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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'85 JUL 24 P4:48

COMMISSIONERS:

Nunzio J. Palladino, Chairman
Thomas M. Roberts
James K. Asselstine
Frederick M. Bernthal
Lando W. Zech, Jr.

SERVED JUL 25 1985

In the Matter of

PRECISION MATERIALS CORPORATION

(Mine Hill, New Jersey Irradiator
Facility)

Docket No. 30-22063

ORDER

By application filed November 5, 1984, Precision Materials Corporation ("PMC") applied for a new byproduct materials license to allow it to possess and utilize byproduce material for the purpose of operating a radiation processing facility in Mine Hill, New Jersey. Specifically, PMC proposed to employ a Cobalt-60 irradiator to irradiate a variety of cosmetic, pharmaceutical, and medical products and components. On March 5, 1985, the Township of Mine Hill ("the Township") filed a request for hearing raising a number of challenges to the technical and financial qualifications of PMC to design, construct, operate, and maintain the irradiator and to the details of operation of the facility proposed by PMC. On March 13, 1985, PMC responded to the

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Township petition, asserting that the petition was untimely, did not provide an adequate statement of concerns, and that, in any event, its pendency should not delay issuance of a license to PMC. On March 29, 1985, the Director of Nuclear Material Safety and Safeguards granted the PMC application (License No. 29-20777-01).

In making an initial disposition of the Township's hearing request, we note that in our decision in Kerr-McGee Corp. (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232 (1982), aff'd, City of West Chicago v. NRC, 701 F.2d 632 (7th Cir. 1983), the Commission indicated that there was no entitlement to a formal, trial-type hearing under either the Atomic Energy Act or NRC regulations with regard to materials licensing actions. Further, the hearing request does not give us cause to exercise our discretion and grant a formal hearing under the "public interest" standard of 10 CFR §§ 2.104(a) and 2.105(a)(7) or to find due process concerns require that a formal hearing need be convened. Therefore, only an informal hearing need be instituted at this time.

With regard to the conduct of the informal proceeding, we direct the Chairman of the Atomic Safety and Licensing Board Panel to designate a single member of that Panel to act as the presiding officer. In order to ensure that all interested persons are identified and heard on a timely basis, the presiding officer should arrange for publication in the Federal Register of a notice of opportunity for hearing that notes the pendency of the hearing request regarding the PMC license application and invites all interested persons desiring to intervene in any hearing proceeding to be conducted to file a petition to intervene with the Docketing and Service Branch of the Office of the Secretary

within thirty days of the publication of the notice. The intervention statement must set forth with particularity (1) the interest of that person in the proceeding; (2) how that interest may be affected by the results of the proceeding, including a delineation of the reasons why that person should be permitted to intervene that makes particular reference to (a) the nature of the person's right under the Atomic Energy Act to be made a party, (b) the nature and extent of the person's property, financial, or other interest in the proceeding, and (c) the possible effect of any order that may be entered in the proceeding on the person's interest; and (3) the specific aspect or aspects of the subject matter of the proceeding that the person seeks to have litigated. Statements by those seeking to intervene as parties will be deemed filed when personally delivered to the Office of the Secretary or when deposited in the United States mail, properly addressed and first-class postage prepaid.

The parties to the informal adjudication will be PMC; the Township, if its petition is found to be adequate; and any other person found to have filed a proper intervention statement. The NRC staff also can appear as a party if it so desires.

Determinations by the presiding officer on the standing of persons seeking to intervene as parties to the proceeding will be governed by existing agency precedents regarding 10 CFR § 2.714(d). See Rockwell International Corp. (Energy Systems Group Special Nuclear Materials License No. SNM-21), ASLPB No. 83-488-01 ML, at 4-5 (Admin. Judge Oct. 7, 1983). If the presiding officer finds that the Township's petition for hearing or any intervention petition should be denied in toto on the

basis of lack of standing or any other reason, such determination, which must be in writing, will become final agency action within thirty days unless the Commission, on its own, undertakes a review of that decision. No petition for review will be entertained by the Commission regarding the presiding officer's decision on such matters.

In carrying out his responsibility under this delegation, the presiding official also will have the authority to request and receive whatever written submissions and documents he deems necessary from any party on any schedule he deems proper. Such requests can include requirements that petitioner or intervening parties provide additional information relative to their standing to participate or further particularize the aspects of the subject matter of the proceeding they wish to litigate or that the parties answer specific questions, with supporting materials, that the presiding officer poses to them. In addition, at such time as may be specified by the presiding officer, persons who do not desire to become parties or cannot fulfill the requirements for party status can file a statement indicating they wish to make a limited appearance regarding any issue in the proceeding. The presiding officer will have the authority to fix such limitations and conditions as appropriate on the participation of those making limited appearances and they are not otherwise to participate in the proceeding.

In his discretion the presiding office also can entertain oral presentations from the parties or those making a limited appearance. Any oral communications between the presiding officer and any party or any person making a limited appearance concerning any matter at issue in the proceeding will be conducted in the presence of the parties or

memorialized in a written memorandum that is served on all parties and made a part of the docket file on the proceeding.

If, on the basis of the parties' presentations and other information that the adjudicator is entitled to rely upon as discussed below, the presiding officer believes that additional procedures are necessary to ensure the full development of the agency record or to resolve any material factual issues that could not be resolved through the procedures set forth in this order, he should seek authority from the Commission to implement any additional procedures.

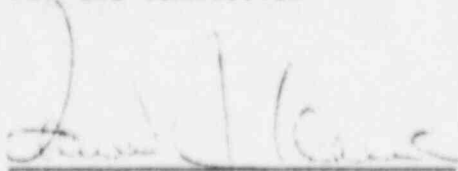
The presiding officer's decision, which is to be in writing, should be made on the basis of the written submissions of the parties, any oral presentations by the parties, and other technical or factual information that is publicly available in the docket file. The presiding officer's decision will become final agency action thirty days after the date of issuance unless the Commission, on its own motion, undertakes a review of the decision. No petition for review will be entertained by the Commission regarding the presiding officer's decision.

Commissioner Roberts disapproved this order. His dissenting views are attached.

It is so ORDERED.



For the Commission


SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.

this 24th day of July, 1985.

7/24/85

DISSENTING VIEWS OF COMMISSIONER ROBERTS *TR*

I do not object to granting the hearing that has been requested. However, I do object to the procedures that have been accepted by the majority for conducting the hearing. Although the use of informal procedures for materials license proceedings was judicially approved in the West Chicago case, the procedures that have been accepted by the majority for use in this proceeding retain too many of the trappings of a formal hearing. I believe that these more formal procedures have the potential for consuming unnecessary time and resources without any obvious benefits.