

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of ) Docket No. 50-170  
)  
ARMED FORCES RADIOBIOLOGY RESEARCH ) (Renewal of Facility  
INSTITUTE ) License No. R-84)  
)  
(TRIGA - Type Research Reactor) )

8/26/81

LICENSEE'S MOTION TO STRIKE

Now comes the Armed Forces Radiobiology Research Institute, Licensee in the above-captured action, and respectfully moves the Board, pursuant to 10 CFR 2.730, to strike from the record of these proceedings a letter dated August 7, 1981 addressed to Samuel Chilk, Secretary, Nuclear Regulatory Commission, which was filed herein on August 7, 1981 by the Citizens for Nuclear Reactor Safety Inc. This motion is based upon the following grounds:

1. Said letter is irrelevant to the instant proceedings.
2. This Board lacks the jurisdiction to grant the relief requested in said letter.
3. Said letter fails to meet the requirements for a petition for leave to intervene as set forth in 10 CFR 2.714.

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4. Said letter was not timely filed and cannot be considered because no proceedings concerning license number 19-08330-03 were pending before the Nuclear Regulatory Commission at the time said letter was filed.

A supporting memorandum and proposed form of order are submitted herewith.

Respectfully submitted,



Robert L. Brittigan  
Counsel for Licensee

Dated at HQ, Defense Nuclear Agency,  
6801 Telegraph Road, Alexandria, VA 22310  
this 26<sup>th</sup> day of August, 1981.

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M. MORANDUM IN SUPPORT OF LICENSEE'S

MOTION TO STRIKE

INTRODUCTION

On August 7, 1981 the Citizens for Nuclear Reactor Safety, Inc. (CNRS) submitted a letter to Samuel Chilk, Secretary, Nuclear Regulatory Commission (NRC) in which CNRS petitioned for a hearing on the application for renewal of Byproducts Material License No. 19-08330-03 (Docket No. 6931, Renewal Application Control No. 04992) and requested that the NRC consolidate hearings on Docket No. 6931 and the instant proceedings. On the same date CNRS effected service of the August 7, 1981 letter herein.

It is not clear whether CNRS seeks a ruling by this Board on the matters raised in the August 7, 1981 letter or is merely using the service list as a convenient means by which to assure

that all interested parties are informed of its actions. It is clear, however, that the issue of a hearing on Docket 6931 is irrelevant to the instant proceedings and beyond the jurisdiction of this Board. Moreover, the August 7, 1981 letter fails to meet the requirements of 10 CFR 2.714 with respect to petitions for leave to intervene and was not filed until after License No. 19-08330-03 had been renewed by the NRC. Accordingly, the August 7, 1981 letter should be stricken from the record of these proceedings.

RENEWAL OF BYPRODUCTS MATERIAL  
LICENSE NO. 19-08330-03 IS NOT  
RELEVANT TO THESE PROCEEDINGS

The Armed Forces Radiobiology Research Institute (AFRRI), Licensee herein, operates pursuant to two separate licenses issued by the NRC. Facility License No. R-84, the renewal of which is the subject of these proceedings, authorizes AFRRI to operate a TRIGA type research reactor. Under a separate license, Byproducts Material License No. 19-08330-03, AFRRI is authorized to use cobalt 60 and depleted uranium. Just as refusal to renew Facility License No. 84 would have no effect on AFRRI's authority to use cobalt 60 and depleted uranium, refusal to renew License No. 19-08330-03 would have no effect on the continued operation of the TRIGA reactor. Under these circumstances, the question of whether to conduct a hearing in Docket No. 6931 is not here relevant. To the

extent to which the August 7, 1981 letter requests that hearings in the two license renewal proceedings be consolidated, the request is premature. Until and unless the appropriate authorities determine that a hearing should be conducted in connection with Docket No. 6931, there is nothing to consolidate. Inasmuch as the petition for a hearing on Docket No. 6931 is irrelevant to the present proceedings and the request for consolidation is, at most, only potentially relevant at some indeterminate time in the future, the August 7, 1981 letter should be stricken.

THIS BOARD IS WITHOUT JURISDICTION TO GRANT THE  
RELIEF REQUESTED IN THE AUGUST 7, 1981 LETTER

The Atomic Safety and Licensing Board Panel is appointed pursuant to section 191 of the Atomic Energy Act, 42 U.S.C. § 2241, and is the organizational group from which the Atomic Safety and Licensing Boards are selected. 10 C.F.R. 1.11. Atomic Safety and Licensing Boards are each composed of three members, two of whom must have "such technical or other qualifications as the Commission deems appropriate to the issues to be decided." 42 U.S.C. § 2241. Once selected, the Boards are empowered to "conduct such hearings as the Commission may direct and make such intermediate or final decisions as the Commission may authorize with respect to the granting, suspending, revoking or amending of any license or authorization..." 42 U.S.C. § 2241. The Act clearly contemplates designation

of Atomic Safety and Licensing Boards for specific proceedings. Both the qualifications of the individual members and the extent of the power delegated to the Board must be tailored by the Commission to fit the particular circumstances of the proceeding for which the Board is selected.

