UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Gregory B. Jaczko, Chairman
Kristine L. Svinicki
George Apostolakis
William D. Magwood, IV
William C. Ostendorff

In the Matter of U.S. ARMY INSTALLATION COMMAND Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii	Docket No. 40-9083

CLI-10-20

MEMORANDUM AND ORDER

Isaac D. Harp has appealed the Atomic Safety and Licensing Board's order denying his request for a hearing with respect to the U.S. Army's application for a license to possess depleted uranium (DU) at the Schofield Barracks (Schofield) on the island of Oahu, and at the Pohakuloa Training Area on the island of Hawaii.[1] For the reasons set forth below, we affirm the Board's ruling.

I. BACKGROUND

The U.S. Army is seeking a possession-only license for fragments of DU that originated from M101 "spotting rounds" that were used for training purposes on firing ranges at Schofield and Pohakuloa during the 1960s, in conjunction with the Davy Crockett nuclear weapon system. As the Board summarized: "The spotting rounds contained DU because its heavy weight enabled the rounds to imitate the trajectory of non-nuclear practice projectiles. The spotting

[1] LBP-10-4, 71 NRC __ (Feb. 24, 2010) (slip op.).

rounds held a small explosive charge that detonated on impact, allowing the weapon system operator to target the weapon properly before firing the practice projectiles."[2] Use of the "spotting rounds" was discontinued in 1968. The DU fragments remained on the firing ranges, undetected, until the Army discovered the fragments at Schofield and Pohakuloa in 2005 and 2008, respectively.[3] The Army's records are insufficient to determine the exact number of spotting rounds fired at either range.[4] As such, the Army seeks authority to possess and manage DU at Schofield and Pohakuloa, in order to perform radiological surveys to fully characterize the nature and extent of contamination, and, as appropriate, to obtain information necessary to support development of decommissioning plans.[5]

Four individual *pro se* petitioners requested a hearing on the license application.[6] The Board rejected all four requests because each petitioner failed to demonstrate standing. While the Board examined both standing and proposed contentions of one petitioner – Ms. Leonardi – who, in the Board's view, presented the strongest claim of standing, it did not examine the contentions proposed by the three remaining petitioners, whose standing claims the Board found to be more attenuated.[7] Mr. Harp thereafter timely filed the instant appeal.[8]

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[2] *Id.* at __ (slip op. at 2).

[3] *Id.*

[4] *Id.* at __ (slip op. at 3-4).

[5] *See* U.S. Army Installation Command, Application for Materials License, at 2 (License Application) (Nov. 6, 2008) (ADAMS Accession No. ML090070095).

[6] These individuals were Cory Harden, Luwella K. Leonardi, Jim Albertini, and Mr. Harp. *See generally* LBP-10-4, 71 NRC __ (slip op. at 15-31).

[7] LBP-10-4, 71 NRC __ (slip op. at 11, 12-25). Ms. Leonardi lives much closer to Schofield Barracks – two miles – than the other petitioners live to Pohakuloa. The Board found none of Ms. Leonardi's contentions admissible under our rules. *Id.* at _ (slip op. at 29-31).

[8] *Supporting Briefing of Petition Isaac Harp Appealing the [D]ecision by the Atomic Energy Safety and Licensing Board Memorandum and Order (Denying Requests for Hearing) (LBP-10-04) US Army Installation Command (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training* (continued . . .)

II. DISCUSSION

Mr. Harp's appeal lies under the provisions of 10 C.F.R. § 2.311(c), which provides that an order denying a petition to intervene and/or request for hearing may be appealed to the Commission on the question of whether the petition and/or request should have been granted. The Staff and the Army oppose the appeal.[9]

A. Requirements for Standing

The Commission generally defers to the Board's rulings on standing in the absence of clear error or an abuse of discretion.[10] In cases not involving nuclear power reactors, whether a petitioner could be affected by the licensing action must be determined on a case-by-case basis, taking into account the petitioner's distance from the source, the nature of the licensed activity, and the significance of the radioactive source.[11] In a materials licensing case such as this one, a petitioner must show more than that he lives or works within a certain distance of the site where materials will be located – he must show a plausible mechanism through which those materials could harm him.[12] Our boards have established the "proximity-plus" test to establish standing in materials cases, where the petitioner must show: (1) that the proposed licensing

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Area, Island of Hawaii, Hawaii), Docket No. 40-9083, served February 24, 2010 (Mar. 4, 2010) (Harp Appeal).

