

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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PEOPLE AGAINST NUCLEAR ENERGY, )

Petitioners, )

vs. )

THE UNITED STATES NUCLEAR REGULATORY )  
COMMISSION; JOHN AHEARNE; VICTOR )  
GILINSKY; RICHARD T. KENNEDY; JOSEPH )  
M. HENDRIE; and PETER A. BRADFORD, in )  
their individual capacities and THE )  
UNITED STATES, )

Respondents. )



PETITION TO REVIEW THE JUNE 12, 1980 FINAL ORDERS OF THE  
UNITED STATES NUCLEAR REGULATORY COMMISSION  
AMENDING NUCLEAR OPERATING LICENSE DPR-73  
(THREE MILE ISLAND) WITHOUT HOLDING THE  
STATUTORILY REQUIRED PUBLIC HEARING

AND

ACTION FOR THE ISSUANCE OF A  
FEDERAL DECLARATORY JUDGMENT, WRIT OF MANDAMUS  
AND OTHER RELIEF

NOW COME THE PETITIONERS, PEOPLE AGAINST NUCLEAR ENERGY,  
an incorporated citizens' organization officially representing,  
before the Nuclear Regulatory Commission, NRC Docket No. 50-320,  
the citizens of Middletown and other Pennsylvania communities  
located within a five mile radius of the Three Mile Island Nuclear  
Reactor, and Petition this United States Court of Appeals to  
review - and to set aside - the June 12, 1980 Final Order of  
the United States Nuclear Regulatory Commission entered in NRC  
Docket No. 50-320 making immediately effective - without prior

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public hearing - an amendment to Nuclear Operating License DPR-73 authorizing the atmospheric venting into the neighborhoods of the Petitioners of 72 dangerous radioactive nuclides and gases at levels significantly above those levels which were "as low as reasonably achievable" as was required by the original license.

In support of this Petition, People Against Nuclear Energy state as follows:

1. That Petitioners officially represent before the United States Regulatory Commission several thousand Central Pennsylvania citizens who live within the five-mile radius of the Three Mile Island nuclear facility in NRC Case Docket No. 50-289, the Three Mile Island "clean-up case";

2. That Petitioners have the requisite training, experience, expertise and direct personal interest in the license amendment at issue in this cause of action to adequately represent the citizens from the Three Mile Island geographic area in raising, and litigating, the issues raised by this attempted precipitous license amendment;

3. The Petitioners have their principle offices in Middletown, Pennsylvania, less than five miles from the Three Mile Island nuclear facility;

4. That, prior to the filing of this cause of action, the Petitioners have exhausted every good faith effort to obtain a public hearing before the Nuclear Regulatory Commission at which to discuss, and to take evidence on, the potential "significant hazard considerations" raised by the June 12, 1980 license amendment issued by the NRC;

5. That the Petitioners know, to their own direct knowledge, that, prior to June 12, 1980, the Commissioners and the staff of the NRC spent many long hours in non-public meetings and non-public internal discussions actively "considering" the very real "significant hazards considerations" which would be raised by the issuance of their June 12, 1980 Final Order authorizing atmospheric venting of the radioactive gases and radionuclides from Unit 2 of the Three Mile Island nuclear reactor - so that there is no doubt that said Final Order raised such "significant hazard considerations" regardless of the manner in which the NRC Commissioners and staff internally resolved those "considerations";

6. That up until the afternoon of Friday, June 27, 1980, the Petitioners, and the other official intervenors recognized by the Nuclear Regulatory Commission as the Pennsylvania citizens officially selected to represent and to protect the public interest in conjunction with the NRC hearings being held regarding the "cleanup" of the Three Mile Island nuclear accident,<sup>1</sup> were trying, in good faith, to evaluate the potential "significant hazard considerations" created by the June 12, 1980 Order of the NRC summarily amending Nuclear Operating License No. DPR-73 and any subsequent venting of radioactive gases, pursuant to that Amendment, into the atmosphere from Unit 2.

7. That the information available to them as the official

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<sup>1</sup> In the Matter of Metropolitan Edison Company, et al., (Three Mile Island Nuclear Station, Unit 2), Docket No. 50-320 before the United States Nuclear Regulatory Commission.

intervenors concerning these potential "significant hazard considerations" was complex, conflicting and considerable.<sup>2</sup>

8. That, as the official intervenors designated by the United States Government to represent the public interest and the personal interests of the citizens within the 25 mile radius of the Three Mile Island nuclear facility during the cleanup phase of the accident at that nuclear reactor, the Petitioners and the other official intervenors held a good faith belief that they would be given a full 30 day period from the date on which the NRC made its final decision regarding the method selected to remove the radioactive gas from Unit 2 of the Three Mile Island facility within which to evaluate that method and within which they could prepare for, and receive, a full public hearing before the NRC at which to discuss the NRC's decision and at which to publicly evaluate the "significant hazard considerations" - if any - which were created by the NRC's final decision.

