

14938

DOCKET NUMBER  
PROD. & UTIL. FAC. 50-289(2.206)

DOCKETED  
USNRC

'94 APR 22 P3:36

# PICA

The Pennsylvania Institute for Clean Air

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
DRAFT

Office of the Senior Researcher, 2211 Washington Avenue  
Silver Spring, Maryland, 20910 Telephone (301) 587-7147

Principal Deficiencies in Director's Decision 94-03  
Concerning PICA's Request Under 10 CFR 2.206  
April 7, 1994

by  
Robert Gary, Senior Researcher

1. On the issue of whether the 10 mile evacuation zone is adequate considering the fact that it excludes 90% of the people of Harrisburg, the DD says on page 29 et seq. that 10 CFR 50.33 (g) calls for a 10 mile EPZ, as explained in NUREG-0396. The DD goes on to say that response measures will be expanded if conditions warrant it. Legal cases are then cited.

Deficiencies in Director's Position:

a. When a rule is being questioned, citing the rule as its own justification involves a logical error. If a rule could be its own justification, then no rule in force could ever be meaningfully questioned. The citation by the Directors of the very rule being questioned in this case has no probative value and should not be considered a substantive response on the issue of whether that rule is reasonable which was the issue raised by PICA.

b. One of the legal cases cited, Long Island Lighting Company, seems on its face to support, or at least be broadly consistent with PICA's position. In the present case 10% of Harrisburg is included in the 10 mile EPZ while 90% is excluded. The case says that a valid administrative consideration is avoiding EPZ boundaries that carve out small portions of governmental jurisdictions. There are two ways this could be done in the case of Harrisburg. One was to make the circle indented by excluding the 10% of Harrisburg that is presently included. The other is to make the circle bulge out to include all of Harrisburg, which is what PICA suggests. The dented circle course was not followed, but neither was the bulging circle course followed. Instead, a small portion of a governmental jurisdiction (The City of Harrisburg) was placed inside the EPZ, while most remained outside. The case does not support such an administrative determination. Planning simplicity and avoidance of ambiguity would require that Harrisburg be either in or out of the EPZ.

D503

C. Harrisburg, a city of 52,000 people, is the Capitol of Pennsylvania, and has been traumatized in 1979 by a major accident at TMI. Since that accident there has been an accident at Chernobyl that contaminated vast areas of Europe and Russia, and there has been the opening and cleanup of TMI-2 which indicates that the 1979 accident was far more serious than originally reported. Some evidence exists that there was a cover up at the highest levels of the U.S. government in this regard. Under these circumstances, and when the 10 mile rule has been questioned in a Petition, it is incumbent upon the Directors to come forth with some positive justification for the rule and not merely citations to CFR, NUREG, and legal cases. The issue of why it is essential not to include Harrisburg in the EPZ was never substantively addressed and the Director's position on this point is therefore unpersuasive in light of the many justifications that have been provided for why Harrisburg should be included in the EPZ.

2. On the issue of whether military trucks can and should be incorporated into the evacuation planning for TMI, specifically for Harrisburg, the DD says on page 20 that PAARNG provides a battalion to assist each risk and support county, that Dauphin county gets one primary battalion with backup, that these battalions take 6 hours to mobilize, that the nearby military trucks are flatbed trailers, and that means and methods for evacuation are not the NRC's primary business in the first place. It is also stated on page 33 that under FRERP, DOD will provide assistance in accordance with DOD policies but that DOD is not intended as a first responder (citation given to 50 FR 46559, November 8, 1985).

#### Deficiencies in Directors Position:

a. PICA has stated that we are prepared to accept representations from military officers or others in the military chain of command as to the capacities of DOD or PAARNG to respond to an emergency. We are not prepared to accept the peremptory statements of PEMA, or FEMA on this matter. We have suggested that persons in the military chain of command be allowed to speak for themselves on what they can do. We have suggested that certificates from them would have high probative value on the issue of whether military units could be productively integrated into emergency evacuation planning for Harrisburg. The Directors have chosen to treat these suggestions as if they were preposterous. The Directors have not consulted with military leaders. Instead they cite administrative arrangements that were made in 1985 and have no direct bearing on Harrisburg. They also cite FEMA, who cites PEMA, who has had no contact with DOD at the Secretary of Defense level. The result is that no primary research was ever done by the NRC on this point. The DD contains no information that could not have been produced by clerical persons operating in a law library. PICA's 2.206 Petition was not filed to obtain paperwork from law clerks. It

was filed to stimulate new and useful connections within government and between government agencies. The Directors have failed to take any steps that would be considered authentic along these lines. Their response is unresponsive and should be set aside in favor of a more proactive response and one that is more genuine in addressing what PICA has suggested.

3. On the issue of whether \$500,000 is a reasonable amount for the entire Commonwealth of Pennsylvania including 33 risk counties and five nuclear sites to spend on radiological emergency preparedness, the DD says on page 28 that the NRC has no requirements concerning the size and allocation of budgets for offsite emergency response organizations, that PICA has not proven that \$500,000 is inadequate, and that NRC has no statutory authority to implement PICA's request.