[9] *NRC Staff's Response to Issac Harp's Petition for Review of LBP-10-04* (Mar. 11. 2010); *US Army Installation Command's Brief in Opposition to the Appeal of Isaac D. Harp from ASLBP Memorandum and Order Denying Request for Hearing* (Mar. 12, 2010).

[10] *See*, *e.g.*, *PPL Bell Bend, LLC* (Bell Bend Nuclear Power Plant), CLI-10-7, 71 NRC __ (slip op. at 5) (Jan. 7, 2010); *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), CLI-09-8, 69 NRC 319, 324 (2009).

[11] *USEC, Inc*. (American Centrifuge Plant), CLI-05-11, 61 NRC 309, 311 (2005). *See also Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116 (1995).

[12] *See USEC, Inc*., CLI-05-11, 61 NRC at 311.

action involves a "significant source" of radiation, which has (2) an "obvious potential for offsite consequences."[13] If a petitioner cannot establish the elements of proximity-based standing, then he must establish standing according to traditional standing principles.[14]

Further, although a Board should afford greater latitude to a pleading submitted by a *pro se* petitioner,[15] that petitioner ultimately bears the burden to provide facts sufficient to show standing.[16]

Here, the Board considered all of these factors as they pertain to Mr. Harp. Therefore, we are reluctant to overturn its well-considered ruling. As discussed below, Mr. Harp's appeal contains no indication that the Board erred in making its standing determination.

B. The Board Did Not Err in Finding that Mr. Harp Had Not Shown Standing

1. Basis of the Board's Ruling

At the outset, the Board recognized that because Mr. Harp is a *pro se* petitioner, it would afford him greater latitude, and construe the petition in his favor.[17] Nonetheless, the Board found that Mr. Harp had not established standing because he failed to show a plausible means through which he could be harmed by the possession-only license that the Army is seeking.[18]

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[13] *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n. 22 (1994). *See also U.S. Army* (Jefferson Proving Ground Site), LBP-00-9, 51 NRC 159, 160-61 (2000) (standing found for organization representing three members living "in close proximity" to decommissioning site, who expressed concern that DU materials could affect a waterway abutting the property of two members).

[14] *See Exelon Generation Co., LLC and PSEG Nuclear, LLC* (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-05-26, 62 NRC 577, 581 (2005).

[15] *See Crow Butte Resources, Inc.* (North Trend Expansion Area), LBP-08-6, 67 NRC 241, 278 (2008), *aff'd* CLI-09-12, 68 NRC 535 (2009); Cf. *Shieldalloy Metallurgical Corp*. (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 354 (1999) (petitioners represented by counsel held to higher standard of specificity in pleading).

[16] *Bell Bend*, CLI-10-7, 71 NRC at __ (slip op. at 7).

[17] LBP-10-4, 71 NRC at __ (slip op. at 11).

[18] *Id.* at __ (slip op. at 23-25).

Mr. Harp's hearing request consisted of two e-mails, which the Board treated as a single petition. His request did not address standing.[19] Rather, he argued that DU has been identified as a "probable cause of various cancers and other mysterious illnesses that many military veterans suffer from," that disturbing the DU with continued munitions operations would put Hawaiians in jeopardy, and that elevated rates of cancer occur on those Hawaiian islands where Pohakuloa, Schofield, and another U.S. military range are located.[20]

The Board also considered additional information relating to standing that Mr. Harp provided at the prehearing conference.[21] At oral argument, Mr. Harp stated that he resides about 19 miles from the Pohakuloa Training Area,[22] and expressed concerns that he could be exposed to DU by air and through groundwater contamination.[23] He further argued that the porous and fractured geology of Hawaii would allow the DU to enter the groundwater.[24] Finally, Mr. Harp described various documents which he claimed supported his standing claim; these documents were not submitted to the Board.