9. That, on Friday, June 13, 1980, the Petitioners, as official intervenors, were first told about the NRC's order of June 12, 1980.

10. That the Petitioners expected that the NRC could never possibly rule that a decision to vent thousands of curies

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<sup>2</sup> See, e.g. the record below, including the June 12, 1980 study of the Institute for Energy and Environmental Research (the Heidelberg Report), first available to the official intervenors only on June 16, 1980 and the Union of Concerned Scientists report of May 25, 1980.



of over 71 different radioactive elements into the atmosphere surrounding their homes, their schools and their farmlands created not even any considerations of any potential "significant hazards" - so as to entirely deprive them of their universally-expected public hearing before the NRC, at which these "considerations" could at least be discussed between the community and the conflicting experts - so as to enable them to perform their service to their friends and neighbors as the citizens selected by their government to protect the public interest during the TMI-2 cleanup.

11. That, as the official intervenors at Three Mile Island, the Petitioners were genuinely, and quite completely, surprised by the NRC's Orders of June 12, 1980 ordering the immediate venting of all of the radioactive gases into the atmosphere from Unit 2 and the NRC's amendment of TMI-2's license to allow this venting to be completely undertaken within a five-day period, starting as early as June 22, 1980.<sup>3</sup>

12. That it was not until Friday, June 20, 1980, that the NRC saw to it that the Petitioners, as the official intervenors in the Three Mile Island cleanup proceedings before the NRC, even received a written copy of the NRC's June 12, 1980 Orders.

13. That on Monday, June 16, 1980, the Petitioners, as official intervenors, for the first time, received a copy of the Heidelberg Report, detailing independent scientific criticisms of the insufficiencies of the NRC-generated reports - which, up to that time, was virtually all they had upon which

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<sup>3</sup> Within 10 days of the NRC's June 12, 1980 Order.

to rely.

14. That on Monday, June 16, 1980 at 6:00 p.m., the Petitioners furnished the NRC and its staff with a copy of the Heidelberg Report, and with a request that the NRC reconsider compliance with the statutory 30 days' notice requirement.

15. That, as of June 16, 1980, as official intervenors in the Three Mile Island cleanup proceedings before the NRC, the Petitioners were certain that the NRC was going to voluntarily give them the previously anticipated 30 days' notice and public hearing, if requested - since it was then obvious, to anyone, that at least "considerations" of significant hazards were presented to the NRC which would require the public hearing contemplated under the Congressional statutes and NRC regulations governing the license amendment issued by the NRC on June 12, 1980 authorizing a possible five day venting into the atmosphere of the 71 radioactive elements which scientists were saying would expose persons in the vicinity of Three Mile Island and others to the risk of cancer - if allowed to proceed as then planned by the NRC. On June 18, 1980, the NRC caused to have published at 45 Fed. Reg. 41251, No. 119 one of its two June 12, 1980 Final Orders.

16. That, when four days of the business week of June 16th, passed and the Petitioners, as official intervenors, and other residents of the Three Mile Island vicinity had received no word as to whether or not the NRC was going to voluntarily schedule a public hearing at which to discuss the clear potential significant hazard considerations coincident with its

June 12, 1980 authorization of a five-day venting of radioactive gases into the populated communities nearby Three Mile Island. Three residents of the Three Mile Island vicinity, on Monday morning, June 23, 1980, had personally served on the NRC a formal request asking the NRC to voluntarily set aside its Orders of June 12, 1980, authorizing the immediate atmospheric venting of the gases in TMI-2 as of June 22, 1980 without any public hearing and without awaiting the statutorily-required 30 day period before making its venting-authorizing amendment final;

17. That, the Petitioners and the other official intervenors received word from the NRC later in the day of June 23, 1980 that the NRC and Metropolitan Edison planned to go forward with the June 12, 1980-authorized venting on Saturday, June 28, 1980 - some 20 days prior to the arrival of July 18, 1980, the day which the law established as the date by which the June 18th published license amendment could lawfully become final - in light of the clear "considerations" of potentially significant hazards involved in the license amendment - if no citizen demanded the hearing prior to the arrival of that date;

18. That it was not, therefore, until the late afternoon of Monday, June 23, 1980, that the Petitioners and the other official intervenors first knew that the Nuclear Regulatory Commission was not voluntarily going to afford the citizens of the Three Mile Island area a public hearing to "consider" the significant hazard considerations raised by the NRC's June 12, 1980 Orders.

