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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

INNOVATIVE WEAPONRY INC.

Albuquerque, New Mexico

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Docket No. 030-30266

EA 96-170

NRC STAFF'S ANSWER TO RESPONSE TO COMMISSION ORDER TO
PARTICULARIZE CONTENTIONS AND REQUEST
TO FILE NONTIMELY RESPONSE

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October 15, 1996

SECY-EHD-006

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ORDER TO PARTICULARIZE CONTENTIONS
AND REQUEST TO FILE NONTIMELY RESPONSE

INTRODUCTION

Pursuant to the Commission's Order, dated June 26, 1996, the staff of the Nuclear Regulatory Commission (Staff) hereby responds to "Response to Commission Order to Particularize Contentions and Request to File Nontimely Response" filed by Innovative Weaponry, Incorporated (Licensee or IWI) on September 30, 1996. For the reasons set forth below, the Licensee's Request to file a Nontimely Response should be denied. In addition, as demonstrated below, the Licensee has failed to conform to the specificity requirements of 10 C.F.R. § 2.714(b)(2). Thus, the Licensee's Request for Hearing, dated June 14, 1996, should be denied.

BACKGROUND

The Licensee is the holder of NRC License No. 30-23697-01E, issued pursuant to 10 C.F.R. Part 30. "Confirmatory Order Modifying License (Effective Immediately)," at 1; (61 Fed. Reg. 25694, May 22, 1996). The license authorizes the Licensee to distribute luminous gun sights

containing sealed tritium-light sources as specified in conditions 7.A. and 10 of the license. *See id.*; 61 Fed. Reg. at 25694.

On May 15, 1996, the Staff issued a "Confirmatory Order Modifying License (Effective Immediately)," (Confirmatory Order).¹ 61 Fed. Reg. 25694. The Confirmatory Order was based on the results of an NRC Office of Investigations (OI) investigation which identified two apparent violations of the Licensee's license.² As a result of the OI investigation, the Staff questioned whether it had the requisite reasonable assurance that the Licensee would comply with NRC requirements. *Id.* at 2; 61 Fed. Reg. at 25694. At a predecisional enforcement conference, the Licensee voluntarily committed to actions to address the NRC's concerns and offered to develop certain plans related to training, audits and procedures and submit them to the NRC. In addition, the training and audit plans required NRC approval. *Id.*; 61 Fed. Reg. at 25694-95. The Staff concluded that implementation of these plans would provide reasonable assurance that the public health, safety and interest would be adequately protected. *Id.* at 2-3; 61 Fed. Reg. at 25695. The Confirmatory Order also provided that any person other than the Licensee could request a hearing on the Order and that such request must conform to the requirements of 10 C.F.R. § 2.714(d). *Id.* at 5-6; 61 Fed. Reg. at 25696.

On June 14, 1996, the Licensee filed a "Request for Hearing," in which the Licensee raised several contentions regarding the Confirmatory Order and requested, among other things, that the "enforcement action" taken be declared null and void. Request for Hearing at 1-2. In response to

¹ At the same time, the Staff also issued a "Notice of Violation and Proposed Imposition of Civil Penalty" (NOV).

² The two violations alleged that: 1) the Licensee distributed tritium in gun sights not approved by the NRC and not specifically authorized on the license; and 2) the Licensee distributed tritium sources obtained from a manufacturer not authorized on the license. Confirmatory Order at 1; 61 Fed. Reg. at 25694.

the Licensee's Request for Hearing, the Commission issued its Order in which it held that the Licensee must provide the bases for its contentions before a determination of whether the Licensee is entitled to a hearing may be made. Commission's Order at 2-3. The Commission, therefore, ordered the Licensee to file the bases for its contentions, using the requirements of 10 C.F.R. § 2.714(b)(2), especially paragraph (b)(2)(ii), as guidance. *Id.* at 3. In addition, the Commission directed the Licensee to state whether it had consented to the Confirmatory Order, and if so, why that consent should not have the legal effect of waiving the Licensee's hearing rights. *Id.* The Commission further provided that the Staff may file an answer to the Licensee's filing. *Id.*

Thereafter, the Licensee filed two unopposed requests for extensions of time to respond to the Commission's Order, which were granted by the Commission. Order, dated July 10, 1996; Order, dated August 2, 1996. The most recent extension gave the Licensee until September 20, 1996 to file its response to the Commission's Order. Order, dated August 2, 1996 at 1. On September 30, 1996, ten days after the deadline set by the Commission, the Licensee filed its response to the Commission's Order. The Licensee's response contains two parts, the first, is entitled "Response to Commission Order dated June 26, 1996" (Licensee's Response) and the second is entitled "Request for Permission to Make Nontimely Filing" (Licensee's Request).³ For the reasons set forth below, the Licensee's Request to file out of time should be denied and its Request for Hearing denied on this basis alone. In the alternative, the Licensee's Request for Hearing should be denied because its Response has failed to provide sufficient bases to support its proffered contentions.

³ Although the Licensee's response contains two separate parts, page citations to either part will be referred to as "Licensee's Response."

DISCUSSION

A. The Licensee's Request for Permission to Make Nontimely Filing Should Be Denied.

Since the Licensee failed to provide the bases for its contentions on time, the use of the late-filed contention criteria of section 2.714(a) would be appropriate. *See Geo-Tech Associates, CLI-92-14, 36 NRC 221, 222 (1992).* The Licensee addresses these factors in its Request. As demonstrated below, the Licensee has failed to meet the criteria of section 2.714(a). Thus, the Licensee's Request should be denied.

Section 2.714(a) of the Commission's regulations provides that the Commission will not entertain late filed contentions unless a balancing of the five articulated factors demonstrates that the request for a hearing should be granted. 10 C.F.R. § 2.714(a). The factors to be balanced for admission of a late-filed petition to intervene or request for hearing are:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.

- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

10 C.F.R. § 2.714(a)(1)(i)-(v).⁴

Of the five factors identified in 10 C.F.R. § 2.714(a)(1), the preeminent factor has long been recognized as factor (i), good cause for failure to file on time. *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 397 (1983), citing *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1765 (1982). Whether a movant has demonstrated good cause for a late filing depends entirely upon the substantiality of the reasons assigned for not having filed at an earlier date. *South Carolina Elec. and Gas Co.* (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 887 n.5 (1981). The consequences of the tardiness are to be looked at in connection with the other factors, particularly with respect to the fifth factor. *Id.*

The Licensee asserts, with respect to the first criterion, that good cause exists because its counsel made an "administrative error," in that he "confused" the filing deadline set by the Commission's September 20, 1996 Order with the deadline, which also had been extended several

⁴ Section 2.714(a) also provides that the factors of section 2.714(d)(1) must also be met. These factors are:

- (i) The nature of the petitioner's right under the Act to be made a party to the proceeding;
- (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding;
- (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

10 C.F.R. § 2.714(d)(i)-(iii). The Staff does not dispute that the second and third criteria favor the Licensee. However, as to the first criterion, the Staff contends that the Licensee has waived its right to any further proceedings because the Licensee has consented to the Confirmatory Order.

times, to file an answer to the NOV. Licensee Response at 16-17. The Licensee attempts to minimize its mistake by asserting that the delay in complying with the Commission's order caused no harm. *Id.* at 17. The Licensee also suggests that administrative efficiency actually warrants the lateness of its filing because it anticipates it will appeal any enforcement action taken as a result of the NOV and that this proceeding and the NOV proceeding should be consolidated. *Id.* at 17-18.

The Licensee's claim of confusion does not excuse the lateness of its filing and nor does it provide the Licensee with good cause for failure to file on time. The Licensee is represented by competent counsel who, by his own assertion, has "11 years experience working inside the NRC" and a "total of 37 years of legal practice." Licensee's Response at 18-19. Thus, the Licensee's counsel's own assertion of his expertise undermines his claims that he confused the two different regulatory actions (NOV as opposed to the Confirmatory Order). *See Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 1), LBP-96-1, 43 NRC 19, 24 (1996) (lateness of a petitioners' filing could not be excused by a lack of familiarity with agency procedures where the petitioners' counsel had participated in NRC adjudicatory proceedings for 20 years).

The Licensee's other excuses likewise do not establish good cause, as the Licensee itself recognizes. *See* Licensee's Response at 18. The lack of harm to the other parties does not establish good cause. *Sumner*, ALAB-642, 13 NRC at 887 n.5. Further, the Commission has stated that "[f]airness to all involved in NRC adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations." *Statement of Policy on the Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 453, 454 (1981).⁵

⁵ While this Policy Statement refers to licensing proceedings, the consideration expressed therein provides useful guidance in the context of enforcement proceedings, as well.

In addition, the fact that this proceeding may be consolidated with any future proceeding regarding the NOV does not establish good cause. A motion for consolidation of the proceedings may be made when there are in fact two proceedings to consolidate. Since that time has not arrived, the mere potential for another proceeding and its consolidation with this one is largely speculative and irrelevant to the existence of good cause. The Licensee, thus, has failed to demonstrate good cause for its failure to file on time.

Turning to the third criterion, whether the petitioner's participation may reasonably be expected to assist in developing a sound record, a petitioner must set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses and summarize its proposed testimony. *See generally, Summer*, ALAB-642, 13 NRC at 894. Other than articulating its attorney's legal experience, the Licensee fails to identify its prospective witnesses or summarize its proposed testimony. It is the petitioner's ability to contribute sound evidence rather than asserted legal skills that is of significance in determining whether the petitioner would contribute to the development of a sound record. *Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1)*, ALAB-671, 15 NRC 508, 513 n.14 (1982). Further, the Licensee's contention raises technical issues regarding the impact on safety of the conditions set forth in the Confirmatory Order. *See Licensee's Response* at 6-7. In such instances, the expertise of the Licensee's counsel is not relevant. *See Yankee Atomic Elec. Co. (Yankee Nuclear Power Station)*, LBP-96-15, 44 NRC 8, 28 (1996).

With respect to the second and fourth criteria, the Staff agrees that there are no other means available by which the Licensee's interest can be protected or that its interest will be represented by existing parties. In addressing the last factor, the extent to which the petitioner's participation will

broaden the issues or delay the proceeding, the Licensee merely asserts that its participation will not broaden or delay the proceeding. Licensee's Response at 19. Granting the Licensee's Request will clearly broaden the issues in this proceeding since there would otherwise be no hearing on the Confirmatory Order.⁶

In sum, the Licensee has failed to demonstrate good cause for the lateness of its filing. In addition, the Licensee has failed to establish that a balancing of the factors in section 2.714(a) indicates that the Licensee's nontimely filing should be entertained. Most notably, the Licensee has failed to establish good cause for the granting of its Request. The Licensee's Request should, therefore, be denied. Because the Licensee's Request should be denied, its Request for Hearing should also be denied for failure to provide adequate bases for its proffered contentions.

B. Licensee's Request for a Hearing

1. The Licensee Has Failed to Provide Adequate Bases for Its Contentions

If the Licensee's filing is not denied as untimely, its Request for Hearing should still be denied for failure to provide adequate bases for its contentions, pursuant to 10 C.F.R. § 2.714(b)(2). As a general matter, since the Licensee consented to the Confirmatory Order, the Licensee is not entitled to a hearing as of right pursuant to 10 C.F.R. § 2.202(a)(3).⁷ The Commission, in its Order,

⁶ The Staff notes that a licensee against whom an order is issued is provided with the opportunity to request a hearing on that order. 10 C.F.R. § 2.202(a)(3). In this case, however, the Licensee waived that opportunity for a hearing because the Licensee agreed to the Confirmatory Order. *See id.* *See also* Commission Order at 3. The issue of the Licensee's right to a hearing is addressed further in connection with the issue of consent.

