

April 18, 1980

To: Harold Denton
United States Nuclear Regulatory Commission
Washington, D.C. 20555

I hereby acknowledge receipt of your denial dated April 7, 1980 of my 2.206 request filed February 25, 1980.

I hereby move that the Agency and appropriate authorities therein review and reconsider the denial of my 2.206 request dated February 25, 1980 for the good and sufficient reasons stated hereinbelow.

Regarding Proper Actions A and C of my request which had to do with a particular scheme of biometric monitoring involving Tradescantia stamen hair scoring and natural sampling methods, the Agency's response imposes an insurmountable burden of proof (at the front end of a proposed inquiry), that is arbitrary and capricious. This is especially true since regarding these proper actions the substantive content of the proposed actions involve gathering information or evidence. To overcome the burden of proof the monitoring itself would have to be conducted, since that is the only way it could be affirmatively proven to be necessary. The public does not have to bear such a burden at this stage of the decisionmaking process when asking for an action of the kind involved in Proper Actions A and C. The 2.206 request does not request that the actions be done but only that hearings be scheduled to determine if the actions should be done. Preremptory denial based on the idea that the actions have not been demonstrated conclusively and affirmatively to be necessary at this point constitutes undue, unwarranted and unfounded denial of the administrative process that is due under all the circumstances. The consequence of such a denial would be the suppression of what might turn out to be a very useful inquiry by pre-emptive procedural foreclosure. This would be a misuse of the exhaustion requirement and would cast that requirement in serious doubt and be injurious to the orderly formation of public policy.

Regarding Proper Action B of my request which had to do with putting an area evacuation plan in the hands of people living near Three Mile Island, the Agency's response is not adequate because it is based on a misconstruction of the substantive content of the action contemplated and described in Proper Action B. The request calls for putting a plan in the hands of the local residents forthwith under all circumstances including the cleanup or not and/or operation or not of any and all reactors located on Three Mile Island. Another area of misconstruction of the request goes to the distinction to be made between talking about a plan, making plans to make a plan, making generic criteria for plan-making and the actual action of making, printing and circulating an actual plan.

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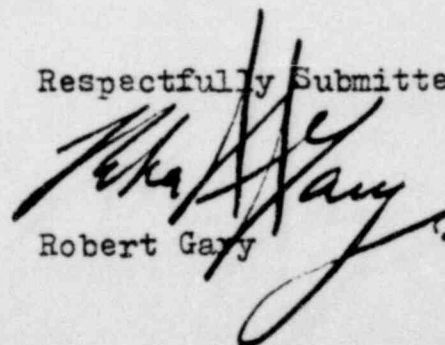
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If attention is narrowly focused on the issue of the actual plan in the people's hand concept it will be realized that on that level we are in no different position now than we were March 28, 1979 regarding the residents in the areas around Three Mile Island. If we had a repeat in 1980 of what happened in 1979 there would be no difference as far as the local population's having a plan to get them out of the area in an orderly and efficient way. The agency is aware that Unit 2 is not out of the woods yet from the viewpoint of being a radiological health hazard suddenly, unexpectedly and in a highly significant degree. The distinction between talking about making a plan and actually making and promulgating a plan to the people who would actually need to follow it is of the greatest importance. The Agency has a high level of expertise in generating documents in the wish-think category. An examination of NUREG 0654 in particular to pages 5, 8, 21, 23, 25, 26 and Appendix 4-3 and 4-4 indicates that it is a document of this sort, and hence it is not what was called for or contemplated or even relevant to my 2.206 request Proper Action B.

A brief note concerning my 2.206 request of February 27, 1980 is appropriate. Petitioner believes that it is in the interest of the public health all things considered to get the gas out of Unit 2 and the cleanup started there according to the plan approved by the Agency, therefore this office will take no further action at any time in any forum regarding that request. Nothing should be done that might impede or delay the cleanup of Unit 2. There are circumstances which need not be elaborated here which make the timing of the cleanup a high priority. Petitioner has done everything possible to dissuade colleagues in the legal profession who seek to serve the public interest from filing any document which might have as one of its consequences the interposition of further delay before the cleanup of Unit 2 can go forward. If the staff says that cryogenic traps are impossible, that will be accepted at face value at this point in time for general considerations. Two things are worthy of note. The spirit of contrariness found in some who purport to seek the public interest today, and their willingness to stick to positions that may appear not-thought-through is a direct consequence of the loss of credibility recently experienced by the Agency. Second, this resistance whatever its merit may bring about a circumstance where Agency compliance with Proper Action B of my February 25, 1980 2.206 Request will be considered a providential step.

Respectfully Submitted,



Robert Gary

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