19. That, to afford the citizens of the Three Mile Island area the full statutory period of up to July 18, 1980, to evaluate the existing data regarding the significant hazard considerations raised by the NRC's June 12, 1980 License Amendment Order - and to give all persons who might be affected by the Orders the full 30 day statutory period within which to determine whether or not they wanted to demand such a public hearing, two persons residing near Three Mile Island filed with the United States Court of Appeals for the District of Columbia Circuit a Petition seeking enforcement of the TMI citizens' statutory right to a 30 day notice period within which to organize to demand their statutorily-guaranteed right to a public hearing. See Sholly v. NRC, no. 80-1691.

20. That the U.S. Court of Appeals for the District of Columbia Circuit on Friday, June 26, 1980, without opinion denied a motion for injunctive, declaratory and other relief suspending the effectiveness of the NRC's Memorandum and Order of June 12, 1980 waiving the 30 day delay period before its venting order and license amendment could be effective. The D.C. Circuit Court apparently concluded that the Petitioners, and the other official intervenors, were not being significantly "irreparably injured" by being given only 10 days within which to demand a public hearing - rather than the 30 days required by Title 42, U.S.C.A. §2239(a). The District of Columbia Circuit Court granted the Motion for Expeditious Consideration of the NRC's failure to give the statutorily required 30 days' notice, but will not consider the merits until after July, 1980 when the 30 day period will have expired.

21. That the Petitioners, and the other official intervenors, thus, as of Friday afternoon, June 27, 1980, were fully convinced that they would not be given until July 18, 1980, by the NRC or by the District of Columbia Court of Appeals, to make a fully-considered judgment with regard to requesting the NRC to provide a public hearing.

22. That, upon reaching this conclusion, the Petitioners, as representative official intervenors in the Three Mile Island cleanup proceedings before the NRC, on Friday evening, June 27, 1980, filed with the United States Nuclear Regulatory Commission Exhibit B attached hereto, a Formal Request for a Public Hearing Before the Nuclear Regulatory Commission prior to the effectuation of the NRC's June 12, 1980 License Amendment authorizing the venting of radioactive gases from TMI-2 into the Petitioners' community. (See Exhibit B, attached hereto.)

23. That, the Nuclear Regulatory Commission started the periodic venting of the radioactivity into the vicinity of Three Mile Island at 8:00 a.m. on Saturday, June 28, 1980 - thus effectuating, as Final, its Orders of June 12, 1980 amending Nuclear Operating License No. DPR-73 - despite the fact that the NRC was in physical possession of a written Formal Demand for a Public Hearing on the License Amendment from officially-recognized intervenors and has not yet held the demanded public hearing.

24. That Title 28, U.S.C.A. Section 2239, (Section 189 of the Atomic Energy Act), mandates that the United States Nuclear Regulatory Commission, once it is placed in possession of a Formal Written Demand for a Public Hearing Prior to Making



a License Amendment Final, must grant said Public Hearing prior to undertaking conduct which is not authorized by the original, unamended Operating License:

25. That the Nuclear Regulatory Commission, in its June 12, 1980 Order For Temporary Modification of License expressly states that

a request for a hearing will not stay the effectiveness of this Order. In the event a hearing is held, it shall be consolidated with any hearing held in regard to Commission orders in this docket dated February 11 and May 12, 1980.

26. That, the June 12, 1980 Order accordingly provides that any hearing on this matter would be combined with the TMI-2 Technical Specifications Proceeding, a proceeding which will not even reach the stage of ruling on contentions until after 7 July, 1980. The actual litigation stage of that hearing will probably occur no sooner than August or September.

27. That, the Metropolitan Edison Company, pursuant to the June 12, 1980 Final Order of the NRC, has been venting radioactive gases and radionuclides into the atmosphere in the Petitioners' neighborhoods, from 8:00 a.m. on June 28, 1980 up to the time of this filing, at levels significantly above those "as low as reasonably achievable" during cleanup - but asserted by the NRC and Met Ed to be below maximum dosage levels permitted during the normal operations of the Reactor;

28. That the Nuclear Regulatory Commission and Metropolitan Edison have publicly announced that on Tuesday, July 8, 1980, the Metropolitan Edison Company will start venting dramatically higher amounts of radioactive gases and radionuclides into the

Petitioners' neighborhoods which venting even the Nuclear Regulatory Commission admits can take place only pursuant to a valid amendment of Nuclear Operating License DPR-73, which the NRC purported to have accomplished by its Final Order of June 12, 1980;

29. That, therefore, it is beyond any dispute that on Tuesday, July 8, 1980, the NRC intends to put into full and finalized effect its June 12, 1980 Order titled "Order for Temporary Modification of License" without ever having given the Petitioners the public hearing on the June 12, 1980 License Amendment which the Petitioners formally demanded on Friday, June 27, 1980;

