



U.S. Department of Justice

*United States Attorney
Southern District of New York*

200200613NRC
MA:lenc

100 Church Street
New York, New York 10007

FILE COPY

April 3, 2002

Karen D. Cyr, Esq.
General Counsel
Nuclear Regulatory Commission
Room 17D23
One White Flint North Building
11555 Rockville Pike
Rockville, MD 20852

Re: Lisa Sarrion & Luis F. Lozano v. NRC, et al.
02 Civ. 2474 (LMM)

Dear Ms. Cyr:

We are enclosing a copy of the summons and complaint in the above-captioned action which was served on this office on April 1, 2002. The defendant's answer must be filed no later than May 31, 2002.

The case has been assigned to Assistant United States Attorney Eric B. Fisher, whose telephone number is (718) 422-5637. Please prepare a draft answer and litigation report and forward them to this office no later than May 1, 2002. The litigation report should include information on the identity of potential witnesses by name, address and telephone number, and the location and custodian of any documents relevant to the action. If you have formulated a position on settlement of the action, please include that in the litigation report as well.

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Do not hesitate to contact AUSA Fisher to discuss the case. You should not, however, speak to any representative of the plaintiff. If you cannot meet the foregoing deadline, advise us immediately. Thank you.

Very truly yours,

JAMES B. COMEY
United States Attorney

By: 

MARLA ALHADEFF
Chief, Civil Division
Tel. (718) 422-5604

Enclosures

cc: David J. Anderson, Esq.
Director - Rm. 1064
Federal Programs Branch
Civil Division
U.S. Department of Justice
901 E Street, N.W.
Washington, D.C. 20004

JO 440 (Rev 10/93) Summons In a Civil Action

United States District Court
SOUTHERN DISTRICT OF NEW YORK

LISA SARRION and
LUIS F. LOZANO,

Plaintiffs,

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

U.S. NUCLEAR REGULATORY COMMISSION,
RICHARD A. MERSERVE, Chairman,
GRETA JOY DICUS, NILS J. DIAZ,
EDWARD MCGAFFIGAN, JR., AND JOSEPH J.
S. MERRIFIELD, Commissioner,

02 CV 2474

Defendants.

TO: (Name and address of defendant)

U.S. NUCLEAR REGULATORY COMMISSION
No. 1. White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address).

STUART JAY YOUNG, Esq.
65-08 Austin Street
Rego Park, New York 11374

JAMES B. COMEY
U.S. ATTORNEY, SDNY

an answer to the complaint which is herewith served upon you, within Sixty (60) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

JAMES M. PARKISON

CLERK

(BY) DEPUTY CLERK

DATE

MAR 23 2004

JAMES B. COMEY
U.S. ATTORNEY, SDNY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LISA SARRION and LUIS F. LOZANO,

Plaintiffs,

02 CV

2474

-against-

Dkt. No 02 CV

UNITED STATES NUCLEAR REGULATORY
COMMISSION, RICHARD A. MERSERVE..
Chairman, GRETA JOY DICUS, NILS J. DIAZ.
EDWARD McGAFFIGAN, JR.. and JEFFREY
S. MERRIFIELD, COMMISSIONERS.

Defendants.

VERIFIED COMPLAINT
IN THE NATURE OF A
MANDAMUS PURSUANT

28 U.S.C. § 1361

MAR 29 2002

U.S.D.C.

Plaintiffs by their counsel, STUART JAY YOUNG, Esq. do hereby show and
allege to this Court as follows:

JURISDICTION

1. Jurisdiction arises and obtains under and pursuant to 28 U.S.C. §1361, a federal statute vesting in U.S. District Courts original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or an agency thereof to perform a duty mandated by law.

PARTIES

2. At all times herein mentioned LISA SARRION and LUIS F. LOZANO were and are natural persons, are United States citizens respectively currently having an office or place of business in and residing in the County of Westchester, State of New York and residing within a radius of about forty-five miles of the town of Buchanan, New York within the County of Westchester, State of New York.

3. At all times herein mentioned defendant UNITED STATES NUCLEAR REGULATORY COMMISSION, ("COMMISSION") was and is a duly and lawfully constituted agency of the Executive Branch of the federal government, having its office and headquarters at No. One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738.

4. At all times herein mentioned the defendants, RICHARD A. MERSERVE,, as Chairman, GRETA JOY DICUS, NILS J. DIAZ, EDWARD McGAFFIGAN, JR., and JEFFREY S. MERRIFIELD, were and are duly and lawfully appointed respectively as Chairman and Commissioners of the COMMISSION ("COMMISSIONERS").

5. At all times herein mentioned two nuclear power plants were and are in operation at or near the Town of Buchanan, County of Westchester, State of New York, ("Indian Point").

