

50-237/249
Dresden
Licensing Renewal
Activity

Sauer Obstetrics & Gynecology
2400 Glenwood Ave Suite 210
Joliet, IL 60435
Phone: (815) 744-8624
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Facsimile Transmittal

JOHN TAPPERT

To: U.S. NRC Fax: (301) 415-2002

From: CYNTHIA + JOSEPH SAUER Date: 4/19/04

Re: HEALTH CONCERNS OF DRESDEN LICENSING Pages: 20

CC:

Urgent For Review Please Comment Please Reply Please Recycle

Notes:

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Add:
J.H. Wilson

A097

April 19, 2004

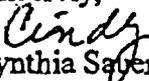
Dear Mr. Tappert,

As discussed in our phone conversation, I am forwarding to you copies of the Court documents (Ten Interrogatories and Protective Order). I find it most concerning that a federal agency as the US NRC was not able to locate these documents yet I was able to. Did your agency ever contact the Exelon Corporation regarding these documents? After reviewing these documents, I have one simple question. Why the need for a protective order if there has never been any accidental or inappropriate releases of radioactive materials? It only stands to reason if a concern arises that is unsubstantiated that one would want all the more to demonstrate that the concern is unfounded.

I also discussed with my husband our discussion regarding your agencies discussions with other agencies who also feel that the study by the National Cancer Institute in July, 1990 is sufficient and no new knowledge has been discerned since then regarding health effects of radiation. His letter is also attached. As the NRC and other federal agencies have the right to their opinion, I must state that I disagree and believe ongoing research is not only needed but is a given within an agency whose primary mission is to protect the health and safety of the public. I am also most thankful that the private research institutions did not stop their ongoing research in July, 1990 on brain tumors and cancer treatment and causes, as our Sarah would not be here today.

I once again thank you for your time and am most appreciative of your responsiveness. My husband and I look forward to hearing from you soon.

Sincerely,


Cynthia Sayer

April 18, 2004

John Tappert
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Tappert,

I had the opportunity to review the "Summary of Meeting Held In Support of the Environmental ..." with my wife. I found the explanation by several of your scientists of the mission of the NRC and the renewal process to be quite enlightening. Johnny Eads described the Atomic Energy Act of 1954 as giving the NRC the authorization to regulate the civilian use of nuclear power. He then states that "The first piece of that mission is ensure that there is adequate *protection of public health and safety*" (Italics added for emphasis).

The most interesting comments, however, came from Bruce McDowell, the contracted expert from the Lawrence Livermore Laboratory. He described how the NRC decided to streamline the overall process of developing environmental impact statements. To do this, the NRC looked at 92 issues and decided that 69 of these were the same for all plants with similar features. These 69 issues were classified as Category One and require no investigation. They are simply issued as generic conclusions. The remaining 23 issues require a site specific supplement to the generic Environmental Impact Statement. He then stated that "As part of our approach my team looked at Category One issues applicable to the Dresden plant to determine if there was any new information related to the issue that might change the conclusion that the NRC reached in 1996." "If new information was identified and determined to be significant either about a Category One issue or a new issue ... then my team would perform a site specific analysis for that issue." He then proceeded to provide a detailed review of the environmental impact of the Dresden Plant. There is no mention, however, of the public health aspect of the plant, despite this being labeled as the first piece of the mission of the NRC.

You were then presented with the dramatically worsening health statistics in Grundy County. Your staff was aware of these statistics from a prior presentation at the July 10 2003 GEIS meeting. You were reminded of the doubling of the infant mortality rate, the nearly 400% increase in pediatric cancer and the 38% increase in cancer in those 25-44 years old (IL decreased 8% in the same time frame). You were also reminded of the violations of the Safe Drinking Water Act and spills of radioactive by-products by the Exelon Corporation (aka Com Ed), which occurred during the 1990's.

Despite the clear evidence that the public health in Grundy County is deteriorating, no investigation was performed by your team. The basis for classifying the human health impact as a Category One issue appears to be the publication of articles published by the NCI and the IDPH stating that counties with nuclear facilities have no statistically significant worsening of health. But, as you are also aware, major flaws in the IDPH study were clearly demonstrated at the January 14, 2004 meeting. These flaws were included in your transcript of the meeting. Given that not one of the more than 15 health physicists, engineers or nuclear safety experts from the NRC, U.S. EPA or the Lawrence Livermore Laboratory would stand up to defend this study, the conclusion of the study can hardly be considered justification for making public health a Category One issue.