30. That the Congressional intent of Title 42 U.S.C. Section 2239 requires that the public hearing regarding the June 12, 1980 License Amendment demanded by the Petitioners on June 27, 1980 be held prior to the effectuation of the June 12, 1980 Order of the NRC;

31. That this demanded public hearing be held prior to allowing the completion of the atmospheric venting of the radioactive gases inside Unit 2 of the Three Mile Island Reactor is even more compelling because, as of the completion of this precipitously authorized venting, the Temporary Modification of Nuclear Operating License DPR-73 will be totally effectuated - and the entire purpose of holding the legally-mandated public hearing will have evaporated;

32. That, in order to protect the right of the Petitioners to the statutorily-mandated public hearing prior to the effectuation of the NRC license amendment of June 12, 1980, this

Court must Issue a Writ of Mandamus ordering the United States Nuclear Regulatory Commission to afford the Petitioners the public hearing required by Section 189 of the Atomic Energy Act, 28 U.S.C.A. Section 2239 prior to the NRC authorizing any further venting under the June 12, 1980 Orders.

The Petitioners, therefore, specifically complain that:

I.

The June 12, 1980 finding of the United States Nuclear Regulatory Commission that its June 12, 1980 Orders did not constitute a license amendment raising any "significant hazard considerations" was "arbitrary, capricious, a gross abuse of discretion and otherwise not in accordance with law" (Title 5, U.S.C.A. Section 706 (2)(a)),

II.

The NRC's June 12, 1980 Order authorizing the final effectuation of its June 12, 1980 Orders without any prior public hearing was, issued "without observance of the procedure required by law", (Title 5 U.S.C.A. Section 706(2)(D)), to wit: Section 189 of the Atomic Energy Act, Title 42 U.S.C.A. Section 2239, and

III.

The June 12, 1980 finding of the United States Nuclear Regulatory Commission suggesting that the interests of public health and welfare required the immediate release of radio-

active materials into the air from the Three Mile Island Unit 2 nuclear reactor was "arbitrary, capricious, a gross abuse of discretion and otherwise not in accordance with law" (Title 5, U.S.C.A. Section 706 (2) (A);

WHEREFORE, the Petitioners seek the following relief:

1. A stay pending review (interlocutory injunction) of the two June 12, 1980 NRC Orders authorizing atmospheric venting of radioactive materials from the Three Mile Island Unit 2 nuclear reactor containment building.

2. An Order Granting the Petitioners' Request for Expedited Briefing and Oral Argument Directing that Briefs be Filed with this Court Within Three (3) Days' Time in Support of, and In Opposition to, Petitioners' Application for a Stay (interlocutory injunction) of the NRC's June 12, 1980 Orders pending direct review of these Orders in this Court.

3. An Order Scheduling a 28 U.S.C. Section 2349 Hearing on the Petitioners' Application for the Issuance of a Stay Pending Review (interlocutory injunction) five (5) Days After the Filing of This Petition, or as soon as practicable thereafter, notice of which hearing is hereby given pursuant to 28 U.S.C. Section 2349.

4. An Order Setting Aside the NRC's Finding of June 12, 1980, that the NRC's June 12, 1980 Order Temporarily Modifying Nuclear Operating License DPR-73 Did Not Constitute a Final Order Raising Any Significant Hazard Considerations..

5. An Order Setting Aside the NRC's Finding of June 12, 1980 Suggesting that the Interests of Public Health and Public

Welfare Require the Immediate Release of Radioactive Materials into the Air from Three Mile Island Unit 2.

6. An Order Setting Aside the NRC's June 12, 1980 Order Making Final Its June 12, 1980 Order Temporarily Modifying Nuclear Regulatory License DPR-73 Prior to Any Public Hearing on Said Order.

7. A Federal Declaratory Judgment, pursuant to Title 28, U.S.C.A. Sections 2201 and 2202, formally declaring that the NRC's June 12, 1980 amendment of Nuclear Operating License DPR-73 to allow the atmospheric venting into populated neighborhoods of radioactive gases and radionuclides - even if the levels of these radioactive releases are below levels declared to be "safe" by the NRC - constitutes a license amendment which raises "significant hazard considerations", and, thus requires a public hearing on this license amendment (if demanded within the 30 days statutory notice period - IF the amount of radiation thereby released into populated neighborhoods is above those levels which are "as low as reasonably achievable". (10 CFR Section 20.1 (c)).

