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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before

Dr. Jerry R. Kline
Administrative Judge

DOCKETED
USNRC

'85 AUG -8 P1:22

In the Matter of:

PRECISION MATERIALS CORPORATION

(Mine Hill, New Jersey
Irradiator Facility)

Docket No. 30-22063 ML

ASLBP No. 85-512-02 ML

August 8, 1985

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

MEMORANDUM AND ORDER
(Notice of Informal Hearing and
Opportunity to Become a Party)

I. Introduction

Please take notice that, on July 24, 1985, the Nuclear Regulatory Commission issued an Order instituting an informal hearing in this matter. Pursuant to the Commission's Order, the undersigned was designated presiding officer for this matter on August 1, 1985.

The Commission instituted this proceeding in response to a petition for a hearing filed by The Township of Mine Hill, New Jersey (The Township). The hearing will concern Precision Materials Corporation's (Precision Materials) proposal to employ a Cobalt-60 irradiator to irradiate a variety of cosmetic, pharmaceutical, and medical products and components. Precision Materials' application for a license for the

irradiator facility was granted by NRC's Director of Nuclear Material Safety and Safeguards on March 29, 1985.

II. How to Participate

The Commission's Order directed the presiding officer to provide an opportunity to petition to be heard by interested persons. The Order authorized the presiding officer: (1) to request, at his discretion, written submissions and documents; (2) to set schedules; (3) to entertain statements from those who do not desire to become parties or cannot satisfy the requirements for party status, and (4) to hear oral presentations if necessary.

The Commission directed that those who wish to become parties (other than the NRC Staff and Precision Materials) must set forth with particularity and in writing:

1. Their interest in the proceeding;
2. How their interest may be affected by the results of the proceeding, including a statement of the reasons why they should be made parties that makes particular reference to:
 - a. their right under the Atomic Energy Act to be made a party;

- b. the nature and extent of their property, financial, or other interest in the proceeding; and
 - c. the possible effect of any order that may be entered in the proceeding on their interest; and
- 3. The specific aspect or aspects of the subject matter of the proceeding on which they wish to be heard.
 - 4. Petitions shall also state specifically the nature of the relief sought with respect to each complaint.

Each of the foregoing points shall be addressed in separate paragraphs concisely stated. All filings shall be submitted under oath or affirmation.

In submitting the information called for in items 3 and 4 above, petitioners are to describe specifically any deficiencies in the application or license, cite particular sections or portions of the application or license which relate to the deficiency, and state in detail the reasons why a particular section or portion of the application or license is deficient. Petitioner must also submit all data and material in its possession which supports or illustrates each of the deficiencies complained of. Data and material from generally available publications may be cited rather than furnished. Petitioners must also

state what relief they seek with respect to each of their complaints. A broad statement requesting denial or rescission of the license, without stating why such extreme relief is appropriate, will not satisfy the requirement to state the relief sought.

A determination that petitioners have standing to participate as parties to the proceeding will be governed by existing agency precedents pursuant to 10 C.F.R. § 2.714(d). See the Commission's Order and Rockwell International Corp. (Energy Systems Group Special Nuclear Materials License No. SNM-21), LBP-83-65, 18 NRC 774 (1983). The Rockwell case relied on Nuclear Engineering (Sheffield, Illinois Low Level Radioactive Waste Disposal Site) ALAB-473, 7 NRC 737 (1978), and stated at page 3 that:

... The practical tests are that the petition must show (1) that the petitioner will or might be injured in fact by one or more of the possible outcomes of the proceeding, and (2) that the asserted interest of the petitioner in achieving a particular result is at least arguably within the zone of interests protected by the statute involved.

If the presiding officer finds that the hearing petitions or any intervention petition should be denied in toto for lack of standing or any other reason, that determination, which must be in writing, will become the final agency action within thirty days unless the Commission, on its own initiative, undertakes a review of that decision.