⁷ Specifically, section 2.202(a)(3) provides that any order issued to a licensee or individual must inform the licensee or individual of his or her right to request a hearing on the order, "except in a case where the licensee . . . has consented in writing to the order." 10 C.F.R. § 2.202(a)(3). The Licensee admits that it consented to the Confirmatory Order. Licensee Response at 8. The
(continued...)

recognized this fact when it stated that “before there can be a ruling on whether the licensee is entitled to a hearing on its contentions, the licensee must provide the bases for its contentions. A hearing cannot be granted on the basis of mere assertions of misconduct.” Commission Order at 2-3. The Commission, therefore, directed the Licensee to provide the bases for its contentions, deriving guidance from the specificity requirements of section 2.714(b)(2), especially paragraph (b)(2)(ii). *Id.* at 3. As demonstrated below, the Licensee has failed to provide adequate bases for its contentions. Its Hearing Request should, therefore, be denied.

Before addressing the requirements of section 2.714(b), the Licensee first asserts that section 2.714 is an inappropriate section to apply in an enforcement proceeding. Licensee’s Response at 2. The Licensee claims that the specificity requirements of section 2.714(b)(2) were intended to apply to intervenors in power reactor licensing cases. *Id.* at 2. The Licensee also claims that key documents, such as the investigation report, are not available to it and, therefore, it has no readily available information to identify material issues of law or fact, much less specify contentions. *Id.* at 3.

⁷(...continued)
circumstances of that consent are addressed below.

Thus, the Licensee states that it is premature to particularize contentions 2 through 7⁸ and requests permission to drop these contentions without prejudice to be filed at a later date. *Id.* at 4.

The Licensee's assertions regarding the appropriateness of applying section 2.714 to an enforcement proceeding are incorrect. Although certain words in section 2.714(b)(2) make reference to the "applicant" and "applications," there is nothing specifically in either the language of the regulation itself or the statements of consideration which would indicate that the requirements of section 2.714(b)(2) could not be used as guidance in formulating contentions in enforcement proceedings. In fact, section 2.714 has been followed by licensing boards in enforcement proceedings for such guidance. *See, e.g. Oncology Services Corp.*, LBP-94-2, 39 NRC 11 (1994). Further, by making this argument, the Licensee ignores the clear directive of the Commission to "be guided by"

⁸ These contentions are:

- 2) The investigation reports upon which decision makers relied in this case are biased, willfully disregard a full and candid exposition of material facts, and amount to a material false statement as that term is defined by the NRC;
- 3) The exercise of power by the NRC in the Order is arbitrary and capricious;
- 4) The exercise of power by the NRC prior to the issuance of the Order amounts to unjustifiable regulatory duress;
- 5) The actions underlying the Order are anti-competitive;
- 6) The actions underlying the Order are unduly discriminatory; and
- 7) The actions underling the Order are otherwise contrary to the public interest.

Request for Hearing at 1-2. To the extent that any of these issues raise concerns regarding unethical conduct by the Staff, the Request for Hearing was forwarded to the NRC's Office of Inspector General (IG) by the Staff on July 10, 1996. Staff Counsel has been informed that the case was closed by the IG without further action.

section 2.714(b)(2). Commission Order at 3. The Commission's Order, in this respect, is well within its authority to set forth procedures governing a hearing request. *See Duke Power Co.*, (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1045 (1983). If the Licensee is wished to challenge the Commission's Order in this regard, the appropriate vehicle would have been a motion for reconsideration. The Licensee did not seek reconsideration of the Commission's order when it was issued over three months ago.

The Licensee's argument regarding the unavailability of documents is also misplaced. The report documenting the Office of Investigations (OI) investigation is not relevant to any of the Licensee's contentions. In addition, it has been held that a petitioner may not use discovery to formulate its contentions. *Duke Power Co.*, ALAB-687, 16 NRC 460, 468 (1982). Thus, although the OI Report was not available to the Licensee, the Confirmatory Order clearly articulates the circumstances which gave rise to the Order. Further, the OI investigation included the Licensee's own employees, including members of its management, and many Licensee documents. In addition, the results of the OI investigation and the Confirmatory Order were discussed with the Licensee in a predecisional enforcement conference and the management licensing conference held on the same day. The Licensee, therefore, had sufficient information readily available to it to provide the bases for its contentions. This is especially true since the Licensee does not deny any of the facts or alleged violations set forth in the Confirmatory Order. The Licensee should be able to articulate the facts or legal theories upon which its contentions are based. Since the Licensee has failed to attempt to comply with the Commission's Order to provide the specific bases for contentions 2-7, and has equally failed to demonstrate why it is unable to do so, the Licensee's contention numbers 2-7 should not be admitted as issues, in the event that the Licensee's Request for Hearing is granted.

The Licensee does, however, attempt to comply with the Commission's Order with respect to its first contention. As written in its Request for Hearing, the Licensee's Contention 1 provides:

The pattern of the NRC actions underlying this [Confirmatory] Order and the Order itself are beyond the agency's jurisdiction.

Request for Hearing at 1. The Licensee further refines this contention and states, in its Response, that the contention raises the issue of "whether the NRC has jurisdiction to take regulatory actions in matters which have no health and safety or common defense and security consequences?" Licensees' Response at 4.

Section 2.714(b)(2) provides that each contention must consist of a specific statement of law or fact to be raised or controverted. In addition, a petitioner must provide with respect to each contention:

- (i) a brief explanation of the basis of the contention;
- (ii) A concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. . . ;
- (ii) Sufficient information . . . to show that a genuine dispute exists with the applicant on a material issue of law or fact.

10 C.F.R. § 2.714(b)(2). Under 10 C.F.R. § 2.714, an intervenor must provide a "clear statement as to the basis for the contentions and the submission of more supporting information and references to specific documents and sources that establish the validity of the contention." *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991). If a contention fails to meet any one of the specific criteria of 10 C.F.R. § 2.714(b)(2)(i), (ii), and (iii), it must be rejected. *Palo Verde*, CLI-91-12, 34 NRC at 155.