As for the 1990 NCI study "Cancer in Populations Living Near Nuclear Facilities, it is limited by the same flaws as the IDPH publication. The writers made this very clear on page xii of Volume 1. The consensus statement lists the flaws in design. They acknowledge that these limitations were known, but they were accepted so that "it could be completed in a time frame that was relatively short for a survey of such magnitude." They continue to state that "this resulted in certain limitations". To summarize these limitations:

1. The study data is based on data from counties. As most counties have their nuclear facilities located in the area of their county with the lowest population density, the effect of radiation on the neighboring residents is diluted by the larger population living at a distance.
2. Many of the nuclear facilities involved in the study had only been in service for a few years. This may not have been enough time for the cumulative effects of low dose ionizing radiation to have manifested in people. It also does not allow for the deterioration of equipment which inevitably will lead to higher leakage rates. It completely ignores the effect of the leakage that occurs with the dry cask storage of spent rods. This obviously increases with the increasing number of spent rods kept at the site. And maybe most importantly, it does not take into account the Tritium that turns up in the water from "spills".
3. The other acknowledged flaw in this study is the use of cancer mortality instead of incidence as an endpoint. Incidence would be much more sensitive in detecting a difference. This is especially true in a study involving facilities that were in service for only a few years. Many of those affected by the radiation would be unaware of their disease or in treatment. As they have not died, they will not be counted until after this study was completed. This also may be biased in that many researchers feel that recurrences are less likely in patients with cancer from environmental causes as they had nothing inherently wrong with their genetic make-up prior to the external insult.

The cancer mortality statistics are also frequently inaccurate in rural counties. In the case of Grundy County, most patients, and all children, with cancer are transferred out to a tertiary care center. If they die in another county, the death certificate is filed in the county of death. The state claims that these deaths are recorded later, but many don't show up in the state data.

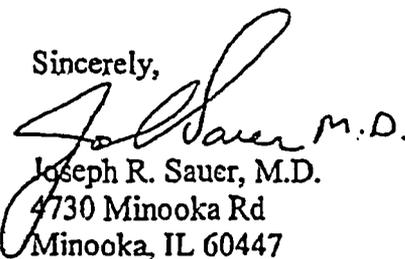
It was the conclusion of the ad hoc committee in their consensus statement that "Consideration should be given, therefore, to further investigations and monitoring, ..." If the ad hoc consensus of the NCI was that further investigation and monitoring was needed, how can the Nuclear Regulatory Commission use this study to justify not monitoring or investigating the health of people living near a nuclear facility. Combining this with the data presented at the meeting regarding the deteriorating state of health in Grundy County, a generic conclusion can not be considered a reasonable investigation.

I am, therefore, formally requesting an independent investigation, preferably a congressional hearing, into the public health impact of the area surrounding the Dresden Nuclear Plant prior to issuance of a license renewal. Furthermore, I am requesting that the public health aspect of the area surrounding all nuclear facilities be made a Category 2 issue for the process of license renewal at all nuclear facilities nationwide.

Upon further investigation, it has come to my attention that during the time of the dramatic worsening of health in Grundy County, the Dresden Nuclear Plant was continuously on the NRC Category 2 Watch List. As you are aware, all the other plants on that list in the 1990's were shut down. As you are also aware, many people within your organization felt Dresden merited a Category 3 in operations and engineering, which would have resulted in immediate closure. While I am not advocating closure of the Dresden Facility, I do feel the people of Grundy County deserve more than a generic answer as to why their children and young adults are getting sick and dying at such an alarming rate. The ad hoc committee of the NCI also stated that "the survey appropriately emphasized leukemia since, of all fatal forms of cancer, leukemia shows the greatest relative increase following exposure to ionizing radiation" In the last five year period available on the IDPH web site (1995-99), the incidence of leukemia is 50% higher in men and 100% higher in women who live in Grundy County as compared to the state of Illinois as a whole.

I thank you for your time and consideration. If you have any questions or if I have misinterpreted the process in any way, please do not hesitate to contact me. I look forward to hearing from you.