8. A Writ of Mandamus or mandatory injunction Ordering the Nuclear Regulatory Commission to Hold the Public Hearing on the NRC's June 12, 1980 License Amendment, In Accordance with Title 42 U.S.C.A. Section 2239, Before Authorizing Any Further Venting Into Petitioners' Neighborhoods of Radioactive Gases and Radionuclides From the Three Mile Island Unit 2 Nuclear Reactor Pursuant to the NRC's License Amendment of June 12, 1980.

9. A temporary stay or suspension, in whole or in part, of the operation of the two June 12, 1980 NRC Orders until no



later than August 11, 1980, pending the hearing on the application for interlocutory injunction, pursuant to 28 U.S.C. Section 2349, in order to prevent the irreparable damage to Petitioners of being forever deprived of statutory due process rights prior to suffering hazards to their life, health and property.

10. An Order scheduling 28 U.S.C. Section 2349 hearing on Petitioners' application for a temporary stay or suspension in whole or in part, of the operation of the two June 12, 1980 NRC Orders, to be held on Wednesday, June 9, 1980, reasonable notice of which hearing is hereby given pursuant to 28 U.S.C. Section 2349.

PETITIONERS SO PRAY,

People Against Nuclear Energy

By Daniel P. Sheehan

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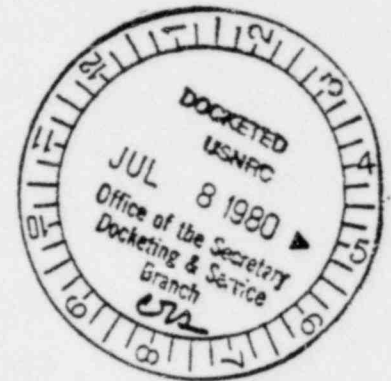
ATTORNEYS FOR PETITIONERS

DOCKET NUMBER  
PROD. & UTIL. I. C. 50-320

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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PEOPLE AGAINST NUCLEAR ENERGY, )  
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 their individual capacities and THE )  
 UNITED STATES, )  
 )  
 Respondents. )



APPLICATION FOR STAY PENDING REVIEW OF  
PETITION FOR REVIEW OF TWO NRC FINAL ORDERS

NOW COME Petitioners, People Against Nuclear Energy, and move this Court of Appeals to enter an Order restraining or suspending, in whole or in part, the operation of two June 12, 1980 NRC Orders, pending the final hearing and determination of the Petition for Review of these two Orders which authorize the venting of radioactive materials from the reactor containment building at Three Mile Island.

In support of this Motion, the Petitioners state as follows:

1. That Petitioners are nearly certain to prevail on appeal, as will be shown more fully in Petitioners' Brief. Section 189 of the Atomic Energy Act clearly provides that a

hearing must be granted by the NRC on the issue of a license amendment if such a hearing is requested by any person who may be affected. No question may be raised that the Petitioners, who include numerous persons who live and work in the vicinity of Three Mile Island, are affected by the June 12, 1980 Orders. It is also clear that these NRC Orders are license amendments. One order is titled "Order for Temporary Modification of License" and provides that Section 2.1.2 "Gaseous Effluents" of the "Environmental Technical Specifications", Appendix B of the Three Mile Island Unit 2 Operating License No. DPR-73 "is amended, effective immediately" so as to revoke the limits imposed on releases of radioactive materials from an operating reactor during the period of the "purge". (p.4) This Order permits the "fast" venting planned to commence on Tuesday, July 8, unless the Order is stayed. The second order titled "Memorandum and Order" permits "slow" venting within the limits set by the Environmental Technical Specifications" of the license. However, the license also incorporates the requirement that all releases meet with the "as low as reasonably achievable" (ALARA) standard. Since even "slow" venting does not meet this standard, this Order constitutes a waiver of a license provision and accordingly is a license amendment - although not designated as such.

A hearing request was submitted to the NRC on June 27, 1980 by persons whose interests may be affected by these license amendments. (Petition, Exhibit B)

Section 189 of the Atomic Energy Act provides that a hearing may be waived only when there is no request for it, and

only then upon 30 days' published notice of its intent to do. The NRC did not give the requisite 30 days' published notice, having published only one of the Orders in the Federal Register on June 18, 1980 (See 45 Fed. Reg. 41251), ten (10) days before venting started. Since the request was made under Section 189 the hearing must be granted. Section 189 provides that the notice may be waived where there is "no significant hazard considerations", but does not say that the hearing may be waived under any conditions. But even if a hearing may be waived under such circumstances, it is clear from the face of the record below that there are numerous hazard considerations which the NRC took account of and then resolved by concluding that the hazards were minor because falling within limits considered safe by the NRC. Petitioners' affidavits also set forth the NRC Orders. The NRC made an explicit finding in the first of its June 12, 1980 Orders that it involved "no significant hazards considerations" (p.3-4). This finding is a clear abuse of discretion in light of the considerations strewn over the record. The Orders of the NRC in essence state that the NRC has considered the hazards and found them to be minor. They found there to be no hazards after con-  
sideration. But the law requires that the consideration of hazards be done in the full light of a public hearing - not behind closed agency doors. Whether because a hearing is mandated when requested or because there is a clear consid-  
eration of significant hazards, the holding of a hearing on the NRC Orders is a non-discretionary duty of the NRC.

