

BEFORE THE COMMISSION

*85 DEC 24 A10:26

In the Matter of

AMERICAN NUCLEAR CORPORATION, ET AL

Docket No. 40-4492

Source Material
License No. SUA-667

NRC STAFF ANSWER TO PETITION FOR LEAVE
TO INTERVENE FILED BY THE ENVIRONMENTAL DEFENSE FUND

INTRODUCTION

On July 19, 1985, the Director, Uranium Recovery Field Office (URFO), U.S. Nuclear Regulatory Commission, issued immediately effective orders to 13 uranium mill licensees. The orders amended each license by adding a license condition requiring each licensee to implement a groundwater detecting monitoring program to ensure compliance with 40 CFR 192.32(a)(2).

Timely requests for hearing were filed by American Nuclear Corporation, Atlas Minerals, Bear Creek Uranium Company, Exxon Minerals Company, Pathfinder Mines Corporation (Riverton, Wyoming), Pathfinder Mines Corporation (Shirley Basin, Wyoming), Plateau Resources Limited, Rio Algom Mining Corporation, Umetco Minerals Corporation (Riverton, Wyoming), Umetco Minerals Corporation (Blanding, Utah) and Western Nuclear, Incorporated. No request for hearing has been received from Minerals Exploration Company or Petrotomics Company.

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On November 4, 1985 URFO issued a revision of orders to modify licenses (50 Fed. Reg. 46370, Nov. 7, 1985) which, as to the 11 licensees who requested a hearing, (1) withdrew the immediate effectiveness of the July 1985 orders and (2) corrected a typographical error in the July 1985 orders. In response to the November 7, 1985 Federal Register Notice, the Environmental Defense Fund (EDF) filed a timely petition for leave to intervene as a full party.

As stated in the November 7, 1985, Federal Register notice, the issue to be considered at the hearing shall be whether, on the basis of the matters set forth in the orders of July 19, 1985 and the revision of orders, the requirements set forth in Section III of the orders of July 19, 1985, as revised by the November 4, 1985 revision of orders, should be sustained.

For the reasons set out below, the NRC Staff believes the EDF should be admitted as a full party.

DISCUSSION OF INTERVENTION

In determining rights to a hearing and to intervene in hearings on proceedings under the Atomic Energy Act, the Commission applies judicial standards of standing. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980); Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976). To satisfy the test for standing, a petitioner must show in enforcement proceedings, as in licensing proceedings, that (1) the action being challenged could cause "injury-in-fact" to

the person seeking to intervene and that (2) such injury is arguably within the "zone of interests" protected by the Atomic Energy Act. Marble Hill, supra, 11 NRC at 439; Pebble Springs, supra, 4 NRC at 613-14. See Warth v. Seldin, 422 U.S. 490 (1975); Sierra Club v. Morton, 405 U.S. 727 (1972). Thus, a petitioner must "set forth with particularity" in its petition to intervene its interest in the proceeding and how that interest may be affected by the outcome of the proceeding. 10 CFR § 2.714(a)(2).

An organization may establish standing based upon an injury to itself or through members of the organization who have interests which may be affected by the outcome of the proceeding. Edlow International Co., CLI-76-6, 3 NRC 563, 572-74 (1976); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 NRC 328, 330 (1976). A petitioner must particularize specific injury that it or its members would or might sustain should it be denied relief. The test is whether a "cognizable interest of the petitioner might be adversely affected if the proceeding has one outcome rather than another." Marble Hill, supra, 11 NRC at 439, quoting Nuclear Engineering Co. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743 (1978); Dairyland Power Cooperative (LaCrosse Boiling Water Reactor), LBP-80-26, 12 NRC 367, 372 (1980). In enforcement proceedings, like the one initiated here, the possible outcomes of the proceeding are limited to whether or not the particular remedy set forth in the order should be imposed. See Marble Hill, supra, 11 NRC at 441; Bellotti v. NRC, 725 F.2d 1380, 1382-83 (D.C. Cir. 1983).

In its December 2, 1985 petition, EDF alleges (1) that it is a national, not-for-profit membership organization, incorporated under the laws of the State of New York, whose principle objective is the elimination of unnecessary human exposure to toxic substances, including the radiological and non-radiological hazards associated with uranium mill tailings, (2) that it has approximately 50,000 members, over 1,000 of whom live in Colorado, Utah, New Mexico and Wyoming, and (3) that a substantial number of its members live, work, travel, or recreate in proximity to the uranium mills and mill tailing sites owned and operated by the licensees represented in this proceeding. In a memorandum filed on December 18, 1985 EDF supplements the information in its December 2, 1985 filing by supplying names of several members and the particulars of how their interests may be affected. With this supplemental information, EDF has met the interest requirement for intervention as a full party. EDF contends that the July 19, 1985 orders, as revised by the November 4, 1985 revision of orders, should be sustained. 1/

In its December 18, 1985 memorandum, EDF also claims that it should be admitted based on the criteria for discretionary intervention. In Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 510 (1976) the Commission set out some of the factors that may be considered in determining discretionary intervention. The Staff believes that EDF should be admitted as a matter of right, so this question need not

1/ This satisfies any requirement that EDF set forth a valid contention -- EDF takes a position on what has already been determined to be the issue for hearing.

be reached. In the event it is considered, however, discretionary intervention should be granted. Almost all parties agree (American Nuclear Corporation has not addressed the issue) that the case should be resolved using summary proceedings and it appears that EDF's participation in those summary proceedings will cause no delay. 2/ EDF has committed to meeting whatever briefing schedule is set by the Commission.

CONCLUSION

For the reasons stated above, the Commission should grant EDF's petition for leave to intervene as a full party.

Respectfully submitted,

W. D. Paton

William D. Paton
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 23rd day of December, 1985

2/ In its August 12, 1985 demand for hearing, Hamel & Park, representing 10 of the 11 licensees who requested a hearing, suggested that the issues that they raised were legal and may be resolved through summary procedures. In EDF's December 2, 1985 petition for leave to intervene, it stated that the issues it raised were purely legal in nature, indicated that licensees' contentions were also purely legal in nature and that both could be disposed of through summary procedures. The staff agrees that the issues raised to date in this proceeding should be disposed of through summary procedures.

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NUCLEAR REGULATORY COMMISSION

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USNRC

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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:	William D. Paton
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Names of Party:	NRC Staff

Respectfully submitted,

W. D. Paton

William D. Paton
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 23rd day of December, 1985

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC STAFF ANSWER TO PETITION FOR LEAVE TO INTERVENE FILED BY THE ENVIRONMENTAL DEFENSE FUND and the NOTICE OF APPEARANCE in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 23rd day of December 1985:

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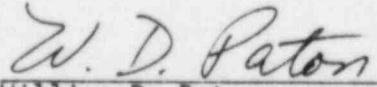
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