6. Upon information and belief, the nuclear power plants at Indian Point are owned and/or operated by ENTERGY, a corporation duly licensed and authorized to operate the Indian Point nuclear power plants in the State of New York.

STATEMENT OF FACTS

7. Upon information and belief the defendant COMMISSION is headed by five Commissioners appointed by the President and confirmed by the Senate for five-years terms. One of them is designated by the President to be the Chairman and official spokesperson of the Commission.

8. Upon information and belief the COMMISSION'S statutory function is set forth in the Energy Reorganization Act of 1974 and *inter alia*, is charged with regulating the operation of the 104 nuclear power plants currently in operation throughout the United States in a manner consistent with the safety of its citizens including the plaintiffs. The COMMISSION is a collegial body and formulates policies, develops regulations governing nuclear reactor and nuclear material safety, issues orders to licensees, and adjudicates legal matters. The COMMISSIONERS are charged with the implementation and enforcement of such regulations pursuant to that end.

9. Since the advent of the September 11th, 2001 terrorist attack upon the World Trade Center in New York City, it has become evident from a series of newspaper and television news releases that the federal intelligence community has learned that United States as a nation is under further threat of imminent attack by terrorists and that a series of increasingly deadly and devastating terrorist attacks on specific United States national targets are intended by a worldwide terrorist network. These targets include essential facilities such as bridges, tunnels, dams, water supply systems, high profile buildings and particularly nuclear power plants

10. Upon information and belief a successful terrorist aerial attack upon a nuclear power plant such as those at Indian Point as hereinbefore alleged, has the potential for releasing deadly radiation with the probability of causing tens of thousands of deaths from radiation sickness and rendering extensive territories of this nation uninhabitable for perhaps hundreds of years. The destructive impact of such an attack upon this nation would by comparison dwarf the devastating effect of the World Trade Center attack.

11. Upon information and belief that in the event of such a successful aerial attack upon a nuclear power plant, the release of deadly radiation as alleged aforesaid would have the potential for causing the death of the plaintiffs and/or their serious and permanent sickness and disability together with the permanent loss of their habitation and place of business.

12. Accordingly, to increase security and protection against such a foregoing disaster and correspondingly to decrease the potential of its occurrence there is an urgent, immediate need for constant, continuous, minute by minute, round the clock, seamless aerial surveillance combined with ability to interdict and prevent aerial attack upon the Indian Point nuclear plants in particular and other nuclear power plants nationwide so as to prevent actual impact by an aerial intruder with the nuclear plant structure.

13. Upon information and belief the Department of Defense has had available to it suitable technology to protect and insulate targets from aerial attack by generating an electronic "shield", "sensory field" or "bubble" to create a "no-fly zone" over potential targets so that an aerial intruder intending to penetrate such a "no-fly zone" would trigger an Surface To Air (SAM) missile retaliatory response which would effectively obliterate

an Surface To Air (SAM) missile retaliatory response which would effectively obliterate the threat before such intruder could intercept its target, thus preventing the intended destructive result.

14. Upon information and belief, notwithstanding the availability of the foregoing technology and perhaps of even more advanced, sophisticated technology now available and suitable to such purpose, no such technology has as yet been installed to protect nuclear facilities generally and the Indian Point nuclear plants in particular from what should long have been (and is now) evident to be a grave threat to the continued existence of this nation, nor have regulations requiring such installation been promulgated by the COMMISSION.

15. Given the national alert now in effect warning of the imminent probability of terrorist attacks and the tragic example of the World Trade Center aerial attack, the foregoing measures when required by COMMISSION regulations and implemented by nuclear plant licensees and/or appropriate federal agencies would constitute reasonable, appropriate and necessary measures incident to the COMMISSION'S legal responsibilities to insure the safe and secure operation of the Indian Point nuclear plants in the context of our government's war on terrorism. Correspondingly, the COMMISSION'S failure or refusal to adopt such regulations and to require their compliance would be entirely unreasonable and in violation of its statutorily mandated responsibilities—and thus the failure to promulgate such regulations would be unlawful.

16. Indeed the continued failure or refusal to promulgate such regulations directing nuclear plant licensees and/or other appropriate federal agencies to do so can only be viewed as a dangerous, impermissible and irresponsible abdication of the COMMISSION'S statutory governmental mandate to protect this nation's citizenry from radiation leaks ensuing from aerial attacks upon nuclear power plants.

17. Upon information and belief the foreseeable consequence of the COMMISSION'S continued failure forthwith to require the installation of this type of technology or of such other available, similar or superior technology to shield nuclear plants from aerial attack will be to expose plaintiffs and indeed thousands of other persons similarly situated to nothing less than an agonizing death in the event of a successful terrorist attack upon the nuclear power plants at Indian Point (Buchanan, New


York). Furthermore, in such event vast tracts of New York State including New York City will likely be rendered virtually permanently uninhabitable as would vast territories of other States from attacks on nuclear power plants nationwide, causing political, economic and social crises and chaos of such magnitude as to threaten the very existence of this nation and leaving its very survival in doubt.