#### Deficiencies in Director's Position:

a. When a rule is being questioned, citing the rule as its own justification involves a logical error. If a rule could be its own justification, then no rule in force could ever be meaningfully questioned. In this case we are talking about the absence of a rule. PICA has suggested that a rule be made. The Directors have denied the request based on the absence of a rule. This is an invalid denial because it entails a logical error.

b. PICA suggested that the Mayors and County Executives be surveyed to determine if they need more money than they are currently getting under Act 147 allocations to offset reasonable planning and safety expenditures which they have to make. This suggestion was treated as preposterous. Instead, the Directors decided that the matter could be handled very satisfactorily by clerical staff operating in a law library and gathering absolutely no primary research information pertinent to the substantive point. This is a case of inaction by the Directors. Instead of acting to see whether PICA is right, they relied on FEMA, who relied on PEMA, who relies on persons such as Senator Shumaker of the Pennsylvania State Senate who feels that the taxpayers or ratepayers should not be burdened with additional expenditures.

c. PICA has also suggested that in the absence of an acceptable and reasonable political response from the Pennsylvania Legislature, that the NRC federalize the collection and distribution of funds for radiological emergency planning and preparedness. Page 29 of the Director's Decision says that NRC has no statutory authority to do this, but that statement was retracted and corrected by phonecall from Mr. Ron Herson, NRC on April 7, 1994, 1100 hrs. The page now reads as if that statement were not there, which suggests to PICA that perhaps the NRC or some part of the Executive branch does have the authority to federalize the collection and distribution of these funds if it

is considered appropriate.

d. Whether it is appropriate or not in this case is a function of the research that PEMA, FEMA, and the NRC Directors have declined to do. The Directors Decision is accordingly deficient on this point and the Commissioners should not permit it to stand as the institutional position of the NRC until some kind of actual factual genuine authentic primary research field survey has been made of the Mayors and County Executives to ascertain if their real needs are being covered by \$500,000 for 33 risk counties when much of that money is actually spent at PEMA headquarters on salaries and benefits for PEMA headquarters staff.

e. The money issue is important because it operates as a constraint on other specific issues that PICA has raised as deficiencies in the Pennsylvania operation. The lack of the warehouse, the lack of unscheduled drills, etc. The issue cannot be disposed of by saying that Pennsylvania passes FEMA's tests every year and thus since there's no inability to pass the tests there's no reason to increase the allocation above \$500,000. This argument would be entirely spurious if one took the position that FEMA is not a competent judge of offsite radiological emergency preparedness. That very premise is part and parcel of PICA's overall position. If we thought FEMA was doing a good job we wouldn't have filed a 2.206 Petition. We don't think FEMA knows what it is doing. We don't think passing FEMA's tests is any indication of anything. Therefore we don't agree that passing FEMA's tests is proof that \$500,000 is the right amount of money to protect 33 risk counties from 5 nuclear sites in a highly populous industrial state.

This letter has been confined to the principal deficiencies in the Director's Decision on what PICA regards as the three main points of its present position. There are all kinds of other little points which, in this context, are details.

Before closing this letter PICA wants make a statement about the work that the NRC has done on PICA's Petition so far. We think the system is bad but the people are good. Within existing guidelines, the Directors have provided us with a model 2.206 process. They and their staff have worked many and long hours to address the many points that PICA has raised in the traditional manner that the system provides.

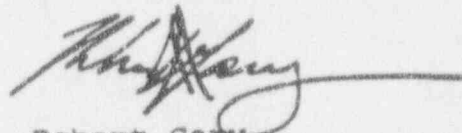
The system, however, is wrong. It does not provide for primary research. The NRC has no real capacity for going and getting new information or going and doing anything in response to a 2.206 Request. The response is a clerical staff response, done in a law library, based on what FEMA said and what PEMA said, and on citing rules and statutes, some of which are the very ones being questioned.

A better response would entail going and getting new information on a primary research basis and bringing it in at the NRC level. A better response would also entail a substantive and original discussion of the policy issues, in their technical, economic, and ethical dimensions -- in other words some actual consideration of the petition from a perspective above the clerical level. This consideration would incorporate the full powers of the NRC, and those that might be activated, or sought by NRC-initiated changes in the CFR's.

When a 2.206 Request raises major issues which are potentially valid, it should be analyzed from an proactive executive's eye perspective not from a "hands-tied" staffer perspective. 2.206 Requests are requests for action. The NRC should reorganize its response process so that more action can be provided. This might mean spending more money to do primary investigations and research and getting higher-level more action-capacitated people involved at the early stages.

Within the framework of a bad system, the Directors and their staff have done superb work on PICA's 2.206 Petition. They have been outstandingly courteous, helpful, fair, competent, open-minded, and professional right down the line. They have accomodated unusual requests from PICA such as the meeting February 2, 1994, well knowing that it would bring them more and more difficult work but in the interest of providing the fullest possible due process. They have consistently restated PICA's positions for the record in a generous, fair, and clear form. The people are not the problem here. The system is structurally arranged to be unresponsive and that is the problem. If the Directors could do more in response to a 2.206 like primary investigative research and real policy analysis, the 2.206 system be a more valuable adjunct to state and federal efforts to ensure public health and safety against the hazards of nuclear power generation.

Sincerely,



Robert Gary  
Senior Researcher  
for PICA  
The Pennsylvania Institute  
for Clean Air