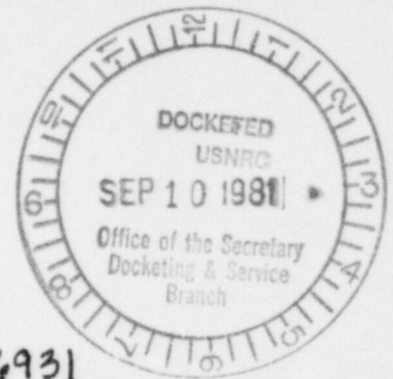


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of

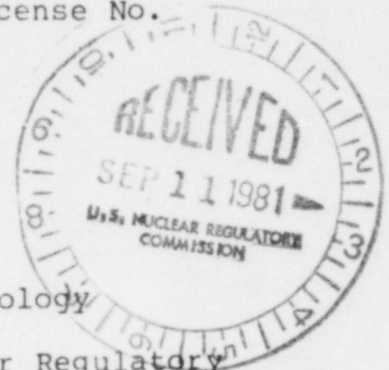
ARMED FORCES RADIOBIOLOGY
RESEARCH INSTITUTE

(Cobalt-60 Storage Facility)

30-6931
Docket No. 6931

Renewal of Byproducts
Material License No.
19-08330-03

OPPOSITION TO PETITION
FOR LEAVE TO INTERVENE



On August 28, 1980 the Armed Forces Radiobiology Research Institute (AFRRI) filed with the Nuclear Regulatory Commission (NRC) a timely application for renewal of Byproducts Material License No. 19-08330-03 (Docket No. 6931). On July 28, 1981 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. On August 29, 1981, more than one month after the license was renewed, the Citizens for Nuclear Reactor Safety, Inc. (CNRS) filed a Petition for Leave to Intervene. As more fully discussed below, AFRRI opposes the Petition for Leave to Intervene on the grounds that there are no pending proceedings in which to intervene, the Petition fails to meet the requirements set forth in 10 C.F.R. 2.206 for requests to institute proceedings to modify, suspend or revoke a license, and no grounds exist to impose requirements by order or to modify, suspend or revoke the AFRRI license.

DS03
501

THE PETITION FOR LEAVE TO INTERVENE
CANNOT BE CONSIDERED IN THE CONTEXT
OF LICENSE RENEWAL

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 on the AFRRRI application for renewal of Byproducts Material License No. 19-08330-03 were terminated on July 28, 1981 when the NRC issued Amendment No. 14 to that license and extended its term to July 31, 1986. CNRS submitted its Petition for Leave to Intervene on August 29, 1981--some thirty two 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. Simply stated, CNRS has no right to a hearing. People of the State of Illinois v. Nuclear Regulatory Commission, 591 F.2d 12 (7th Cir. 1979).

The fact that CNRS is not entitled to a hearing does not end the inquiry. It is, however, critical to consider

the CNRS Petition in the proper context. Proceedings on licensing actions cannot be indeterminate. There must be a beginning and an ending. Logically, a proceeding on a license renewal application begins when the application is submitted to the NRC and ends when the renewal is either granted or denied.¹ A contrary interpretation, leaving license renewal proceedings open ad infinitum, would impose a heavy and unwarranted burden upon licensees, damage the public interest, and violate the will of the Congress as expressed in the Atomic Energy Act of 1954.

Participation in contested administrative hearing processes requires the expenditure of substantial effort and resources on the part of the licensee. Management, legal, and scientific personnel are diverted from their primary duties and compelled to respond to various allegations. Planning for future operations is complicated by the uncertainty which necessarily accompanies contested proceedings. While these disruptions can be anticipated and programmed for in connection with periodic license

1. An argument may be made that the failure to publish notices of proposed actions on material licenses in the Federal Register deprives potential intervenors of the opportunity to seek a hearing and requires that a hearing be granted even after the proceeding has resulted in a determination. That argument, however, has no applicability to the instant case. CNRS admittedly had actual notice of the proceedings on the renewal of Byproducts Material License No. 19-08330-03 not later than February 4, 1981. See letter dated August 7, 1981, addressed to Samuel Chilk, Secretary, Nuclear Regulatory Commission, by CNRS. (Attached as Exhibit A).

renewal actions, licensees have no control over potential intervenors or the timing of their complaints. Permitting hearings on the merits of a license renewal after the renewal has been granted would leave the licensees totally at the mercy of potential complainants and thereby impair the efficiency and effectiveness of the licensees' operations.

