

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



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APPEAL to the Atomic Safety and Licensing Appeal Board,
in compliance with 10, C.F.R. 2.714 a, from Order
of Atomic Safety and Licensing Board:

That the question of jurisdiction over both the
subject and subject matter is appealed from in
general, and some parts in particular.

Docket Numbers: 50-329 OM
50-330 OM
50-329 OL
50-329 OL

In the Matter of CONSUMERS POWER COMPANY, Midland Plants,
Units # 1 and # 2

On Order resulting from September 10, 1980 pre-hearing,
dealing with proceeding involving Order modifying construction
permits, No. CPR-81 and No. CPR-82, dated December 6, 1979.

* * * * *

Your Petitioner takes exception to the foregoing
Order, and states that the Order stands moot as to the
question of jurisdiction.

Since January 31, 1979, jurisdiction of the Clean
Water Act over discharges of solid wastes in wetlands is
contained in 404 of the Clean Water Act:

The Administrator of the Environmental Protection
Agency, not the Secretary of the Army, has the authority
to determine whether disposition of solid wastes requires
a N.P.D.E.S. permit or a Section 404 permit: fill material
as discharge.

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In a case of disagreement, the Administrator and the Secretary of the Administrator have the ultimate authority to determine whether a discharge of solid waste in waters of the United States requires an N.P.D.E.S. permit or a Section 404 permit. Such a permit must be secured 404 (B) (1) which are prepared by the Environmental Protection Agency.

* * * * *

APPEAL from denial of letter presented to the Atomic Hearing Board, denied on the grounds of being both "untimely" and "vague"

Petitioner represents, upon appeal, that a question of jurisdiction was raised before the Board, and is reflected in the official record; that, further, a conflict of administrative laws is evident as to jurisdiction over "fill materials", where the construction of the sinking generator building is in a flood district and upon the surface of land situated over underground water courses constantly flowing.

1. The Tittabawassee River is a navigable stream, within the meaning of the law. Ruled by Douglas: a navigable stream does not have to be navigable at all times to be considered and held a navigable stream. Moreover, that the silt and erosion of fill material into the Tittabawassee River has not been denied.
2. That fill dirt does pose a threat by running into the natural water courses, and thereafter into the Tittabawassee River.

3. That consolidation under Part 2, Rules of Practice, subpart. D - 2.402 was approved by the Board on the hearing at Midland, Michigan.

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NOW COMES WENDELL H. MARSHALL, denied the admissions of a letter on the basis of being "both untimely and vague", and takes exception to these finds, and takes appeal therefrom:

Claiming there is a conflict of laws as to jurisdiction, since the Consumers Power Company refuses to make the borings requested by the N.R.C., stating that the cost would entail expenditures of one million dollars -- since over this amount is spent every day on this construction, it would lead one to conclude that Consumers Power Company engineers know that the construction is over underwater caverns.

With regard to jurisdiction, it is the position of the appellant that modification should include inclusion of consideration of the Number One law enforcement officer of the United States of America, Attorney General Civiletti:

To Clifford Alexander, September 5, 1979:

"Noting the administrator's role under Section 10D, the dual role of the E.P.A. and the Corps under Section 404, and that a jurisdictional decision by the Corps would necessarily affect parts of the program administered by E.P.A., not the Corps, had authority to determine the jurisdictional waters of the 'United States' which appears in the general provisions of the Act. Section 502(7) and

the term 'fill' appears only in Section 404 and related parts of Section 208. In each case, the interpretation of the term clearly impacts other programs under the Act; in fact, in the instant situation and interpretation by the Corps could considerably even affect the applicability of the Resource Conservation and Recovery Act, which is also an 'E.P.A. statute'. R.C.R.A. excludes from 'solid waste' those industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act."

* * * * *

The Atomic Safety and Licensing Board, Charles Bechoefer, Chairman, on October 27th, 1980 - prehearing conference order ruling on contentions and on consolidation of proceedings, October 24, 1980, in re the order modifying Construction Permits No. CPR-81 and No. CPR-82, dated December 6, 1979 OM proceedings, and Operating Licence OL proceedings, involving issues related to those under consideration in the OM proceeding.