Sincerely,



Joseph R. Sauer, M.D.
4730 Minooka Rd
Minooka, IL 60447

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

THE GODLEY PARK DISTRICT,)
a Municipality, and THE GODLEY)
PUBLIC WATER DISTRICT,)
a Municipality,)
)
Plaintiffs,)
)
vs.)
)
COMMONWEALTH EDISON a/k/a)
EXELON CORPORATION, a Corporation,)
)
Defendant.)

Case No 01-L-216
JURY DEMAND (12-man)

FIRST SET OF SUPPLEMENTAL
INTERROGATORIES TO DEFENDANT

TO: Alan P. Bielawski E. Kent Ayers
John A. Heller Christian G. Spesia
Sidley Austin Brown & Wood Spesia, Ayers & Ardaugh
Bank One Plaza 115 N. Chicago, Street
10 South Dearborn Street Suite 200
Chicago, IL 60603 Joliet, IL 60432

Plaintiff, The Godley Park District, a municipal corporation, and The Godley Public Water District, a municipal corporation, by their attorneys, Rooks, Pitts and Poust, and Ackman, Marek & Boyd, Ltd., pursuant to Illinois Supreme Court Rule 213, respectfully request the defendant Commonwealth Edison, a/k/a Exelon Corporation ("Commonwealth Edison") to answer these supplemental interrogatories under oath within 28 days.

Unless otherwise indicated, these interrogatories call for information relating to the period from January 1, 1990 to present.

SUPPLEMENTAL INTERROGATORIES

- 1. State the full name and address of each person(s) answering these interrogatories.

ANSWER:

2. State the full name and address of each person who witnessed or claims to have witnessed the disposals and/or releases of tritiated water or radioactive contaminants at or from the Power Station.

ANSWER:

3. State the full name and address of each person not named above who was present or claims to have been present at the scene immediately before, at the time of, or immediately after, or who has knowledge of the disposal and/or releases of tritiated water or radioactive contaminants at or from the Power Station.

ANSWER:

4. Does Commonwealth Edison have statements from any witness relating to the disposal and/or releases of tritiated water or radioactive contaminants at or from the Power Station. If so, give the name and address of each such witness, the date of the statement and state whether the statement was written or oral.

ANSWER:

5. Were any photographs or videotapes taken of the scene of the disposal and/or releases of tritiated water or radioactive contaminants at or from the Power Station. If so, state the date on which each such photograph or videotape was taken, its subject, the names of the person who took the photographs or videotapes, and the name of the persons who now have custody of them.

ANSWER:

6. For each disposal and/or releases of tritiated water or radioactive contaminants at or from the Power Station during the period from January 1, 1990 to present, identify the specific contaminants released, the dates when Commonwealth Edison learned or became aware of the disposal and/or releases, and the dates when Commonwealth Edison first reported each disposal or release to governmental agencies including the identity of the specific agencies to which each of the releases was reported.

ANSWER:

7. Has Commonwealth Edison or any environmental consultants retained by Commonwealth Edison performed any environmental investigations, tests, studies, audits, sampling or analyses at or near the Power Station relating to any disposal or releases of tritiated water or radioactive contaminants at or from the Power Station, or performed any removal or remedial action relating to those events? If so, state with particularity: (a) the name of each person or consultant; (b) a general description of their work; (c) the dates of the work; and (d) the identity of all documents relating to that work.

ANSWER:

8. Has any federal, state or local governmental agency investigated and/or requested information relating to the disposal and/or release of tritiated water or radioactive contaminants at or from the Power Station? If so, state with particularity: (a) the identity of each federal, state or local governmental agency or entity which conducted each investigation; (b) the dates of each investigation; (c) the identify of all documents which refer to, relate to or reflect each investigation; and (d) the identity of each individual having knowledge relating to any such investigation.

ANSWER:

9. Describe any plans, procedures and/or precautions adopted by Commonwealth Edison to prevent, detect, and/or report the disposal and/or release of tritiated water or radioactive contaminants into the soils, groundwater, or surface waters at, from or near the Power Station.

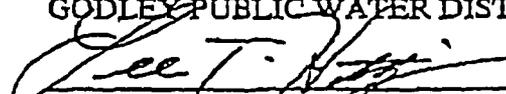
ANSWER:

10. Has Commonwealth Edison performed any exposure route analysis for tritiated water or radioactive contaminants disposed and/or released on or near the Power Station? If so, state the results of its analysis and identify any and all reports and documents relating to the analysis.