Similar concerns exist with regard to the NRC Staff and adjudicative personnel. The NRC has only limited resources with which to fulfill its many responsibilities to the public. Effective management of those resources requires an orderly approach to the NRC functions. Maintaining open ended proceedings on license renewal actions and permitting hearings at any time are utterly inconsistent with such an approach.

Congress recognized the distinction between the processing of a license application and the initiation of an action during the term of a license when it enacted the Atomic Energy Act of 1954. License applications are governed by 42 U.S.C. § 2232. Actions initiated during the term of a license, on the other hand, are governed by 42 U.S.C. § 2236, Revocation of licenses - False applications; failure of performance, and 42 U.S.C. § 2237 Modification of license.²

2. Although 42 U.S.C. § 2232 authorizes the Commission to obtain additional information during the term of a license, it is clear that enforcement actions must be taken, if at all, under the provisions of 42 U.S.C. § 2236.

Granting the Petition for Leave to Intervene filed herein and affording a hearing to CNRS in the context of a license renewal application would violate both the clearly expressed Congressional intent and the rights of the Licensee under 42 U.S.C. § 2236. Accordingly, the Petition for Leave to Intervene may only be considered as a request to institute a proceeding under the provisions of 10 C.F.R. 2.206.

THE PETITION FOR LEAVE TO INTERVENE
FAILS TO MEET THE REQUIREMENTS SET
FORTH IN 10 C.F.R. 2.206

Inasmuch as Byproducts Material License No. 19-08330-03 was renewed on July 28, 1981, these proceedings may only be maintained under the provisions of 42 U.S.C. § 2236. The NRC has implemented 42 U.S.C. § 2236 in Subpart B, Part 2, Chapter 1 of the NRC regulations. Section 2.206 of that Subpart, published at 10 C.F.R. 2.206, provides that any person may file a request to institute a proceeding pursuant to section 2.202 to modify, suspend or revoke a license and establishes the procedures for processing such a request. 10 C.F.R. 2.206 further provides that "The requests shall specify the action requested and set forth the facts that constitute the basis for the request."

The Petition for Leave to Intervene filed herein does not specify the action requested and it is not clear

from reviewing that document whether CNRS seeks revocation or modification of the license in question. The only specific request in the Petition is that a hearing be conducted. Until and unless CNRS identifies the purpose for which the hearing is sought, the Petition cannot be favorably considered under 16 C.F.R. 2.206. There is, however, a more fundamental deficiency in the Petition. No facts constituting the basis for the request are set forth therein. CNRS has merely stated, in very broad terms, a list of possible concerns which might, if properly refined, be developed into contentions. In the absence of any facts which might support or provide a basis for an action under 42 U.S.C. § 2236, the Petition for Leave to Intervene must be denied under the provisions of 16 C.F.R. 2.206.

NO GROUNDS EXIST TO INSTITUTE
PROCEEDINGS UNDER 42 U.S.C. § 2236

42 U.S.C. § 2236 sets forth only two possible bases for revocation of a license--material false statements in the license application and failure to operate in accordance with the terms and conditions of the license, statutes, and NPC regulations. CNRS has not alleged and cannot show any false material statements in the AFRI license

application. Moreover, CNRS has not alleged and cannot show any violations on the part of AFRRI since the license was renewed on July 28, 1981.³ Under these circumstances, there is no basis for action under 42 U.S.C. § 2236 and the Petition for Leave to Intervene must be denied.

The impossibility of proceeding further on the instant Petition is further demonstrated by the procedures mandated in the NRC regulations. Under 10 C.F.R. § 2.201 proceedings to impose requirements by order on a licensee or to modify, suspend or revoke a license must be preceded, absent special conditions not here present, by a written notice of violation which will, inter alia, "concisely state the alleged violation." Where, as here, there is no violation, the NRC staff cannot promulgate such a notice. A similar problem is presented by 10 C.F.R. 2.202 which requires that proceedings to modify, suspend, or revoke a license be instituted by serving upon the licensee an order to show cause which must, inter alia, "Allege the violations with which the licensee is charged, or the potentially hazardous conditions or other facts deemed to be sufficient ground for the proposed action."