The only meaningful hearing under the circumstances of this case is a hearing prior to the venting. After the venting the NRC can give no remedy to the Petitioners and will be biased in their defense of a position become further entrenched by irrevocable action.

2. Petitioners will suffer irreparable damage if this Stay Pending Review is not granted because the venting will be wholly accomplished within a matter of days whereas this action will take, under the most expedited course, at least weeks and months before a decision and order might be had. Once the radioactive materials have been vented the issue of whether the venting involved significant hazards becomes a moot one because there will be no effective remedy even if hazards were found to be present. There is no way to recapture or protect against the vented radioactive materials. If someone contracts cancer as a result of the venting they would have no action for damages at law because it would be impossible to prove that a particular cancer was caused by a particular source of radiation. The only right to protection against radiation that the public has been accorded by Congress is the right to notice and participation in the licensing hearings of the NRC. When this right is effectively denied, the only available remedy for increasing levels of radioactivity in our environment is denied.

If the venting is completed before the statutory due process rights have been accorded Petitioners, their only available means to protect themselves, families and homes against the radiation emanating from the Three Mile Island



Unit 2 nuclear power facility will have been irretrievably and irrevocably denied. Their one and only opportunity to affect the decision to adopt a method for decontaminating Three Mile Island which assures the maximum possible release of radiation into the environment where they live will have been swallowed by an administrative fait accompli. This is a highly significant and irremediable injury which will be suffered by these Petitioners if the two June 12, 1980 Orders are not stayed pending review.

3. There will be no injury to the NRC or any interests within the legitimate concern of the NRC if a Stay Pending Review of the two June 12, 1980 orders is granted. The NRC suggests that its orders must be promptly enforced in the public interest. However, the findings contained in the Orders on this point are notably weak, as are the findings in the NRC's Staff Report. The only basis for urgent execution of the NRC's Orders even suggested by the Orders are:

(a) that "until the fuel is removed, TMI-2 will continue to present a potential risk to public health and safety" (Memorandum and Order, p.5).

(b) that the psychological effects on people near the Three Mile Island reactor from the accident there would be lessened by "promptly" venting the radioactive contaminants into the air. (id. p.9).

Both of these reasons are revealed as empty on any superficial analysis. One or two additional months' delay for public hearings on top of the delay occasioned by the NRC since March 28, 1980 can in no way increase the "potential risk to public health and safety" claimed by the NRC Order.

The Union of Concerned Scientists' Report to the Governor of Pennsylvania, "Decontamination of Krypton-85 from Three Mile Island Nuclear Plant" dated May 15, 1980, relied upon by the NRC Orders, after analyzing all of NRC's reasons for wanting to proceed with haste, states:

The UCS study group concludes that none of the concerns expressed by Met Ed and NRC have sufficient merit to justify their proposed schedule. Furthermore, we have identified no other concerns that would support a conclusion that prompt entry in the short time they propose is needed. (pp. 17-18)

This statement by independent, qualified scientists reveals the NRC's unseemly haste in rushing to release radiation into the environment for what it is: one more in a long line of actions intended to give the industry the cheapest and easiest rather than safest solution to its problems.

In light of the NRC's notoriously poor record for protecting the public health from radiation, its new-found concern for the public's psychological health rings perversely cynical. The NRC's theories about psychological stress rest on such thin and untested scientific grounding and are so far removed from the areas of NRC competence and legitimate concern as to be next to worthless in the context of discussing legal injuries. The NRC neither has the competence to discern nor the jurisdiction to protect the public against psychological stress. The Petitioners herein represent the public which the NRC claims to be protecting from psychological stress by venting radioactive materials upon them. Their stress would be temporarily relieved, and in no way aggravated by the grant of a Stay Pending Review herein. There is no valid reason why the

operation of the NRC Orders of June 12, 1980 cannot be suspended or stayed pending review of this case. Such an order could be easily drafted to accommodate any legitimate concerns the NRC may have, if any, about emergency access to the reactor in the event of unexpected changes in the reactor building which pose hazards to the public greater than those involved in the free venting of the radioactive gases and particulates from the containment building into the atmosphere.

If the venting is not promptly stopped the Petitioners' rights to due process will have been flagrantly and irremediably denied. If it is stopped no rights or interests of any other party will have been denied.