The special as opposed to general nature of the jurisdiction exercised by Atomic Safety and Licensing Boards is also inherent in the selection process through which the NRC implements 42 U.S.C. § 2241. 10 C.F.R. 2.704(a) provides that the Commission or, if the Commission fails to do so, the Chairman of the Atomic Safety and Licensing Board Panel may designate an Atomic Safety and Licensing Board to conduct hearings in conjunction with a particular proceeding. The authority of the Board, being derived from such a designation, is necessarily pro haec vice.

The August 7, 1981 letter requests that a hearing be conducted in Docket No. 6931, proceeding for the renewal of Byproducts Material License No. 19-08330-03. This Board was designated to conduct hearings with respect to Docket No. 50-170, Renewal of Facility License No. R-84. In view of the special, limited jurisdiction of Atomic Safety and Licensing Boards, this Board is without power to grant the relief requested in the August 7, 1981 letter. Accordingly, the letter should be stricken from the record of these proceedings.

THE AUGUST 7, 1981 LETTER FAILS TO  
MEET THE REQUIREMENTS OF 10 C.F.R. 2.714

Inasmuch as the August 7, 1981 letter requests that a hearing be conducted in Docket No. 6931, it must be construed as a petition for leave to intervene in those proceedings. The requirements for a petition for leave to intervene are set forth in 10 C.F.R. 2.714(a)(2). One of those requirements is that the petition set forth "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." The August 7, 1981 letter candidly concedes that CNRS is not prepared to submit specific contentions. More significantly, review of the letter fails to disclose "the specific aspect or aspects" with respect to which CNRS seeks to intervene. The letter merely states that "many of the issues involved in this decision are interrelated with many of the issues (e.g. emergency planning, building access, security, environmental monitoring) currently being litigated in the proceedings on AFRRRI's application to renew its reactor license (Docket No. 50-170)." This shotgun approach fails to afford the Licensee, NRC Staff, or this Board sufficient information to identify the specific aspect or aspects of the Byproduct Materials License about which CNRS is concerned. The only specific reference in the August 7, 1981 letter is to an accident in the cobalt storage facility between April 22 and May 16, 1981 which, CNRS alleges, could have escalated

to "an emergency necessitating evacuation of the entire AFRRRI facility." Even this reference, however, is insufficient to meet the requirements of 10 C.F.R. 2.714(a)(2). The accident in question did not escalate into an emergency and no evacuation of the facility was required. Indeed, the members of this Board visited AFRRRI during the time that this "accident" or "emergency" was occurring. CNRS does not identify how or under what circumstances such an escalation could have occurred. Finally, CNRS is careful to emphasize that the cited accident is intended only as an example by stating that, "the petitioner plans to include contentions relating to the hazards posed by accidents in the cobalt storage facility such as..." Taken as a whole, the August 7, 1981 letter fails to state the specific aspect or aspects of the proceeding as to which CNRS wishes to intervene. This being the case, the letter fails to meet the requirements of 10 C.F.R. 2.714(a)(2) and should be stricken from the record of these proceedings.

THE AUGUST 7, 1981 LETTER WAS

NOT TIMELY FILED AND CANNOT

BE CONSIDERED

The statutory authority for the conduct of hearings in connection with licensing proceedings before the NRC is section 189 of the Atomic Energy Act, 42 U.S.C. §2239, which provides, in pertinent part, that "In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license...the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding..."

Proceedings under Docket No. 6931 were terminated on July 28, 1981 when the NRC issued Amendment No. 14 to Byproducts Material License No. 19-08330-03 and extended the term of the License to July 31, 1986. CNRS submitted the letter requesting a hearing on August 7, 1981--some ten days after the renewal had been issued. At the time CNRS sought to intervene, there were no proceedings in which to intervene. Under these circumstances, 42 U.S.C. 2239 does not afford any statutory basis for the conduct of hearings.