WHEREFORE it is respectfully requested that this Court forthwith make and enter an Order/Judgment/Decree pursuant to 28 U.S.C. § 1361 -

A. Directing the COMMISSION and the COMMISSIONERS forthwith to promulgate and enforce suitable regulations directing the installation with all deliberate speed of appropriate technology herein described as well as other available technology suitable to protect the nuclear power plants at Buchanan, New York in particular and all nuclear power plants nationwide in general from terrorist aerial attack, and

B. For such other, further and different relief as to this Court may seem just and appropriate in the premises.

DATED: Rego Park, New York
March 16th, 2002


STUART JAY YOUNG (SJY3958)
Attorney for Plaintiffs
Office and P.O. Address
65-08 Austin Street
Rego Park, New York 11374
Tel. No. 1(718) 459-6601

TO:
UNITED STATES NUCLEAR REGULATORY
COMMISSION,
RICHARD A. MERSERVE,, Chairman,
GRETA JOY DICUS, Commissioner
NILS J. DIAZ, Commissioner
EDWARD McGAFFIGAN, JR., Commissioner
JEFFREY S. MERRIFIELD, Commissioner
No. One White Flint North,
11555 Rockville Pike,
Rockville, Maryland 20852-2738.

VERIFICATION

STATE OF NEW YORK)
) ss.:
 COUNTY OF WESTCHESTER)

LUIS F. LOZANO, being first duly sworn, does depose and say: I am a Plaintiff in the within action; I have read the foregoing Verified Complaint and know the contents thereof and the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The grounds of my belief as to all matters not stated upon my own knowledge are: statements of persons, parties, records and documents.

Luis Lozano

Subscribed and sworn to before me this 22nd
 day of March, 2002

Notary Public, State of New York

2003

STATE OF NEW YORK)
) ss.:
 COUNTY OF WESTCHESTER)

LISA SARRION, being first duly sworn, does depose and say: I am a Plaintiff in the within action: I have read the foregoing Verified Complaint and know the contents thereof and the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The grounds of my belief as to all matters not stated upon my own knowledge are: statements of persons, parties, records and documents.

Lisa Sarrion

Subscribed and sworn to before me this 22nd
 day of March, 2002

Notary Public, State of New York

NOTARY PUBLIC
 STATE OF NEW YORK
 Commission Expires 12/13/05

File No. 02 CV Year 2002

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LISA SARRION and LUIS F. LOZANO,
Plaintiffs,

-against-

UNITED STATES NUCLEAR REGULATORY COMMISSION, et al.,
Defendants.

VERIFIED COMPLAINT FOR AN ORDER/JUDGMENT/DECREE
PURSUANT TO 28 U.S.C. § 1361

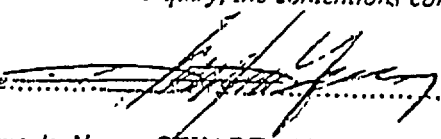
Law Offices Of
STUART JAY YOUNG
Plaintiffs

65-08 Austin Street
Rego Park, N.Y. 11374
Tel. (718) 459-6601

Attorney for

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated... March 22nd, 2002.

Signature.....

Print Signer's Name...STUART JAY YOUNG.....

Service of a copy of the within
Dated

is hereby admitted

.....
Attorney(s) for

PLEASE TAKE NOTICE

Notice of [] that the within is a (certified) true copy of an
Entry entered in the office of the clerk of the within named Court on

Notice of [] that an Order of which the within is a true copy will be presented for settlement to the
Settlement

Hon

one of the judges of the within named Court

at

on

. at

M.

Dated...March 22nd, 2002

Attorney for

Law Offices Of
STUART JAY YOUNG
Plaintiffs

65-08 Austin Street
Rego Park, NY 11374
Tel. (718) 459-6601

TO United States Attorneys Office.

Southern District of New York

Attorney for Defendants.

No. 1 St. Andrews Plaza, New York, NY 10007

U.S. Nuclear Regulatory Commission, No. One White Flint North,
11555 Rockville Pike, Rockville, Maryland 20852-2738.

**FACSIMILE COVER SHEET**

U.S. ATTORNEY'S OFFICE, S.D.N.Y.
100 Church Street, 19th Floor
New York, New York 10007

From: ERIC B. FISHER, Assistant United States Attorney

Office Phone No.: 718-422-5637

Fax No.: 718-422-1783

No. pages (including cover sheet): //

Date: April 8, 2002

Name	Telephone	Fax Number
Karen Cyr, Esq.	301-415-1743	301-415-3086
John Cordis, Esq.	301-415-1600	301-415-3725

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