WHEREFORE the Petitioners having so stated move the Court to issue a Stay Pending Review (interlocutory injunction) restraining or suspending in whole or in part the operation of the two June 12, 1980, NRC Orders, pending a final hearing and determination of the Petition to Review the June 12, 1980 Final Orders.

Respectfully submitted,

PEOPLE AGAINST NUCLEAR ENERGY

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(202) 797-8106  
(202) 526-4183

ATTORNEYS FOR PETITIONERS

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M. HENDRIE; and PETER A. BRADFORD, in  
their individual capacities and THE  
UNITED STATES,

Respondents.



AFFIDAVIT OF ATTORNEY DANIEL P. SHEEHAN, ESQ.  
FILED IN SUPPORT OF PETITIONER PANE'S  
MOTIONS FOR THE TEMPORARY STAY AND  
THE STAY OF THE JUNE 16, 1980 ORDER OF THE  
NUCLEAR REGULATORY COMMISSION MAKING FINAL  
ITS AMENDMENT OF NUCLEAR OPERATING LICENSE DPR-73

NOW COMES Attorney Daniel P. Sheehan, and having been  
duly sworn, hereby deposes and says:

1. That I am a duly-licensed attorney-at-law, admitted  
to practice before the courts of the State of New York and the  
District of Columbia, the United States District Courts for  
the Southern District of New York and for the District of  
Columbia as well as before the United States Courts of Appeal  
for the 2nd, 10th and District of Columbia Circuits;

2. That, in addition to being the Attorney retained  
by the Petitioner-citizens' group which is the movant in this

cause of action, I am also the attorney retained by the Three Mile Island Legal Fund\* to advise that citizens' coalition with regard to all legal matters;

3. That, in these two capacities, I am personally familiar with the factual assertions set forth by the Petitioners in their Petition to Review and in the Motions filed in conjunction therewith;

4. That I have reviewed all of the filings being submitted on this day by the Petitioners with the Court of Appeals and I know the assertions of fact contained therein to be true.

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\* The Three Mile Island Legal Fund is an incorporated citizens coalition made up of elected representatives from each of the six (6) citizens' groups officially recognized by the Nuclear Regulatory Commission as the exclusive Official Intervenor to intervene before the NRC in the TMI-2 cleanup cases. People Against Nuclear Energy is the NRC-recognized Official Intervenor Representing the Pennsylvania citizens who live within a five-mile radius of the nuclear facility.

Respectfully submitted by,



Daniel P. Sheehan  
On Behalf of the Petitioner  
People Against Nuclear Energy

Sworn to before me this \_\_\_ day of July, 1980.

---

Notary Public

My commission expires:



IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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 )  
 Petitioners, )  
 )  
 vs. )  
 )  
 THE UNITED STATES NUCLEAR REGULATORY )  
 COMMISSION; JOHN AHEARNE; VICTOR )  
 GILINSKY; RICHARD T. KENNEDY; JOSEPH )  
 M. HENDRIE; and PETER A. BRADFORD, in )  
 their individual capacities and THE )  
 UNITED STATES; )  
 )  
 Respondents. )



MOTION FOR AN ORDER DIRECTING THAT BRIEFS BE SUBMITTED  
 WITHIN THREE (3) DAYS TIME AND THAT A HEARING BE  
 HELD WITHIN FIVE (5) DAYS TIME OF FILING THIS PETITION

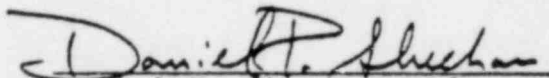
NOW COME the Petitioners, People Against Nuclear Energy,  
 and move this Court of Appeals to enter an Order directing  
 that Briefs be submitted by the parties to the Court within  
 three (3) days and that a hearing be held within five (5)  
 days of the filing of the Petitioners' Petition to Review  
 and Application for Temporary Stay or Suspension, and Appli-  
 cation for Stay Pending Review.

In support of this Motion the Petitioners direct the  
 Court's attention to the reasons given in support of the  
 Petitioners' Motion for Expedited Briefing, Oral Argument

and Disposition. These reasons are included herein, again, by reference.

