TAKING THE NRC TO COURT: LEGAL STRATEGIES AGAINST NUKES

1) 10 CFR 2.309 (Title 10 of Code of Federal Regulations, Section 2.309) governs how individuals or grassroots groups can request formal trial-type hearings by filing petitions to intervene in Nuclear Regulatory Commission (NRC) adjudicatory proceedings (adjudication is a lawyer word for "trial"). Petitioners have to show they have legal standing (explaining how they are affected) and must submit at least one admissible contention, which is a specific statement raising a legal or factual claim that some aspect of the nuclear plant proposal is flawed, illegal, defective, scientifically questionable or there are unconsidered or underestimated problems, such as environmental effects, that will be caused by the plant being built or operated.

- *Legal Standing Requirements (2.309(d))*: Petitioners must provide their name/address, the nature of their right to participate, the nature of their interest (property, financial, etc.), and how a decision may affect that interest.
- *Contention Admissibility (2.309(f))*: Each contention must be a specific statement of law or fact to be litigated, include a brief explanation of the bases, and a concise statement of supporting facts or expert opinion. At least one contention has to be "admitted" – approved by the three member licensing panel, called an Atomic Safety Licensing Board or ASLB (or "A-slobs"). The ASLB are administrative judges who will conduct the trial of the contentions.
- *Time Limits:* Generally, requests for hearings or petitions to intervene must be filed within 60 days of the notice of hearing publication in the Federal Register.
- *You do not have to be a lawyer*. Many times, conscientious nonlawyer activists have raised issues and been able to proceed to a trial.
- *Section 2.309 Petitions require discipline and a large capacity for disappointment. This is the stage of the licensing proceeding where most grassroots groups register their objections to the shortfalls/ deficiencies in the Environmental Report (see below), to warn the NRC Staff to write a more competent Draft Environmental Impact Statement (discussed in more detail below).* The NRC administrative judges are extremely stringent to the point of setting contentions for trial a near-impossibility, refusing to hear complex and expert-supported issues. The best antinuclear lawyers in the country have experienced frustration in persuading A-slobs to allow contentions to go to trial. Your opposition to a nuclear reactor being licensed must always be focused on using media coverage to educate and on occasion shaming or revealing faulty work by the NRC and/or the Daddy Warbucks corporation seeking to license the reactor.

2) The nuclear industry is trying to make contention filing even more difficult. This corporate law firm summary explains the ways nuclear industry lobbyists are working to undermine the public's limited opportunities to oppose new nuclear plants. NRC Proposes to Streamline Contested Hearings in Licensing Proceedings, https://www.orrick.com/en/Insights/2026/03/NRC-Proposes-to-Streamline-Contested-Hearings-in-Licensing-Proceedings There is a good likelihood that most or all of these changes will become the new normal for intervening in a licensing case.

3) **National Environmental Policy Act (NEPA) proceedings:** A NEPA proceeding to license a new nuclear power plant in the United States overseen by the NRC to evaluate the environmental impacts of the proposed construction and operation. The procedure typically involves the following key stages:

- *Applicant's Environmental Report:* Before filing a license application, the prospective licensee prepares an Environmental Report (ER) analyzing the impacts of the proposed plant on the local environment
- *Scoping and Public Input:* Upon receiving an application, the NRC publishes an Notice of Intent to compile an Environmental Impact Statement (EIS) in the Federal Register, and might conduct a public meeting near the proposed site to identify potential environmental issues and "scope" the depth of the environmental analysis that will be necessary by gathering input from the public.
- *Draft EIS:* The NRC staff compiles and publishes a draft EIS (DEIS) to evaluate the environmental impacts, including impacts on air, water, land, and aquatic resources for public review and comment. Under NEPA law, the public must be allowed at least 30 days to submit written comments and the NRC may accept oral comments in public meetings. ***It is vital to comment in writing at the Draft EIS stage in order to preserve issues that the NRC Staff has not adequately covered or has refused to cover to raise them in court followng the end of the NRC licensing stage (the Section 2.309 licensing stage).***
- *Use of GEIS (NUREG-2249):* Depending on the type of nuclear reactor proposed, the NRC might substitute a Generic Environmental Impact Statement (GEIS) to address environmental issues common to many new reactors. It's supposed to streamline the review by requiring the public to focus primarily on site-specific issues but is often used to minimize as "routine" or "small impacts" particular local environmental problems (local weather changes caused by vapor drift from cooling towers, effects of thermally heated water being dumped on aquatic life nesting areas, outsized water withdrawals for cooling reducing a surface water source like a river or lake are examples).
- *Final EIS:* The NRC staff reviews public feedback and finalizes the EIS (called an FEIS). This document becomes the primary tool for the licensing decision. It is possible to submit comments on the FEIS in order to add even more detail about where the NRC Staff failed to address an environmental problem.
- *Safety Analysis Report*: Simultaneously as it conducts the NEPA proceeding, the NRC conducts a safety review of the applicant's **Safety Analysis Report**, assessing reactor design, safety features, and site safety.
- *Record of Decision (ROD):* The final step is the issuance of a ROD, which states the NRC's decision to approve or deny the license, based on the findings of the EIS.

  2026 Streamlining Updates: As of April 2026, the NRC has implemented significant changes aimed at improving efficiency:
- *Generic Environmental Impact Statement for Licensing of New Nuclear Reactors* (NR GEIS) and its associated regulations aim to reduce the time spent on common environmental issues, such as standard aquatic impacts. Found at https://www.federalregister.gov/documents/2026/04/24/2026-08015/generic-environmental-impact-statement-for-licensing-of-new-nuclear-reactors
- *Focus on Significant Issues:* The updated process focuses resources on the most significant environmental issues, such as climate change and cumulative impacts on local communities. Make the most of the few battleground issues allowed. Climate chaos, for example, should be heavily emphasized in developing opposition because of the extreme heating of air and water caused by nuclear power plants, as well as the considerable carbon emissions from concrete, the uranium fuel chain (mining, milling, refining, enriching, fissioning in reactors is a very energy, mostly fossil fuel-intensive chain of events).

- *Categorical Exclusions:* The NRC expanded **categorical exclusions**, which allow certain types of routine or low-impact regulatory actions to bypass the need for a full EIS. This is another battleground, as there are environmental effects caused by steps or stages the NRC and the applicant might try to minimize. https://www.jdsupra.com/legalnews/nrc-amends-and-expands-nepa-categorical-7669883/

4) **10 CFR 2.206 complaints.** A Section 2.206 petition is a process allowing any person to request that the NRC take enforcement action someone holding or requesting a license, such as a license to operate a nuclear power plant. You can request the NRC modify, suspend or revoke the license. It must be in writing, raise safety issues, and provide supporting facts.

- *Purpose:* The process is designed to address safety concerns regarding NRC-licensed activities to try to get the agency to act to protect public health and safety.
- *Submission & Content:* The petitioner must clearly state the action requested and provide specific, documented facts supporting the request. General opposition to nuclear power is not sufficient.
- *Review Process:* The Petition Review Board (PRB) evaluates the request. If accepted, the NRC staff investigates the concerns.
- *Director's Decision:* The responsible NRC office director issues a decision granting or denying the request in whole or in part.
- *Public Involvement***:** Petitioners are often given the opportunity to address the PRB directly to explain their concerns.
- The NRC provides a "Desktop Guide" to the filing and review of 2.206 petitions. You do not have to be a law, but it can help. https://www.nrc.gov/docs/ML2123/ML21237A347.pdf
- *THIS IS A LEGAL DEAD-END BUT MAY HAVE PUBLICITY VALUE.* Even high-quality complaints, supported by scientific or engineering opinion are rejected literally around 99% of the time. Use the 2.206 route to provide a vehicle to publicize problems that are serious. It's a formal request to the NRC to do something, often about an issue that they are very unwilling to act upon, but it is something to inform the public through media coverage about.