The Licensee contends, as the basis for its contention, that the Confirmatory Order was not based on the protection of the public health and safety. Licensee's Response at 6-7. Since, the

Licensee argues, the NRC may not impose regulatory requirements which have no health and safety consequences or do not adversely affect common defense and security, the requirements articulated in the Confirmatory Order are beyond the NRC's authority to impose. *Id.* at 6. To support its assertion that the Confirmatory Order was not based on the protection of the public health and safety, the Licensee makes two factual assertions. First, the Licensee claims that the Staff informed the Licensee that "this case" did not involve public health and safety but was a matter of license compliance. *Id.* at 5-6. Second, the Licensee claims that the violations of its license conditions set forth in the Confirmatory Order have no relationship to public health and safety. *Id.* at 6-7.

The Licensee fails to support the basic assumption of its proffered basis; that the Confirmatory Order lacked a public health and safety basis. The Confirmatory Order explicitly states that the implementation of the commitments offered by the Licensee to correct deficiencies noted in the conduct of its operations and outlined in the Confirmatory Order are necessary in order to assure that licensed activities will be in compliance with NRC requirements in the future and that compliance with these commitments will provide reasonable assurance that the public health and safety are protected. Confirmatory Order at 2-3; 61 Fed. Reg. at 25695. The NRC, in discharging its responsibility to protect public health and safety must be assured that a licensee will adhere to the Commission's regulations. *Hamlin Testing Laboratories, Inc.*, 2 AEC. 423, 428 (1964), *citing*

X-Ray Engineering Co., 1 AEC 553, 555 (1960).⁹ See also *Randall C. Orem*, CLI-93-14, 37 NRC 423, 431 (1993).

To support its assertion that the Confirmatory Order was not based on a public health and safety concern, the Licensee relies on its understanding of the Staff's statement regarding the safety impact of the alleged violations. The Staff did not assert, as the Licensee would have one believe, that the Confirmatory Order was not based on protection of public health and safety, but, rather the letter issued to the Licensee transmitting the NOV and the Confirmatory Order stated, "even though these violations did not result in any actual safety impact, they are nonetheless significant from a regulatory standpoint."¹⁰ Letter to Innovative Weaponry, Inc., Attn: Mr. David Gregor, President from James Lieberman, Director, Office of Enforcement, United States Nuclear Regulatory Commission, May 15, 1996. A copy of this letter is attached hereto as Attachment 1. Relying on this language, the Licensee draws the conclusion, despite the explicit language in the Confirmatory Order, that the Confirmatory Order was not based on public health and safety but "was solely a matter of license compliance." See Licensee Response at 6. The Licensee, thus, draws a false dichotomy

⁹ In *X-Ray Engineering*, the Commission stated that:

Our regulations require meticulous attention to detail to assure the adequate protection of the public health and safety, and a licensee who regards them as trivial demonstrates a lack of understanding of the Commission's, and Licensee's own, obligation with respect to the public health and safety.

¹ AEC at 555.

¹⁰ The Staff's comments in this regard are in conformance with the NRC's Enforcement Policy which recognizes that some violations have more impact on safety than others. See *General Statement of Policy and Procedure for NRC Enforcement Actions, Enforcement Policy*, NUREG-1600, Section IV, Severity of Violations, at 7.

between safety and compliance. As discussed above, the issue of licensee compliance with the Commission's regulations is a public health and safety concern.

The Licensee also misunderstands the basis for the Confirmatory Order. The Licensee claims that the violations of license conditions set forth in the Confirmatory Order, and the underlying license conditions themselves, have no reasonable relationship to public health and safety. Licensee's Response at 6-7. The failure of a licensee to comply with its license is of the utmost relevance to the issue of public health and safety. *See Advanced Medical Systems, Inc.*, CLI-94-6, 39 NRC 285, 312 (1994), *citing Atlantic Research Corp.*, CLI-80-7, 11 NRC 413, 425 (1980) ("[t]he Commission's safety regulations and license conditions reflect the Commission's considered judgment as to what is required to protect the public."). *See also Hamlin Testing*, 2 AEC at 428. As already discussed, the basis for the Confirmatory Order was that the Staff lacked reasonable assurance, in light of these violations, that the public health and safety would be protected. Since the Confirmatory Order is based on the protection of the public health and safety, the Licensee has failed to provide an adequate basis for its contention and has failed to satisfy the first criterion of 10 C.F.R. § 2.714(b)(2).

With respect to the second criterion of section 2.714, which requires a statement of alleged facts or expert opinion which support the contention and references to specific sources and documents the petitioner intends to rely upon to establish those facts or expert opinions, the Licensee merely provides vague references to the Atomic Energy Act and "general case law."¹¹ In fact, general case law weighs heavily against the Licensee. *See, e.g., Advanced Medical Systems, Inc.*, CLI-94-6,

¹¹ The Licensee does offer one case, *Pacific Gas and Elec. Co. v. State Energy Resources Conservation & Development Commission, et al.*, 103 S. Ct. 1713 (1983). This case held that the Atomic Energy Commission has the authority to regulate radiological hazards. 103 S. Ct. at 1723. The Licensee fails to explain how this case supports its contention in light of the fact that the Confirmatory Order has an articulated health and safety basis.

39 NRC 285. The Licensee also promises that it may use "NRC pronouncements, rules, policies and other agency materials." Licensee's Response at 7. Finally, the Licensee states that it "will probably" use expert testimony and that the NRC Staff may also be called as witnesses." *Id.* The Licensee clearly has failed to provide a statement of alleged facts and/or expert opinion which support its contention. Further, those facts and arguments the Licensee does discuss in connection with the first criterion, as already demonstrated, are insufficient to support its contention. The Licensee's failure with regard to this criterion is particularly fatal in light of the Commission's order to especially address it. Commission's Order at 3. *See also Palo Verde*, CLI-91-12, 34 NRC at 155-56 (The bases for contentions must be set forth in clear statements and supported by information, documents, and sources establishing the validity of the contentions.).