ANSWER:

THE GODLEY PARK DISTRICT AND THE
GODLEY PUBLIC WATER DISTRICT

By:



One of Its Attorneys

Terrence E. Kiwala
ARDC No. 1476548
Lee T. Hettinger
ARDC No. 1206397
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IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

THE GODLEY PARK DISTRICT,)
a Municipality, and THE GODLEY)
PUBLIC WATER DISTRICT,)
a Municipality,)

Plaintiffs,)

vs.)

Case No 01-L-216

COMMONWEALTH EDISON a/k/a)
EXELON CORPORATION, a Corporation,)

Defendant.)

JURY DEMAND (12-man)

FIRST SUPPLEMENTAL REQUEST FOR
PRODUCTION TO DEFENDANT

To: Alan P. Bielawski
John A. Heller
Sidley Austin Brown & Wood
Bank One Plaza
10 South Dearborn Street
Chicago, IL 60603

E. Kent Ayers
Christian G. Spesia
Spesia, Ayers & Ardaugh
115 N. Chicago, Street
Suite 200
Joliet, IL 60432

Plaintiffs, The Godley Park District, a municipal corporation, and The Godley Public Water District, a municipal corporation, by their attorneys, Rooks, Pitts and Poust, and Ackman, Marek & Boyd, Ltd., pursuant to Illinois Supreme Court Rule 214, for its First Supplemental Request for Production respectfully request defendant, Commonwealth Edison a/k/a Exelon Corporation ("Commonwealth Edison") and its attorneys and agents, to produce for inspection and copying the following documents, objects and other tangible things within 28 days of service of this request.

Unless otherwise indicated, these requests call for production of all documents dated, prepared, written or produced at any time during the period from January 1, 1990 to present.

SUPPLEMENTAL REQUEST FOR PRODUCTION OF DOCUMENTS

1. Any and all statements given by any party or any officer, employee, or agent of any party to anyone other than their own attorney relating to the disposal and/or releases of tritiated water or radioactive contaminants at or from the Power Station.

2. Any and all statements of any person who claims to have been a witness to the disposal and/or releases of tritiated water or radioactive contaminants at or from the Power Station.

3. Any and all photographs, slides, videotapes, or motion pictures of the scene of the disposal and/or releases of tritiated water or radioactive contaminants at or from the Power Station, or of any physical objects involved in said disposal and/or releases taken by Commonwealth Edison, its agents, consultants, any unit of government, or any other person at the time of or subsequent to the disposal and/or releases of tritiated water or radioactive contaminants at or from the Power Station.

4. Any and all accident reports, incident reports, investigative reports, and consultant's reports including Site Investigation Reports and Problem Identification forms relating to the disposal and/or releases of tritiated water or radioactive contaminants at or from the Power Station.

5. All documents that identify or help to identify persons with first-hand knowledge of any disposal and/or releases of tritiated water or radioactive contaminants at or from the Power Station.

6. All documents received from or sent to local, state and/or federal governmental agencies relating to the disposal and/or releases of tritiated water or radioactive contaminants at or from the Power Station. For purposes of this request, governmental units shall include the USEPA, the Nuclear Regulatory Commission, The Illinois Department of Nuclear Safety, the Illinois EPA, the Illinois Department of Public Health, the Illinois Emergency Management Agency, the United States or Illinois Department of Agriculture, the Illinois Department of Natural Resources, and any local or municipal governmental agency.

7. All documents relating to notices of intent to pursue legal action, and/or relating to the actual or threatened imposition of any fine, penalty, or restriction on Commonwealth Edison as a result of any violation or alleged violation at the Power Station of any permit or environmental statute or regulation relating to the disposal and/or releases of tritiated water or radioactive contaminants at or from the Power Station.

8. All Problem Identification forms relating to the release of any hazardous waste, hazardous substance or other contaminant at or from the Power Station.