This appeal is taken from a failure to admit the letter of Wendell H. Marshall, representative of the Mapleton Intervenors, which was to be considered in the form of a petition in the OL proceedings, that the only proposed contention for the OM proceedings was the first paragraph of his letter of August 27, 1980.

At the same time, before the Board, Mr. Marshall, Petitioner, did raise questions as to jurisdiction, and stated that a signed contract in the form of a compact was in existence by and between the People of the United States of America and the People of Canada, signed and executed by President Nixon and President Trudeau of Canada.

Requested on the basis of timeless factors of
10 C.F.R. 2.714 (a).

On May 27, 1980, the Consumers Power Company
filed a motion to consolidate the ON proceedings
with three issues relating to soil conditions and
plant fill materials raised in the OL proceedings
by memorandum and order dated June 27, 1980.

Appeal taken 2.714 raising questions raised upon
hearing in RE 2.718 taken appeal from the Order of the
Atomic Safety and Licensing Board, dated at Bethesda,
Maryland, this 24th day of October, 1980.

Signed by Charles Bechthoefer, Chairman, speaking
for the Panel.

* * * * *

The most recent regulatory ruling to my letter
was that it was "vague and untimely". Exception is
taken.

Regulations of August 7, 1975, revealed many
questions as to the scope of the Act; one of the most
frequently raised questions was whether employees are
considered part of the "public water system" (see
Section 1401(4)).

E.P.A.'s response, as formulated in Appendix A
to the November 12, 1975 draft of the final regulations,
was that such water supplies are covered even where
they do not serve the general public (see Appendix A,
Statutes, at page 3.

Pre-hearing conference order ruling on contentions
and on consolidation of proceedings October 24, 1980:
on September 10, 1980, page 9 B 2:

"The applicant would reject the last sentence of Ms. Warren's contention 2 A on the basis that it relates to natural soils (silt) rather than fill soils, and I claim that the modification order relates only to fill soils."

Petitioner takes exception to failure to admit August 27, 1980 letter, re-stating that a compact by and between Canada and the United States of America, as signed by Richard M. Nixon and President Pierre Trudeau of Canada amounts to a writ of prohibition under the circumstances, barring construction or licensing of a nuclear power plant unless an absolute guarantee can be given that the common waters of the two nations are not endangered.

Petitioner raised the questions of jurisdiction in the record as to the soils settlement and compacted fill materials.

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Environmental Protection Agency

March 20, 1979

Clean Air Act, Section 122 (c) (2)

The N.R.C. requirement under the Atomic Energy Act

This mandate for cooperation is subject to the limitation that it be consistent with the provisions of the Clean Air Act, Section 122 (c) (2).

Moreover, in Congress' view, providing only a Section 404 exemption for those discharges was not enough, since E.P.A. would still be able to step in and require a Section 402 permit.

With respect to the claim that your Petitioner-Appellant is "untimely" in his presentation, I stand chagrined.

I was born in Midland County, Michigan, of poor but honest parents, and walked over a mile to school for five years without ever being absent or tardy. I still possess a medal awarded by the School District for this outstanding record; and I claim that this record of school attendance has established a standard of punctuality and timeliness which I have sustained throughout my life.

As far as "vagueness" is concerned, I cannot pretend to the standards of attorneys and others skilled in word usage, inasmuch as I have never taken any of the following courses (as recommended by law schools) from any accredited college of law:

- Business law
- Civil procedure
- Constitutional law
- Contracts
- Criminal law
- Equity
- Evidence
- Legal writing and research
- Professional responsibility
- Property
- Taxation
- Torts
- Trial advocacy

Be that as it may, I feel that I am able to express myself in layman's language, and I beg the Appeal Board's indulgence for my lack of formal legal education; I am as precise in my presentations as I can possibly be, within my limitations.

I wish the Nuclear Regulatory Commission and the Docketing Service to permit me to take advantage, under the law, of copies to be furnished to the participants under the new section, absolutely free gratis and for nothing, which, I understand, will include franked mail service to the certified list and all interested agencies, and, in particular, Mr. William D. Paton, Counsel for the N.R.C. staff, and James E. Brunner of the Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan.

Dated this 12th day of
November, A.D. 1980, at
Midland, Michigan.