On or before September 12, 1985 the Township, and anyone else, including governmental entities, who wish to become a party shall file the information called for above. On or before September 26, 1985 the NRC Staff, if it wishes to participate as a party, shall so notify the undersigned in writing.

III. Where to File

The information called for by this Notice and Order is to be filed with the Docketing and Service Branch of the Office of the Secretary, U.S. Nuclear Regulatory Commission, 1717 H Street, N.W., Washington, D.C. 20555. Such filings shall also be served on Precision Materials and the presiding officer by either personally delivering it or mailing it, properly addressed and stamped, by September 12, 1985 .

IV. Duty of the Licensee

In order to permit petitioners to comply with the 30-day deadline to submit the information required, Precision Materials must ensure that the application, the license, and all correspondence pertaining to its license are immediately on receipt of this Notice and Order: (1) made available to petitioners for inspection and copying, and (2) forwarded to the Presiding Officer. This material shall be made available at a convenient location in the vicinity of the Precision Materials facility and at such other locations as may be indicated by requests. The

material shall be available for inspection and copying during business hours and during reasonable periods during evenings and weekends. This material, together with the material submitted by petitioners, and any other material called for by the presiding officer, will form the Hearing File on which the presiding officer will base his decision.

V. Presiding Officer's Initial Ruling

Upon receipt of petitioner's submission, the presiding officer will evaluate the material in the Hearing File. The presiding officer will then rule on each petitioners' right to become a party to this proceeding. The presiding officer will also review each petitioners' complaints and supporting material. In making this review, the presiding officer may rule, in the alternative, that the petitioners' complaints: (1) are admissible for consideration; (2) are beyond the scope of this proceeding; (3) constitute requests for relief which the presiding officer lacks the power to grant; (4) are too vague to permit consideration; or (5) are otherwise inadmissible. If necessary, the presiding officer will call for additional submissions prior to making the rulings contemplated by this paragraph. In the absence of such a request, no further submissions are to be made.

Petitioners are hereby put on notice that the presiding officer may rule on the merits of the entire matter based on petitioners initial submission.

VI. Informal Hearing

To the extent the presiding officer finds petitioners' complaints admissible, he either may order additional submissions from each party, or schedule an oral presentation, or both. If an oral presentation is scheduled, it will take place in the vicinity of the Precision Materials facility. The parties will be permitted to present testimony and argument, but cross-examination will not be permitted. The parties may, however, suggest questions to the presiding officer to be posed by him. Discovery is not permitted.

If the NRC Staff does not elect to participate as a party to this proceeding, the presiding officer may seek information from the Staff directly. In that event, any information received will be served on the parties to the proceeding by the presiding officer.

VII. Limited Appearances

Those who do not wish to become parties but wish to submit a statement to the presiding officer may do so by mailing their statement to the Commission's Secretary, properly addressed and stamped, on or before September 12, 1985. Should the presiding officer determine that a petitioner may not be a party to this proceeding, the material submitted by that petitioner will be treated as such a limited

appearance statement. Limited appearance statements are not part of the hearing file.

VIII. Schedule for Decision

The presiding officer intends to issue a decision in this proceeding as promptly as feasible following receipt of petitioners' submissions, with a goal of 120 days if additional submissions are required following receipt of initial petitions. No petition for review will be entertained by the Commission regarding the presiding officer's decision. However, the Commission may review the decision on its own initiative.

ORDER

For all the foregoing reasons and upon consideration of the entire record in this matter, it is, this 7th day of August, 1985

ORDERED

1. That on or before September 12, 1985, any person wishing to participate in this informal hearing shall file a petition to participate as described in the foregoing memorandum;

2. That on or before September 25, 1985, the NRC Staff shall notify the presiding officer if it wishes to participate as a party to this proceeding; and
3. That this informal hearing shall be conducted in accordance with the procedures described in the foregoing memorandum.


Dr. Jerry R. Kline

ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 8th day of August, 1985