THE GODLEY PARK DISTRICT AND
THE GODLEY PUBLIC WATER DISTRICT

By:

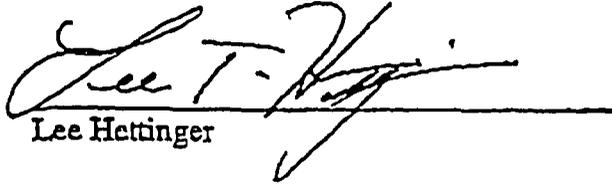

One of its Attorneys

James Grumley
ARDC No. 1077198
Terrence E. Kiwala
ARDC No. 1476548
Lee T. Hettinger
ARDC No. 1206397
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John J. Boyd
ARDC No. 6202484
ACKMAN, MAREK & BOYD, LTD.
One Dearborn Square
Suite 400
Kankakee, Illinois 60901
(815) 933-6681

CERTIFICATE OF SERVICE

Lee T. Hettinger, an attorney, states that he caused true and correct copies of the First Set of Supplemental Interrogatories to Defendant and First Supplemental Request for Production to Defendant to be faxed and mailed to Alan P. Bielawski and John A. Heller, Sidley Austin Brown & Wood, Bank One Plaza, 10 South Dearborn Street, Chicago, IL 60603., fax number (312) 853-7036, and E. Kent Ayers and Christian G. Spesia, Spesia, Ayers & Ardaugh, 115 N. Chicago Street, Suite 200, Joliet, IL 60432, fax number (815) 726-6828, on the 14th day of August, 2002, by depositing the same in the mail box at 111 North Ottawa Street, Joliet, Illinois 60434, before 4:00 p.m.


Lee Hettinger

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

GODLEY PARK DISTRICT)

Plaintiffs,)

-vs-)

Case No. 01 L 216

COM ED. and EXELON CORPORATION)

Defendants.)

Opinion

The Defendant Com Ed. moved the Court for a Protective Order directing that they not be required to respond to Plaintiff's first set of supplemental interrogatories to Defendant and production request. The subject matter of these ten interrogatories and the production request is the disposal or release of tritiated water or radioactive contaminants at or from the Defendant's power station from January 1, 1990 to the present.

Arguments of counsel were heard on October 3, 2002, and the Court has considered the written responses and replies regarding the matter and took the matter under advisement. The Court now finds and rules as follows:

I

Background

The Plaintiffs filed their initial complaint and following pleading Motions, the Plaintiffs filed their amended complaint and the Defendant answered the same. The complaint is in several courts, all seeking damages for release of diesel fuel and other

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hazardous substances from Defendant's Braidwood Nuclear Power Station from 1990 and repeatedly thereafter to the filing of the complaint. The amended complaint is based on the theories of negligence, Res Ipsa Loquitor, trespass, nuisance, and violation of the Public Utilities Act.

II

Analysis of Issue Presented

Plaintiff argues that in conducting discovery it learned of a release of tritiated water and radioactive contaminants in 2000. Plaintiff claims that this within the legitimate scope of discovery in the case. Defendant argues that the Plaintiff's case revolves around a release of diesel fuel in the year 2000 and prior years and the subject of the discovery in dispute is simply a fishing expedition and abuse of the discovery process since there is no showing of any linkage by the Plaintiff that the tritiated water and radioactive contaminant releases had any impact on or damage to the Plaintiffs.

Applicable Law

Discovery in Illinois is governed by Supreme Court Rules 201 through 222. Such discovery is designed to be broad and the Judicial gloss on the rules indicates that it encompasses not only relevant evidence (relevant in the sense of admissible at trial) but relevant in the discovery sense (information that could lead to admissible evidence). See Winfrey vs. Chicago Park District, 654 N.E.2d 508 (1995).

Supreme Court Rule 201 (C)(1) and (C)(2) authorizes Protective Orders and is designed to prevent abuse of discovery, including unreasonable annoyance,

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expense, embarrassment, disadvantage, and oppression. The only standard announced in the Rule in balancing the discovery rights of the parties for the Court is "as justice requires."

In short, the trial Court is given broad discretion in issuing Protective Orders and supervising discovery. The Court in May Centers, Inc. vs. S. G. Adams Printing, 506 N.E.2d 691 (1987) indicated that "good cause" should be shown regarding discovery. Other cases announce that the Court's discretion is to be tempered by "justice" and that a "just" exercise of discretion is one that ensures both broad discovery and a trial on the merits. Martinez vs. Pfizer Labs, 576 N.E. 311 (1991), WYRICK U.S. Time Chemical, Inc., 548 N.E.2d 524 (1989).