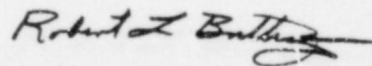
3. While there may have been minor technical violations in years past, none would warrant action under 42 U.S.C. § 2236 and all were well known to the NRC when Byproducts Material License No. 19-08330-03 was renewed on July 28, 1981.

The Petition for Leave to Intervene does not disclose any facts which would constitute a ground for proceedings under 42 U.S.C. § 2236 and, indeed, no such facts exist. Accordingly, the Petition must be dismissed.

CONCLUSION

For the reasons stated, the Petition for Leave to Intervene cannot be considered in the context of proceedings on the application to renew Byproducts Material License No. 19-08330-03, fails to meet the requirements set forth in 10 C.F.R. 2.206, and fails to disclose any facts sufficient to warrant proceedings under 42 U.S.C. § 2236. Moreover, review of the entire record demonstrates that there are no grounds for instituting proceedings to modify, suspend, or revoke the license. AFRRI therefore respectfully prays that the relief requested in the Petition for Leave to Intervene be denied and that the Petition be dismissed.

Respectfully submitted,



Robert L. Brittigan
Counsel for Licensee

Dated at HQ, Defense Nuclear Agency,
6801 Telegraph Road, Alexandria, VA 22310
this 8th day of September, 1981.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
	)	Docket No. 6931
ARMED FORCES RADIOBIOLOGY)	
RESEARCH INSTITUTE	)	Renewal of Byproducts
	)	Material License No.
(Cobalt-60 Storage Facility)	)	19-08330-03
)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 2.713(b), 10 CFR Part 2, the following information is provided:

Name	-	Robert L. Brittigan
Address	-	Headquarters Defense Nuclear Agency Washington, D.C. 20305
Telephone Number	-	Area Code 202 - 325-7681
Admission	-	Supreme Court of the State of Ohio
Name of Party	-	Armed Forces Radiobiology Research Institute Defense Nuclear Agency Washington, D.C. 20305

Robert L. Brittigan

ROBERT L. BRITTIGAN
Counsel

Dated at HQ, Defense Nuclear Agency,
6801 Telegraph Rd., Alex., VA 22310
this 8th day of September 1981


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
	)	Docket No. 6931
ARMED FORCES RADIOBIOLOGY)	
RESEARCH INSTITUTE	)	Renewal of Byproducts
	)	Material License No.
(Cobalt-60 Storage Facility)	)	19-08330-03

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 2.713(b), 10 CFR Part 2, the following information is provided:

Name	-	David C. Rickard
Address	-	Headquarters Defense Nuclear Agency Washington, D.C. 20305
Telephone Number	-	Area Code 202 - 325-7681
Admission	-	Supreme Court of the State of Pennsylvania
Name of Party	-	Armed Forces Radiobiology Research Institute Defense Nuclear Agency Washington, D.C. 20305


DAVID C. RICKARD
Counsel

Dated at HQ, Defense Nuclear Agency,
6801 Telegraph Rd., Alex., VA 22310
this 8th day of September 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
	)	Docket No. 6931
ARMED FORCES RADIOBIOLOGY)	
RESEARCH INSTITUTE	)	Renewal of Byproducts
	)	Material License No.
(Cobalt-60 Storage Facility)	)	19-08330-03

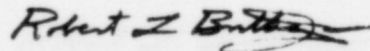
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposition to Petition for Leave to Intervene and Notices of Appearance for Robert L. Brittigan and David C. Rickard were served on the following by depositing in the United States Mail, First Class this 8th day of September, 1981:

Mr. Richard G. Bachmann, Esq.
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Elizabeth B. Entwisle, Esq.
8118 Hartford Avenue
Silver Spring, MD 20910

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555



ROBERT L. BRITTIGAN
Counsel for Licensee