5) **National Pollution Discharge Elimination System Permits.** NPDES permits are federal licenses required under the **Clean Water Act** that regulate the discharge of pollutants from point sources (including nuclear power plants) into U.S. waters.

- *Purpose*: To prevent industrial pollution from contaminating water bodies.
- *Matters that can be regulated:* Administered mainly by states environmental agencies, these permits set specific limits on waste and toxic chemicals and can be used to force limits on the heated nature of water being dumped from nuclear plants, also to limit fish kills from drawing huge volumes from a lake or river for cooling purpose. Also can be used to force the considerable expense on a nuclear plant promoter of building cooling towers to cool the water before dumping into the river or lake.
- *Requirements:* Permits often include strict limitations on pollutant concentrations, flow rates (measured in MGD - millions of gallons of water per day), mandatory monitoring, and reporting obligations.
- *Validity***:** Permits are generally issued for a limited time, not exceeding five years.
- *NPDES permits can provide a bit of a weak spot for the sponsor of a nuclear power plant that wants to cut corners at the expense of killing aquatic wildlife with a primitive thermal heating water discharge system. There are also aquacides – herbicides or pesticides -- deliberately, via permit, authorized for dumping into the waters offshore of nuclear plants to kill off mussels that clog water intakes. These*

water poisons are very toxic to fish and other aquatic life, and fish and other aquatic animals such as water snakes are killed by the billions in industrial water intakes such as at nuclear plants. Public opposition to NPDES permits is a means of publicizing the true environmental cost of nuclear (indeed, any thermal process to generate electricity that draws on the commons for cooling water). NPDES permits are typically issued by state environmental agencies, and it may be possible, with or without a lawyer, to slow down or block a fast-track permitting for water pollution.

6) Section 404 of Clean Water Act wetlands permits. This is another show-slower-downer if not a momentary showstopper for a nuclear power plant development Section 404 permits (referring to a section of the Clean Water Act) involves a review by the U.S. Army Corps of Engineers (USACE) for discharging dredged or fill material into waters of the U.S. Section 404 permits are required before wetlands and marshlands can be filled in and destroyed.

- *Pre-application Consultation:* The utility company engages with the USACE district office and relevant state environmental agency to identify potential environmental impacts, discuss alternatives, and define the scope of the project before submitting a formal application.
- *Wetland Delineation*: A qualified consultant must delineate (identify and map) the wetlands and other "waters of the United States" on the site, which the USACE verifies.
- *Alternatives Analysis (LEDPA):* The applicant must demonstrate that they have avoided and minimized wetland impacts to the maximum extent practicable. They must identify the Least Environmentally Damaging Practicable Alternative (LEDPA).
- *Permit Application Submission:* The applicant submits the application to the USACE, including the LEDPA analysis, site plans, and proposed mitigation plans.
- *Public Notice and Review:* The USACE issues a public notice inviting comment from the public, special interest groups, and government agencies.
- *Section 401 Water Quality Certification:* The applicant must obtain certification from the state (e.g., Ohio EPA) that the project will not violate state water quality standards.
- *Final Decision and Mitigation:* The USACE evaluates all comments and information to make a final decision. If permitted, the applicant must usually implement compensatory mitigation, such as restoring or creating wetlands elsewhere to offset losses.
- *Timing:* The process for major projects can take 6–18 months or longer.
- *EPA Veto Power:* The U.S. EPA has the authority to veto a USACE permit decision if it determines the project will have unacceptable adverse effects. This authority is rarely invoked and surely won't be with the current president.
- *Nuclear Regulatory Commission (NRC)*: While the USACE handles the 404 permit, this is often integrated into the larger Nuclear Regulatory Commission (NRC) Environmental Impact Statement (EIS) process.
- ***Strategic Considerations: The Corps of Engineers is characteristically hostile to citizen opposition because they're, well, engineers who think we can build our way into Nirvana. One showstopper can be a Section 401 certification denial by the state environmental agency. Requires much organizing and legal confrontation.***

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