On the other hand, discovery, although designed to be broad, must have some limits. Several Courts have indicated that the discovery requested must have some nexus to the subject matter of the litigation or, put another way, discovery must be linked to the material issues as formulated by the pleadings. See for example Avery vs. Sodifie, 704 N.E.2d 750 (1998).

It is incumbent on the party requesting discovery, therefore, to establish, in some fashion, some link between the issues formulated by the pleading and the discovery requests, Davis vs. Hinde, 490 N.E.2d 1049 (1986), Costa vs. Dresser Industries, 642 N.E.2d 898 (1994), Audition Division, Ltd. vs. Belter Bus Bureau, 458 N.E.2d 115 (1983).

The Plaintiff's amended complaint in each count alleges the Defendant operates a system of underground supply lines for the supply of diesel fuel and other hazardous

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substances and also operates a central system of storm water run off. The complaint goes on to allege that since December 19, 1990, the underground supply lines have leaked and released diesel fuel and other substances into the drainage system, which, on information and belief, contaminated the Plaintiff's land and water.

Paragraph eleven on page six of the amended complaint alleges that "chemicals found in the park district's well after the Defendant's releases, leaks, and spills of diesel fuel in 1990 and thereafter were and are consistent with contamination of the park district's water supply by diesel fuel."

In the context of pollution of a water well, proximate cause has been held to mean that the Plaintiff must demonstrate by a preponderance of the evidence a connection between Defendant's acts and the injury or damage. The case Van Brocklen vs. Sudema, 199 N.E.2d 457 (1964) discussed this requirement of proximate cause. The Court held that where the Plaintiff was able to demonstrate that the Defendant maintained a manure pile near the Plaintiff's well, that the smell and taste of the well-water suggested the presence of manure, and, further, that tests of Plaintiff's well-water showed high manure related bacteria levels is sufficient to demonstrate proximate cause.

In the case of Homewood Fishery Club vs. Archer Daniels Midland Co., 605 N.E.2d 1140 (1992), the Plaintiff fishing club sued the Defendant for causing damage to its lake by discharging contaminated water into the lake. At trial, the Plaintiff offered expert testimony that the Defendant's discharge was a cause of poor water quality in the lake. The Appellate Court reversed a judgment in favor of the Plaintiff, indicating that in

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order to establish proximate cause, there must be relevant evidence that material discharged by the Defendant into Plaintiff's lake was causally responsible for the condition of the lake.

The Defendant, in seeking the discovery Protective Order in the instant case, supplied the Court with a 2000 IDPH test of the well-water which did not show the presence of any foreign materials, except bacteria associated with human or animal waste. The Plaintiffs were asked to provide the Court with anything to indicate that the Plaintiff's well-water at any time ever showed the presence of, or any indications of the presence of tritiated water or radioactive contaminants of any sort. Nothing was supplied to the Court. In short, the Plaintiff could not show the Court any linkage or nexus between the 2000 tritiated water or the radioactive contaminant release and any impact, effect, damage, or injury to Plaintiff's well-water.

III

Findings

The Plaintiff has not at this point given the Court any basis or indication that the discharge of tritiated water or radioactive contaminants in 2000 is in any way linked to any alleged condition of Plaintiff's well-water. The pleadings do not contain any such allegations. In fact, the only evidence presented to the Court of any contamination of Plaintiff's well-water was a test that showed the presence of bacteria associated with human or animal waste. (See September 8, 2002, letter for IDPH)

At the hearing, Plaintiff's counsel could not offer the Court any basis to support the need for this discovery or any basis that in any way linked the subject release to

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Plaintiff's claimed injuries or damages. The Court therefore finds that the subject discovery is overly broad as being without any demonstrable link to any injury or contamination of the well-water.

Order

Based on the above the Court grants the following Protective Order:

The Defendant is not required to answer the ten supplemental interrogatories nor the supplemental request to produce. This order shall remain in effect without prejudice to the Plaintiff to provide the Court with some good faith basis demonstrating some link or nexus between the subject matter of the discovery in issue and any alleged contamination of Plaintiff's water.

DATED THIS 8th DAY OF OCTOBER, 2002.

ENTER:


JAMES E. GARRISON
ASSOCIATE JUDGE