10 C.F.R. 2.714(a)(1) sets forth the general rule that, absent special circumstances, nontimely filings will not be entertained. As CNRS correctly notes, proposed actions on material licenses are not published in the Federal Register. An argument may be made, therefore, that the belated filing by CNRS should be excused for good cause. In the August 7, 1981 letter, however, CNRS acknowledges that it had actual notice of the pending action at least as early as February 4, 1981. While the mistaken belief that action on Docket No. 6931 would be deferred may have justified some delay, there is no evidence or indication that CNRS even checked on the status of that proceeding during the period from February 4, 1981 to August 6, 1981. The fact that CNRS was vigorously pursuing intervention in the instant proceedings throughout that period demonstrates that CNRS was well aware of both AFRRRI and NRC activities. Where, as here, the would-be intervenors

had actual knowledge, the absence of constructive knowledge through publication in the Federal Register cannot constitute good cause for failure to file on time.

The CNRS attempt to reopen proceedings and cause a hearing ten days after the license in question had been renewed raises a serious question of public policy. Contested proceedings require the expenditure of substantial resources on the part of both the NRC and the Licensee. The efficient conduct of licensed operations requires some degree of certainty on the part of the Licensee that continued operations will be permitted. These "costs" associated with repeated review of licenses must be weighed against the legitimate environmental and health concerns involved in nuclear activities and the right of the public to participate in and comment upon proposed licensing actions.

The NRC has struck an appropriate balance between these competing interests. NRC licenses are issued for a term certain and liberal provision is made for intervention during the renewal process. While periodic renewal imposes burdens and uncertainty on the NRC Staff and Licensees, it assures that the public interest is adequately considered. The fixed term of the licenses assures that scarce resources are not wasted in endless and unproductive administrative proceedings.

There may well be cases in which licenses should be reviewed prior to their expiration. If changed circumstances or newly

discovered evidence indicate the existence of some hazard unknown when the license was issued or renewed, the NRC should reopen the proceedings and assess the hazard. Where, however, there has been no change, the Licensee should be permitted to continue operations free from the costs and uncertainty associated with reconsiderations.

Nothing has changed with respect to Byproducts Material License No. 19-08330-03 since July 28, 1981. AFRRI has operated in accordance with the terms and conditions of the license. No accidents have occurred. No scientific discoveries or problems at other sites have created any reason to question the safety of the ongoing operation. No public interest would be served by reopening the proceedings. Granting the relief requested, on the other hand, would place AFRRI and all other NRC licensees in the untenable position of continually reproving their cases. The NRC Staff would quickly become inundated with repetitious, groundless, interminable administrative proceedings. As a matter of policy, such a result should not be permitted.

The August 7, 1981 letter was submitted after Byproduct Materials License No. 19-08330-03 was renewed and at a time when no proceedings concerning that license were pending before the NRC. There is no good cause for failure to file on time

and no new matter which might warrant reopening the proceedings. Accordingly, the 7 August 1981 letter is utterly without merit and should be stricken from the record of these proceedings.

For the reasons stated, the accompanying Licensee's Motion to Strike should be granted.

Respectfully submitted,

*Robert L. Brittigan*

Robert L. Brittigan  
Counsel for Licensee

Dated at HQ, Defense Nuclear Agency,  
6801 Telegraph Road, Alexandria, VA 22310  
this 26<sup>th</sup> day of August, 1981.

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(TRIGA - Type Research Reactor)	)	

ORDER

(Granting Licensee's Motion to Strike)

On August 7, 1981 the Citizens for Nuclear Reactor Safety Inc. filed herein a letter dated August 7, 1981 addressed to Samuel Chilk, Secretary, Nuclear Regulatory Commission. On August 27, 1981 the Armed Forces Radiobiology Research Institute, Licensee herein, filed Licensee's Motion to Strike the August 7, 1981 letter.

After due consideration of Licensee's Motion to Strike and the entire record herein. it is the finding of this Board that the motion should be granted for the reasons stated therein. Accordingly it is ORDERED that Licensee's Motion to Strike dated August 27, 1981 be and the same hereby is granted and it is further ORDERED that the letter dated August 7, 1981 addressed to Samuel Chilk, Secretary, Nuclear

Regulatory Commission be and the same hereby is stricken  
from the record of proceedings herein.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

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Louis J. Carter, Chairman  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland  
this \_\_ day of \_\_\_\_\_, 1981.

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RESEARCH INSTITUTE	)	License No. R-84)
	)	
(TRIGA-Type Research Reactor)	)	

CERTIFICATE OF SERVICE OF DUPLICATE SIGNED  
COPIES OF 27 AUGUST, 1981 FILING

I hereby certify that true and correct copies of the foregoing "LICENSEE'S MOTION TO STRIKE," "MEMORANDUM IN SUPPORT OF LICENSEE'S MOTION TO STRIKE" and "ORDER" were mailed this 27th day of August, 1981, by United States Mail, First Class, to the following:

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