Wendell H Marshall

Wendell H. Marshall, President
Mapleton Intervenors
Petitioner - Appellant

TO: United States Nuclear Regulatory Commission
Washington, D.C. 20555

ATTN: Robert L. Tedesco
Assistant Director for Licensing
Division of Licensing

FROM: Mapleton Intervenors
Wendell H. Marshall, President

RE: Docket Nos. 50-329/330 OL
50-329/330 OM

SUBJECT: Request for Details of Stress Analysis for
Underground Piping

EXHIBIT # 1

The continued settling of the buildings, and the most recent report by the N.R.C. - Mechanical Engineering Branch, in conjunction with their Energy Technology Engineering Center, on the serious overstress of underground piping before service, as reported by Mr. Robert L. Tedesco in his letters of October 20, 1980, to the Consumers Power Company, indicate that this problem has not been solved. This is further evidence that not all of the engineering considerations applicable to the building of a nuclear plant in a natural flood plain at the junction of three rivers with attendant dewatering engineering problems have been considered - one might say, they have been grossly overlooked - with respect to plant site selection and the attendant hydraulic conditions.

The dewatering soil compaction problem at the Midland nuclear plant site is one where all the facts and parameters have not been considered in the assessment of the true problem. In this area, problem solving on a piecemeal basis is not conducive to a safely engineered plant.

The location of the nuclear plant at the junction of three rivers indicates that the plant is settling upon a hardpan in a flood plain. The hardpan is the natural drainage route of surface water, supplemented by an artesian flow, depending upon the water tables both above and below the various water tables of each individual hardpan layer.

During heavy rainfall, the natural drainage flow from the high ground must flow along natural drainage ditches. In addition, the ground water build-up due to the wet season can, and does, affect the water tables. It is a known fact that, in the Midland area, there are many artesian water flows from naturally occurring flows and from abandoned wells that have not been plugged.

I would also assume that the many core samples taken over the plant site area were not plugged, and would offer a natural additional relief of the accumulated ground water pressure, permitting water to penetrate the plant construction site, in addition to the normal surface water runoff.

While not germane, I do believe that much technical information and findings have not been recorded, and would have been overlooked by the succeeding engineers not familiar with the original surveys. The lack of continuity of engineering precludes the acceptance of a total individual responsibility, in the face of known personal problems in the engineering staff at the Midland site. This implication involves the Dow Chemical Company, the Consumers Power Company, and Bechtel Construction Company personnel.

In summary, there are just too many factors that have not been reported in the areas of natural watercourse drainage, penetration of hardpan in areas susceptible to varying hydraulic groundwater pressures, naturally occurring artesian wells as related to seasonal rainfall, and ten-, fifty-, and hundred-year floods.

It is further noted that many engineering water problems were encountered by the Dow Chemical Company and their contractors in construction adjacent to the nuclear site, south of the river. The question resolves: Has all of the history of this area been evaluated in terms of the whole, or has a system of piecemeal engineering been used to solve immediate problems?

Wendell H. Marshall

Wendell H. Marshall, President
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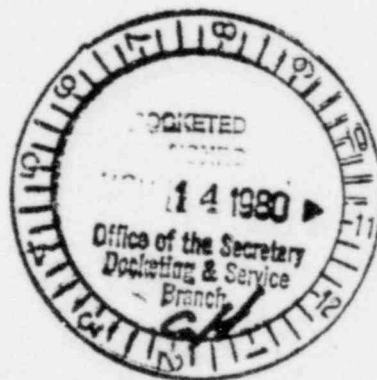
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I have seen most of the world and have been in its highest mountains. I have walked the valleys of all the continents and seen their wonders. Now and then I have come across a sanctuary equal to our best. But when a full accounting is made there is no continent on earth equal in natural wonders and glories to what we have here.

We must learn to love it and cherish it. We must put our arms around it and protect it as we would a fragile but precious child. Technology can destroy it. But it can also save it. Only we the people, not technology, have "values." Love, respect, admiration, tenderness—these must be our attitude toward this biosphere if it is not to meet the technological Armageddon.

—Justice William O. Douglas
The New York Times
July 1, 1973, § 4, p. 13