The Board found that Mr. Harp had failed to demonstrate standing using either traditional standing principles or the "proximity plus" principles particular to NRC proceedings.[25] As an initial matter, the Board found that Mr. Harp, Ms. Harden, and Mr. Albertini were all similarly

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[19] *See* e-mails from Isaac D. Harp to Emile Julian, *Army Request for a Depleted Uranium Possession-Only Permit* (Oct. 26, 2009 and Oct. 28, 2009) (Harp Petition). Mr. Harp also stated that he joined Ms. Harden's petition to intervene.

[20] *Id*. These general arguments constituted the entirety of Mr. Harp's hearing request; he filed no express "contentions."

[21] *See* Tr. at 35-39, 76-92.

[22] *Id.* at 77.

[23] *Id.* at 79-80.

[24] *Id.* at 80, 83.

[25] LBP-10-4, 71 NRC __ (slip op. at 24-25).

situated with respect to their standing claims, in that they all lived at least 19 miles away from the Pohakuloa site.[26]

The Board found that none of these three petitioners had shown that Pohakuloa presented a significant source of radiation with an obvious potential for off-site consequences.[27] In particular, the Board found that the Army's license application showed that the amount of DU scattered on the firing range was not a "significant source of radioactivity."[28] The Board cited portions of the application that showed that even conservative estimates of the number of spotting rounds fired at the Pohakuloa range would not result in concentrations of DU exceeding decommissioning screening values for U-234, U-235, and U-238.[29] Finally, the Board found that there was no obvious potential for offsite consequences from the possession-only license because there was no apparent means for the DU to spread beyond its current location.[30]

In addition, the Board considered Mr. Harp's claims under traditional standing requirements, and found that he failed to demonstrate a plausible mechanism for DU to migrate offsite to affect him.[31] The Board observed that Mr. Harp had offered no support, for example, of his claim that the Army is disturbing the DU with ongoing munitions operations. The Board pointed out that Army regulations prohibit the use of high explosive munitions in areas

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[26] *Id.* at 22, 24.

[27] *Id.* at 16-20, 22, 24.

[28] *Id.* at 16.

[29] *Id.* Specifically, the Board pointed to portions of the license application which stated that even conservatively estimating the number of spotting rounds present on the Pohakuloa range at 2,932 rounds, the concentration of radioactivity is "'significantly lower than [decommissioning] screening values for uranium' . . . specified in Volume 2, Appendix H, NUREG-1757 [Consolidated Decommissioning Guidance: Decommissioning Process for Materials Licensees].'" *Id*. (citing License Application at 9, 10).

[30] *Id*. at 17-20.

[31] *Id.* at 24.

containing DU fragments.[32] The Board found Mr. Harp's claims that there are high cancer rates in Hawaii, and his general assertion that the DU constitutes a "never-ending threat" to Hawaiians, did not show a plausible connection to the DU at the Pohakuloa Training Area.[33]

Mr. Harp's appeal, for the most part, simply reiterates the arguments in his petition and at oral argument, which he claimed that the Board "ignored" in reaching its decision.[34] The appeal also claims that the Board erroneously made various improper assumptions in reaching its decision.[35] None of these claims, as discussed below, shows that the Board erred in its determination that Mr. Harp lacked standing.

2. Claims of Error

a. Application of "Relaxed Pleading Standards"

As an initial matter, Mr. Harp claims that the Board did not apply relaxed pleading standards to himself (or to the other *pro se* petitioners in this case). Mr. Harp complains that the Board "relied on technicalities raised by the Staff in regards to *pro se* petitioners' inability to meet strict NRC guidelines on establishing standing."[36] As a rule, *pro se* petitioners are held to less rigid pleading standards, so that parties with a clear – but imperfectly stated – interest in the proceeding are not excluded.[37] But contrary to Mr. Harp's claim, the record reflects that the

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[32] LBP-10-4, 71 NRC __ (slip op. at 19, 24) (citing Department of Defense, Directive 4715.11, "Environmental and Explosives Safety Management on Operational Ranges Within the United States," Sec. 5.4.9 (May 10, 2004) (Department of Defense Directive 4715.11) (available at http://www.dtic.mil/whs/directives/corres/pdf/471511p.pdf (last accessed June 27, 2010)).