The Licensee also fails to show that a genuine dispute exists on a material issue of law or fact. The only fact the Licensee disputes is the fact that the Confirmatory Order was based on the protection of public health and safety. The Licensee, however, fails to demonstrate that there is a genuine dispute regarding this fact. As already discussed, the Confirmatory Order is based on the protection of the public health and safety and nothing the Licensee has provided contradicts this fact. The Licensee fails to provide any support for its assertion and ignores the basis for the issuance of the Confirmatory Order.¹² The only issue of law the Licensee raises is whether the NRC has the authority to impose requirements which do not directly affect the public health and safety. This issue is not material because the Licensee has failed to indicate that the Confirmatory Order was not based on the protection of public health and safety. Thus, even if the Licensee prevails on its legal issue, it would not be entitled to the relief it seeks, the lifting of the Confirmatory Order. The Licensee,

¹² The Licensee has not disputed any other fact set forth in the Confirmatory Order.

therefore, has failed to demonstrate that a genuine material issue of law exists. Having failed to provide sufficient specificity to support its contention, pursuant to section 2.714(b)(2), the Licensee's first contention should not be admitted. Since the Licensee withdrew its other contentions, the Licensee's Request for Hearing must be denied.

2. Consent Issue

The Commission also requested that the Licensee address the issue of why the Licensee's consent to the Confirmatory Order does not have the effect of waiving the Licensee's hearing rights. Commission Order at 3. The Licensee, first, acknowledges that it did consent to the Confirmatory Order. Licensee's Response at 8. The Licensee, however, asserts five reasons why the Licensee's consent does not have the legal effect of waiving its hearing rights. *Id.* at 8-9. Notwithstanding these assertions, the Licensee's consent should be held to have the effect of waiving its hearing rights.

First, the Licensee claims, without any reference to statutes or case law, that "[j]urisdiction cannot be conferred by inference, implication or by the act of any private party and cannot be waived as a litigable issue." *Id.* at 9. Since, the Licensee asserts, it has raised an issue regarding the jurisdiction of the NRC to issue the Confirmatory Order, to find that the Licensee has waived its hearing rights would be tantamount to allowing the agency to create "jurisdiction where none exists." *Id.* The Licensee's jurisdictional argument fails because it has not, in fact, raised a jurisdictional issue with respect to the Confirmatory Order. Subject-matter jurisdiction refers to the power of a court to deal with the general subject involved in the action. Black's Law Dictionary 1278 (5th ed. 1979). The Licensee, here, is not challenging the NRC's power or authority to deal with the general subject matter (*i.e.*, the Licensee's activities); rather, the Licensee is questioning the extent of the NRC's authority to regulate those activities under its jurisdiction. *See* Licensee's Response at 5-7. Thus,

the Licensee's consent to the Confirmatory Order does not create "jurisdiction where none exists." The Licensee's jurisdiction argument, therefore, fails to establish that its consent to the Confirmatory Order should not be deemed to constitute a waiver of its hearing rights.

Second, the Licensee contends that consent to the Confirmatory Order was "exacted by the NRC staff under extreme duress." Licensee Response at 10. The Licensee claims that it only consented to the Confirmatory Order because the Staff would not review a pending license amendment request until it agreed to the conditions of the Confirmatory Order. *Id.* Without the amendment, the Licensee contends, it would be bankrupt. *Id.* Thus, the Licensee claims that the Staff coerced it into agreeing to the Confirmatory Order and that such coercion was unlawful because the Staff did not have jurisdiction to act. *Id.*

The Staff must be able to rely on a licensee to comply with the Commission's regulations prior to issuing a license or a license amendment. *See Hamlin Testing Laboratories, Inc.*, 2 AEC 423 at 428. *See also Randall C. Orem*, CLI-93-14, 37 NRC 423, 431 (1993). To that end, the Staff must be free to consider any information that may affect the Staff's decision on whether to issue a license amendment. Consideration of information obtained by OI regarding the Licensee, was not, therefore, improper and does not constitute unlawful coercion.

The Licensee apparently made a business decision that it would be better to propose the terms documented in the Confirmatory Order, than to not consent to it and risk the Staff imposing, by order, conditions on its license. Such a decision is analogous to that made by a licensee, who, after having been issued an immediately effective order suspending or revoking its license, decides to settle with the Staff, after requesting a hearing. Under those circumstances, there is no coercion involved in the licensee's decision to settle the case, even though the licensee was unable to conduct any

licensed activities absent such a settlement. Similarly, the Licensee decided it would agree to the conditions in the Confirmatory Order. Having made this decision, it cannot now renege on its agreement.¹³

The Licensee's remaining three reasons consist of vague references to due process, public policy, and the implementation of the NRC's strategic initiative of September 16, 1996.¹⁴ Licensee's Response at 11-13. With respect to the Licensee's due process challenge, the Licensee asserts it is entitled to review the evidence upon which the Confirmatory Order was based.¹⁵ *Id.* at 11-12. The Licensee's argument has nothing to do with the effect of its consent to the Confirmatory Order has on its hearing rights. In any event, due process requires only notice of the basis on which the agency has acted, which the Licensee received in the Confirmatory Order and opportunity for a hearing, which the Licensee has waived. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1949).

¹³ The commitments expressed in the Confirmatory Order were discussed during the predecisional enforcement conference and at a licensing meeting immediately following it. May 15, 1996 Letter at 2. At both of those meetings, the Licensee had the benefit of counsel and, thus, cannot assert that it was not aware of the effect of agreeing to the Confirmatory Order on its hearing rights.

¹⁴ Specifically, these reasons are, 1) "Holding that consent to the Order constitutes a waiver in the circumstances of this case would amount to the denial of due process"; 2) "Holding consent to be a waiver of hearing rights in this case would be bad public policy"; 3) "Holding that no waiver exists will assurance public confidence and facilitate NRC implementation of its Strategic Assessment Initiative of September 16, 1996." Licensee's Response at 11, 12, 13.