[33] *Id.*

[34] Harp Appeal at unnumbered pages 1-4.

[35] *Id.* at unnumbered pages 6-7.

[36] *Id.* at unnumbered page 6.

[37] *Public Service Electric & Gas Co*. (Salem Nuclear Generating Station, Units 1 & 2), ALAB-136, 6 AEC 487 (1973); *International Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-01-8, 53 NRC 204, 207-208 (2001); *Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-14, 63 NRC 568, 581 (continued . . .)

Board gave generous consideration to all of his claims. Further, the Board relaxed the NRC's filing requirements, permitting consideration of Mr. Harp's request in the first instance.[38] But the Board cannot wholly disregard the substantive requirements for standing and contention admissibility.[39] We find no Board error on this point.

b. Treatment of Mr. Harp's "Supporting Information" Related to Standing

Mr. Harp challenges the Board's finding that he offered no support for his assertion that DU could migrate from the Pohakuloa Training Area and harm him. Mr. Harp points out that during oral argument he cited several documents which, he argues, support his claim of potential harm.[40] Mr. Harp's appeal describes the six documents, but, as noted above, none of them appears to have been submitted to the Board.[41] In our view, the Board did not err to the

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(2006). *Cf. Shieldalloy*, CLI-99-12, 49 NRC at 354 (petitioners represented by counsel are generally held to higher standards than pro se litigants).

[38] LBP-10-4, 71 NRC __ (slip op. at 9). The Board exempted Mr. Harp and the other petitioners from the e-filing requirements "for good cause shown." *Id*. at 11 n.13.

[39] *See*, *e.g.*, *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260 (2009) ("While a board may view a petitioner's supporting information in a light favorable to the petitioner, it cannot do so by ignoring our contention admissibility rules, which require the petitioner (not the board) to supply all of the required elements for a valid intervention petition.") (footnote omitted). *Cf. Georgia Tech*, CLI-95-12, 42 NRC at 115 (citing *Kelley v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995)). In *Kelley*, the court observed, "[i]n order to determine whether the petitioners have standing, we 'accept as true all material allegations of the complaint, and … construe the complaint in favor of the complaining party.'" 42 F.3d at 1507-08 (quoting *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 109 (1979)).

[40] *See* Harp Appeal at unnumbered page 2, Tr. at 78-82.

[41] *Id.* at unnumbered page 2. These documents or statements are: (1) an article which, according to Mr. Harp, states that in 1979, air filters located 26 miles from a facility manufacturing DU penetrators were found to contain trace amounts of DU; (2) an article from an electronic newsletter claiming that 11,000 Gulf War veterans have died from illness caused by uranium munitions; (3) a paper claiming that DU can leach into soil (W. Schimmack, U. Gerstmann, U. Oeh, W. Schultz, P. Schrammel, "Leaching of Depleted Uranium in Soil as Determined by Column Experiments," Radiat. Environ. Biophys (2005) 44:183-191); (4) Mr. Harp's statement that the Hawaii Department of Health found trichloroethylene in drinking water wells supplying Schofield Barracks; (5) Mr. Harp's statement that the Environmental Protection Agency shut down cesspools to protect drinking water at Pohakuloa; and, (6) a site status summary regarding the Jefferson Proving Ground site in Rock Island, Indiana, from the NRC (continued . . .)

extent that it did not consider references that were not provided to it with specificity, or in a timely fashion.[42] In any event, however, Mr. Harp's references do not appear to provide any support for his argument that DU may migrate off of the Pohakuloa site and adversely affect him.[43] We find that the Board did not err in its treatment of Mr. Harp's supporting references.

c. *Use of High-Explosive Munitions*

Before the Board, Ms. Harden, in whose petition Mr. Harp joined, argued that high-explosive munitions may be falling onto DU, and that this action might pulverize and ignite the DU, generating aerosols that might travel through the air, providing an inhalation pathway for offsite exposure.[44] The Board concluded that these assertions were unsupported, particularly in view of the Army's statement that it adheres to Directive 4715.11, which sets restrictions for firing high-explosive munitions into areas containing DU. Without more, the Board found these assertions to be "bare conjecture", and insufficient to support standing.[45]

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website, stating that DU has contaminated the soil at the site and that groundwater will be monitored bi-annually (http://www.nrc.gov/info-finder/decommissioning/complex/jefferson-proving-ground-facility.html) (last visited June 27, 2010).