¹⁵ The Licensee also asserts that the OI report and exhibits have been withheld from the Licensee. The Licensee filed a request for the information under the Freedom of Information Act and its request is being processed.

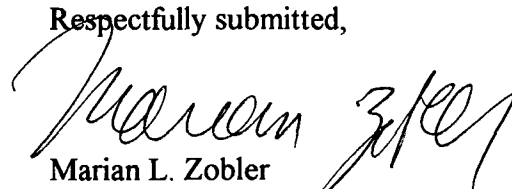
With respect to its public policy argument, the Licensee asserts that it has raised important questions regarding the authority of the NRC to regulate. Licensee's Response at 12-13. Even if true, this mere assertion does not negate the fact that the Licensee agreed to the Confirmatory Order. If the Licensee wished to challenge the Staff's authority, it should not have agreed to the conditions set forth in the Confirmatory Order. The Licensee cannot raise them now in an effort to renege on its agreement to comply with the Confirmatory Order. Similarly, the Licensee's reference to the NRC's Strategic Assessment Initiative is not only irrelevant, but it also does not negate the fact that the Licensee agreed to the Confirmatory Order. In fact, it could be argued that both public policy and the efficacy of the regulatory process requires that where a Licensee has consented to a Confirmatory Order, no further proceedings should be conducted.

As demonstrated above, the Licensee has failed to provide adequate specificity to support the admission of its contentions and has failed to demonstrate that a genuine issue of material fact or law exists. In addition, the Licensee has failed to explain why its consent to the Confirmatory Order does not have the legal effect of waiving its hearing rights. The Licensee's Request for a Hearing must, therefore, be denied.

CONCLUSION

The Licensee's Request to Make Untimely Filing should be denied based on a balancing of the factors in 10 C.F.R. § 2.714(a). On that basis, the Licensee's Request for Hearing should be denied. In the alternative, the Licensee's Request for Hearing should also be denied because the Licensee has failed to provide adequate bases for its contentions. In addition, the Licensee has waived any right it may have had to request a hearing. For the reasons set forth above, the Licensee's Request for Hearing should be denied.

Respectfully submitted,



Marian L. Zobler
Counsel for NRC Staff

Dated Rockville, Maryland
this 15th day of October, 1996



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 15, 1996

EA 96-135
EA 96-170

Innovative Weaponry, Inc.
ATTN: Mr. David Gregor, President
337 Eubank NE
Albuquerque, New Mexico 87123

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$7,500 AND
CONFIRMATORY ORDER MODIFYING LICENSE (EFFECTIVE IMMEDIATELY)
NRC Investigation Report No. 4-95-022)

Dear Mr. Gregor:

This refers to the predecisional enforcement conference conducted on April 23, 1996, with you and other Innovative Weaponry, Inc. (IWI) representatives in the NRC's offices in Rockville, Maryland. A list of conference attendees is enclosed (Enclosure 1).

The conference was conducted to discuss apparent violations identified during an NRC investigation conducted between May 9, 1995, and March 22, 1996. These apparent violations, as well as the concern that they may have been committed willfully by company officers, were discussed by telephone with an IWI representative on April 11, 1996, and were briefly described in a letter sent to IWI on April 17, 1996.

Based on the information developed during the investigation and on our consideration of the information that you provided during the conference, the NRC has determined that violations of NRC requirements occurred. These violations, which IWI admitted at the conference, are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Enclosure 2). Specifically, the NRC concludes that IWI distributed licensed material, i.e. tritium, in various gunsights that were not approved by the NRC and not authorized on the license and that IWI distributed tritium sources that were obtained from a manufacturer not authorized on the license.

At the conference, IWI officials admitted that violations had occurred but denied that there was any intent to commit them. Notwithstanding the Licensee's position on intent, the NRC is concerned that the violations resulted from a lack of effective action to assure compliance with license requirements, despite IWI officials being aware that the NRC license contained

limitations on what could and could not be distributed. This awareness should have prompted IWI to make certain that it both understood and was conducting its business in compliance with the license while it was seeking to amend it.

Thus, even though these violations did not result in any actual safety impacts, they are nonetheless significant from a regulatory standpoint. Therefore, the violations in the enclosed Notice have been categorized as a Severity Level III problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$2,500 is considered for a Severity Level III problem. In this case, given management's failure to assure that requirements were met and that the license was understood, I have been authorized, after consultation with the Director, Office of Enforcement and the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, to exercise discretion pursuant to section VII.A.1 of the Enforcement Policy and propose a civil penalty of \$7,500.

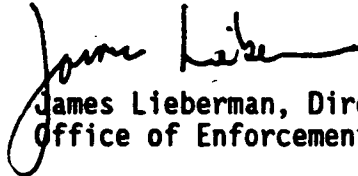
At the conference and at the licensing meeting that followed it, IWI officials voluntarily made various commitments to correct these violations and to assure that future operations will be conducted in strict accordance with the license conditions. These commitments included the development of a training program for all IWI employees whose activities may affect compliance with NRC requirements, and the hiring of a third-party, independent auditor to develop an audit plan and conduct periodic audits of IWI to assure continued compliance with all NRC requirements. These commitments are described in more detail and are confirmed in the enclosed Confirmatory Order Modifying License.

Pursuant to section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of the enclosed Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalty.

You are required to respond to the Notice and the enclosed Order and should follow the instructions in each when preparing your response. In your response to the Notice, you should document the specific actions taken and any additional actions you plan to prevent recurrence. After reviewing your response to this Notice, including your proposed corrective actions and the results of future inspections, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Sincerely,


James Lieberman, Director
Office of Enforcement

Docket No. 030-30266
License No. 30-23697-01E

Enclosures:

1. Conference Attendance List
2. Notice of Violation and Proposed Imposition of Civil Penalty
3. Confirmatory Order Modifying License

cc w/encl:
State of New Mexico

PREDECISIONAL ENFORCEMENT CONFERENCE ATTENDANCE

LICENSEE/FACILITY	Innovative Weaponry, Inc. of Nevada	
DATE/TIME	April 23, 1996 / 9 a.m. EDT	
MEETING LOCATION	NRC HQ, Rockville, Maryland	
EA NUMBER	96-135	
NAME	ORGANIZATION	TITLE
David Gregor	IWI of Nevada	President
Patricia Wilson	IWI of Nevada	Executive Vice President
Kenneth Wilson	IWI of Nevada	Consultant
James Tourtellotte	Representing IWI of Nevada	Attorney
James Lieberman	NRC	Director, Office of Enforcement
Geoffrey Cant	NRC	Enforcement Specialist, Office of Enforcement
Larry W. Camper	NRC	Chief, Medical, Academic and Commercial Use Safety Branch
Susan Greene	NRC	Medical, Academic and Commercial Use Safety Branch
Michael Rafky	NRC	Office of the General Counsel
Jeff Bartlett	NRC	Office of the General Counsel
Linda Howell	NRC, Region IV	Chief, Nuclear Materials Inspection and Fuel Cycle/Decommissioning Branch
Gary Sanborn	NRC, Region IV	Enforcement Officer

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Innovative Weaponry, Inc. of Nevada
Albuquerque, New Mexico

Docket No. 030-30266
License No. 30-23697-01E
EA 96-135

During an NRC investigation conducted between May 9, 1995 and March 22, 1996, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- A. License No. 30-23697-01E authorizes the licensee to distribute SRB Technologies, Inc., Model PRH-800/G/200 sealed light sources.

Contrary to the above, from June to August 1995, the licensee distributed tritium sealed light sources from a manufacturer not authorized in the license. (01013)

- B. License Condition 10 of License No. 30-23697-01E authorizes the licensee to distribute sealed light sources in specified gunsights and in specified configurations.

Contrary to the above, from July to September 1995, the licensee distributed tritium sealed light sources in configurations not specified or otherwise authorized in the license. (01023)

These violations represent a Severity Level III problem (Supplement VI).
Civil Penalty - \$7,500.

Pursuant to the provisions of 10 CFR 2.201, Innovative Weaponry, Inc., is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to expanding the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty by letter addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a check, draft, money order, or electronic transfer payable to the Treasurer of the United States in the amount of the civil penalty proposed above, or the

Notice of Violation

- 2 -

cumulative amount of the civil penalties if more than one civil penalty is proposed, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation(s) listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.B.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, letter with payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Dated at Rockville, Maryland
this 15th day of May 1996

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	Docket No. 030-30266
Innovative Weaponry, Inc.)	License No. 30-23697-01E
Albuquerque, New Mexico)	EA 96-170

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Innovative Weaponry, Inc. of Nevada, (IWI or Licensee) is the holder of NRC License No. 30-23697-01E issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes the Licensee to distribute byproduct material (i.e., tritium) in gunsights as specified in the license. The license was transferred from IWI of New Mexico to IWI of Nevada on April 3, 1995. Although due to expire on June 30, 1993, the license has remained active based on a timely renewal application.

II

Based on its review of the results of an NRC investigation conducted from May 9, 1995, through March 22, 1996, the NRC identified the following apparent violations of IWI's license conditions: 1) IWI distributed tritium in gunsights not approved by the NRC and not specifically authorized on the license; and 2) IWI distributed tritium sources obtained from a manufacturer not authorized on the license. In addition, as indicated in a letter issued to IWI on April 17, 1996, it appeared that the violations were committed by the President and Executive Vice President of the company.

These apparent violations and the concern that they were committed by the President and Executive Vice President were discussed with IWI representatives

at a predecisional enforcement conference in Rockville, Maryland on April 23, 1996. The Licensee admitted that violations had occurred but denied that there was any intent to commit the violations. Notwithstanding the Licensee's position on intent, the NRC is concerned that the violations resulted from a lack of effective action to assure compliance with license requirements, despite IWI officials being aware that the NRC license contained limitations on what could and could not be distributed.

III

As a result of the NRC investigation, the NRC staff questioned whether it should have the requisite reasonable assurance that IWI will comply with agency requirements. At the predecisional enforcement conference and a meeting on the same date to discuss license amendment issues, the Licensee voluntarily committed to actions to address the NRC's concerns about its ability to conduct its activities in compliance with the license and applicable NRC requirements. The Licensee offered to develop the following plans and to submit them to the NRC for approval: 1) a training plan to assure that all IWI employees, including management, understand the NRC license and applicable NRC requirements; 2) an audit plan to assure compliance with requirements to be implemented by a third-party, independent auditor; and 3) development of written procedures to maintain accountability, control, and security of materials authorized by the NRC for distribution. The NRC has concluded that implementation of these commitments, which are described in more detail below, would provide the necessary assurance that licensed activities will be in compliance with NRC requirements in the future.

I find that the Licensee's commitments set forth at the predecisional enforcement conference and licensing meetings conducted on April 23, 1996, are acceptable and necessary and conclude that with these commitments the public health, safety and interest are reasonably assured. In a telephone call on May 8, 1996, with Mr. James Tourtellotte, the Licensee's attorney, the Licensee agreed to this action. I have also determined, based on the Licensee's consent and on the significance of the conduct described above, that the public health and safety require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. 30-23697-01E IS MODIFIED AS FOLLOWS:

1. The Licensee shall submit for NRC approval, within 30 days of the issuance of this Order, a training plan designed to assure that all IWI employees, including management, who are involved in activities that may affect compliance with the NRC license are familiar with the conditions and restrictions contained in the license, as well as with all other applicable NRC requirements. The training plan also shall provide for training in accountability, control, and security of licensed material in gunsights authorized by the NRC for distribution to persons exempt from licensing. The training plan shall provide for initial training of

all existing employees, including management, within 30 days of the issuance of this Order, training for new employees, including management, prior to their working with licensed materials, and annual refresher training thereafter.