[42] *See generally Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 249 (1996) (for factual disputes, a petitioner "must present sufficient information to show a genuine dispute").

[43] It appears that, notwithstanding the Board's directive that participants were not permitted to introduce new supporting documentation at oral argument, it considered at least some of the material referenced by Mr. Harp, although, in our view, it was not required to do so. *See generally* Memorandum and Order (Setting Oral Argument) (Jan. 7, 2010) (unpublished), at 2-3. For example, the Board pointed out that Mr. Harp did not provide factual support for his assertion that DU munitions are the "probable cause" of illness suffered by military veterans. LBP-10-4, 71 NRC __ (slip op. at 24).

[44] LBP-10-4, 71 NRC __ (slip op. at 19) (citing Tr. at 11).

[45] The Board recommended that the Staff consider embodying the representation regarding the use of high-explosive munitions in a license condition. See LBP-10-4, 71 NRC __ (slip op. at 19 n.20). But even were the Staff to follow this suggestion, Mr. Harp could not base standing or a contention on the possibility that the licensee will violate the terms of its license. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-9, 53 NRC 232, 235 (2001); *International Uranium (USA) Corp.* (White Mesa Uranium Mill), CLI-01-18, 54 NRC 27, (continued . . .)

Mr. Harp disagrees with the Board's finding that the Army will not use high-explosive munitions on the site, because, he argues, the Army has no "credibility," based on its "past activities in Hawaii."[46] In addition, Mr. Harp argues that the Army may have used high-explosive munitions in the DU area prior to the discovery of DU there.[47]

Mr. Harp's arguments on appeal are unavailing. His concerns regarding the use of high-explosive munitions are without factual support, and we find that the Board did not err in declining to find standing on the basis of unsupported assertions. Fundamentally, Mr. Harp would have the Board find that the Army will, in the future, stop following applicable Department of Defense guidance, and disregard its representation to the Board that high-explosive munitions are not, and will not be, used in the DU areas at Pohakuloa or Schofield. We decline to assume that the Army will act contrary to applicable law, guidance, or the strictures of its license in the future.[48]

d. General Claims Regarding Cancer Rates in Hawaii

On appeal, Mr. Harp reiterates his generalized claims that Hawaii has a high cancer rate, and that the DU constitutes a "never-ending threat" to the health of Hawaiian citizens, but he does not address the Board's findings relating to this claim. We agree with the Board that

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30 (2001).

[46] Harp Appeal at unnumbered page 3.

[47] *Id.*

[48] *See PFS*, CLI-01-9, 53 NRC at 235 ("in the absence of evidence to the contrary, the NRC does not presume that a licensee will violate agency regulations wherever the opportunity arises"). *Cf. Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 365-67 (2001) (historical actions by an applicant are not relevant to its current fitness unless there is some "direct and obvious" relationship between the asserted character issues and the licensing action in dispute).

these claims are vague and insufficiently supported, and do not tend to establish any connection with the proposed license or potential harm to Mr. Harp.[49]

e. Mr. Harp's Additional Statements

To conclude his appeal, Mr. Harp makes several "additional statements" that we need mention only briefly here.

Mr. Harp claims that the Board erred in relying on a report provided by an environmental consultant, Peter Strauss, to Ms. Harden, who submitted it as part of her hearing request.[50] The hearing request did not explain how that report would support either Ms. Harden's claim of standing or contentions.[51] And, as the Board pointed out, the Strauss Report apparently contradicts her claim that the DU at Pohakuloa Training Area has the potential for offsite consequences.[52] Mr. Harp, however, argues that the Board "relied" on the Strauss Report in error because Mr. Strauss does not qualify as an expert on the radiological or chemical effects of DU.

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[49] *See U.S. Enrichment Corp.* (Paducah, Kentucky, and Piketon, Ohio), CLI-96-12, 44 NRC 231, 242 (1996) (finding, in the context of a challenge to a Director's Decision, that petitioner failed to provide "a reasonable basis" for assertions that increased cancer rates were associated with gaseous diffusion plant operations); *Crow Butte Resources, Inc.* (In Situ Leach Facility, Crawford, Nebraska), CLI-09-9, 69 NRC 331, 363-64 (2009) (reversing Board's admission of late-filed contention because petitioners failed to support their "fundamental premise" that applicant's "licensed activities have exposed petitioners and others to arsenic").

[50] *See* Cory Harden, *Request for Exemption From Electronic Filing and Request for Extension of Time to File a Request for Hearing and Petition for Intervention* (Oct. 9, 2009) (Harden Petition), Attachment 5 (memorandum from Peter Strauss to Cory Harden, "Independent Review of Pohakuloa Training Area (PTA): Depleted Uranium from the Davey [*sic*] Crockett Weapon System" (Aug. 1, 2008) (Strauss Report)). The report provides, among other things, Mr. Strauss' general views about potential health threats from DU at Pohakuloa.

[51] Ms. Harden cited the report only to show that Strauss estimated that there were up to 2,000 rounds fired in Hawaii. *See* Harden Petition at 3.

[52] *See, e.g.,* LBP-10-4, 71 NRC __ (slip op. at 17) (citing Strauss Report at 6: "geochemistry of the site makes it unlikely that DU is leaching from the surface to the groundwater;" and "[w]ind-carried particles would not likely carry very far because of the weight of DU").

This argument does not suffice to demonstrate Board error. Although the Board cited the Strauss Report several times in its discussion,[53] it did not opine on Mr. Strauss' status as an expert, but rather concluded that the contents of the report did not support the intervention petition. We find no Board error in that determination.

Mr. Harp noted that, during the prehearing conference, the Board posed questions as to whether the Army would update its application.[54] Mr. Harp argues that, if the application is going to be, or has been, updated, then the NRC must publish a notice in the *Federal Register* and solicit public comments on the amendments.[55] We decline to direct the Staff to take such action. Should Mr. Harp wish to challenge any future amendments to the Army's application that present genuinely new issues, he may file a fresh intervention petition, consistent with our rules for untimely petitions in 10 C.F.R. § 2.309(c).[56]

Finally, Mr. Harp requests that the NRC initiate enforcement action against the Army for purportedly possessing the DU munitions after its license to use them expired in 1964.[57] The Staff represents that it has forwarded Mr. Harp's request to the appropriate office for consideration, and it appears that the request is under active consideration by the Staff.[58] We therefore need take no further action with respect to Mr. Harp's request.

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[53] *See id.* at __, __ (slip op. at 16, 17, 20, 22, 26, 27).

[54] Tr. at 113.

[55] Harp Appeal at unnumbered page 6. Mr. Harp further requests that, if amendments are filed, the Board be directed to stay its order terminating the proceeding.

[56] In addition to satisfying our requirements for a late petition, Mr. Harp would be required to demonstrate standing and submit at least one admissible contention, pursuant to 10 C.F.R. §§ 2.309(d) and 2.309(f)(1).

[57] *See generally* 10 C.F.R. § 2.206.

[58] Staff Brief at 8. *See* Acknowledgement of Request for Enforcement Action Against U.S. Army Installation Command (Schofield Barracks and Pohakuloa Training Area, Hawaii), 75 Fed. Reg. 24,755 (May 5, 2010).

III. CONCLUSION

We have reviewed Mr. Harp's appeal in its entirety, and find that it has no merit. We therefore *affirm* the Board's denial of Mr. Harp's intervention petition.

IT IS SO ORDERED.

For the Commission

[NRC Seal]

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 12th day of August, 2010.