- 2.a. The Licensee shall submit for NRC approval, within 30 days of the date of this Order, the name and qualifications of an independent auditor or auditors whom the Licensee proposes to conduct the audits described below and who are capable of conducting such audits to assure compliance with all NRC license conditions and requirements.
- b. The Licensee shall submit for NRC approval, within 30 days of the NRC's approval of the above auditor, an audit plan which shall provide for periodic audits to assure compliance with all NRC license conditions and requirements. The audit plan shall provide for an initial audit, followed by quarterly audits for a 1-year period, and semi-annual audits thereafter. The audit plan shall provide for audit reports to be issued to the Licensee and the NRC at the same time within 30 days of the completion of each audit. The audit report shall contain findings on the Licensee's state of compliance with NRC requirements and recommendations to achieve compliance if deficiencies are noted. The plan shall provide for the Licensee to respond in writing to all audit findings within 30 days of each audit report, with a copy to the NRC. The response shall state the actions taken by the licensee to address audit recommendations with which the Licensee agrees. For those

recommendations that the Licensee disputes, the Licensee shall provide the basis for dispute and any other action taken.

3. The Licensee shall develop and implement, within 30 days of the issuance of this Order, written procedures designed to maintain inventory and accountability of gunsights with sources authorized by the NRC for distribution to persons exempt from licensing.
4. Upon approval of the actions required under items 1 and 2.a above, items 1 and 2.b shall be implemented until relaxed by the Regional Administrator, Region IV.
5. Requests for approval of the auditor, audit plan, training plan, and for changes of the approved auditor, changes to the audit plan, and to reports required to be submitted, shall be submitted to the Regional Administrator, Region IV, with a copy to the Director, Office of Nuclear Materials Safety and Safeguards.

The Regional Administrator, Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a

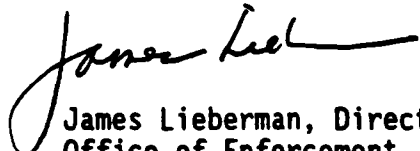
hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person other than the Licensee, adversely affected by the Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 5th day of May 1996

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE COMMISSION

'96 OCT 16 P4:17

In the Matter of

INNOVATIVE WEAPONRY INC.

Albuquerque, New Mexico

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Docket No. 030-30266

EA 96-170

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with § 2.713(b), 10 C.F.R., Part 2, the following information is provided:

Name:

Marian L. Zobler

Address:

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Washington, D.C. 20555

Telephone Number:

(301) 415-1572

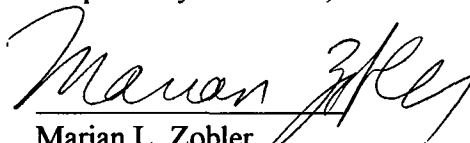
Admissions:

New York State Supreme Court,
Appellate Division, Second Dept.
District of Columbia Court of Appeals

Name of Party:

NRC Staff

Respectfully submitted,



Marian L. Zobler
Counsel for NRC Staff

Dated at Rockville, Maryland
this 15th day of October, 1996.

DOCKETED
USNRC

'96 OCT 16 P4:17

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

INNOVATIVE WEAPONRY INC.

Albuquerque, New Mexico

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) Docket No. 030-30266
)
) EA 96-170
)
)

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with § 2.713(b), 10 C.F.R., Part 2, the following information is provided:

Name:

Eugene J. Holler

Address:

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Telephone Number:

(301) 415-1520

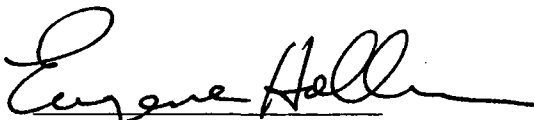
Admissions:

Maryland Court of Appeals

Name of Party:

NRC Staff

Respectfully submitted,



Eugene J. Holler
Counsel for NRC Staff

Dated at Rockville, Maryland
this 15th day of October, 1996.

'96 OCT 16 P4:17

BEFORE THE COMMISSION

In the Matter of

INNOVATIVE WEAPONRY INC.

Albuquerque, New Mexico

Docket No. 030-30266

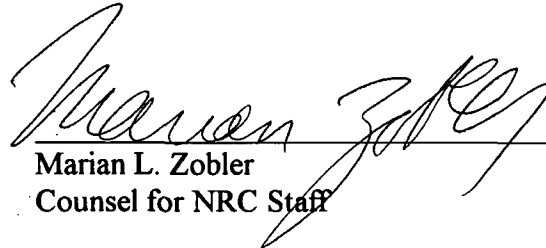
EA 96-170

I hereby certify that copies of the "NRC STAFF'S ANSWER TO RESPONSE TO COMMISSION ORDER TO PARTICULARIZE CONTENTIONS AND REQUEST TO FILE NONTIMELY RESPONSE" and "NOTICE OF APPEARANCE" for Marian L. Zobler and Eugene J. Holler in the above-captioned matter have been served on the following by deposit in the United States mail, first class, as indicated by asterisk or through deposit in the Nuclear Regulatory Commission's internal mail system this 15th day of October, 1996:

**Adjudicatory File (2)
Atomic Safety and Licensing Board
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555**

**Office of the Commission Appellate
Adjudication
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Marian L. Zabler
Counsel for NRC Staff

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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'96 OCT 16 P4:17

BEFORE THE COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

INNOVATIVE WEAPONRY INC.

Albuquerque, New Mexico

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)

Docket No. 030-30266

EA 96-170

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with § 2.713(b), 10 C.F.R., Part 2, the following information is provided:

Name:

Eugene J. Holler

Address:

Office of the General Counsel
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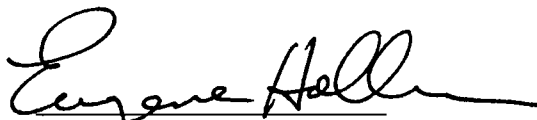
Admissions:

Maryland Court of Appeals

Name of Party:

NRC Staff

Respectfully submitted,



Eugene J. Holler
Counsel for NRC Staff

Dated at Rockville, Maryland
this 15th day of October, 1996.