Respectfully submitted,

PEOPLE AGAINST NUCLEAR ENERGY



Daniel P. Sheehan and  
Robert Hager  
Christic Institute  
1324 N. Capitol St.  
Washington, D.C. 20002  
(202) 797-8106  
(202) 526-4183

ATTORNEYS FOR PETITIONERS

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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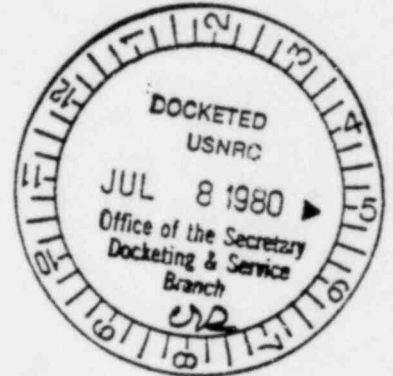
PEOPLE AGAINST NUCLEAR ENERGY, )

Petitioners, )

vs. )

THE UNITED STATES NUCLEAR REGULATORY )  
COMMISSION; JOHN AHEARNE; VICTOR )  
GILINSKY; RICHARD T. KENNEDY; JOSEPH )  
M. HENDRIE; and PETER A. BRADFORD, in )  
their individual capacities and THE )  
UNITED STATES, )

Respondents. )



PETITION FOR THE ISSUANCE OF A WRIT OF MANDAMUS

NOW COME the Petitioners, People Against Nuclear Energy, and petition this Court of Appeals for the issuance of a Writ of Mandamus, or mandatory injunction, ordering the Commissioners of the Nuclear Regulatory Commission to accord the Petitioners a public adjudicatory hearing such as required by Section 189 of the Atomic Energy Act, Title 42, U.S.C.A. 2239, as requested of the NRC, in writing, on June 27, 1980.

In support of this Petition, the Petitioners assert that:

1. The Commissioners of the Nuclear Regulatory Commission are bound by law to provide a prior public hearing on a license amendment when requested, before the license amendment may be put in effect.

2. The Commissioners of the NRC have put a license amendment into effect for which a hearing was first requested by

persons who may be affected by that amendment.

3. The grant of a public hearing on a license amendment, upon request by persons who may be affected by the license amendment, is a non-discretionary duty which may be enforced by Writ of Mandamus.

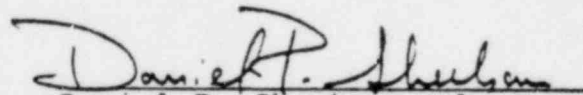
4. If the requested hearing is not held on the license amendment prior to giving effect to an amendment which could be fully and irrevocably executed prior to review by this Court, this Court will be prevented from exercising its jurisdiction to review the NRC's orders concerning the license amendment.

5. This Court has jurisdiction under the All Writs Act, 29 U.S.C. Section 1651, to order a Writ of Mandamus when necessary to protect its jurisdiction.

WHEREFORE, Petitioners pray that this Court issue a Writ of Mandamus or Mandatory Injunction ordering the Commissioners of the NRC to hold a public hearing on the NRC's June 12, 1980 license amendment before authorizing any further venting of radioactive materials into the air from the Three Mile Island Unit 2 nuclear reactor.

Respectfully submitted,

PEOPLE AGAINST NUCLEAR ENERGY



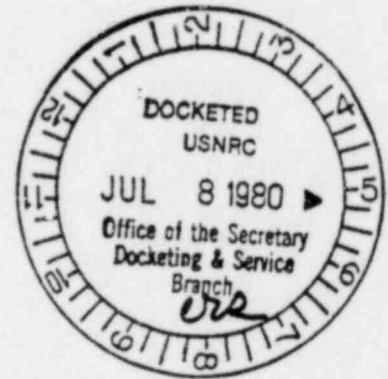
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ATTORNEYS FOR PETITIONERS

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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PEOPLE AGAINST NUCLEAR ENERGY, )  
 )  
 Petitioners, )  
 )  
 vs. )  
 )  
 THE UNITED STATES NUCLEAR REGULATORY )  
 COMMISSION; JOHN AHEARNE; VICTOR )  
 GILINSKY; RICHARD T. KENNEDY; JOSEPH )  
 M. HENDRIE; and PETER A. BRADFORD, in )  
 their individual capacities and THE )  
 UNITED STATES, )  
 )  
 Respondents. )



ORDER SETTING ASIDE THE NRC'S TWO FACTUAL FINDINGS OF  
 JUNE 12, 1980 PERTAINING TO THE NRC'S JUNE 12, 1980  
 PROPOSED AMENDMENT OF NUCLEAR OPERATING LICENSE DPR-73

Upon consideration of Petitioner PANE's Motion for an  
 Order Setting Aside the two June 12, 1980 findings of the NRC,  
 and

Upon consideration of the Briefs and Oral Arguments of the  
 Parties and Intervenors in this action, it is

ORDERED that the aforesaid Motion is hereby granted,  
 FURTHER ORDERED that a full opinion by the Court shall be  
 prepared and filed by the Court in the near future.

FOR THE COURT,

Judge, U.S. Court of Appeals



IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

PEOPLE AGAINST NUCLEAR ENERGY, )  
 )  
 Petitioners, )  
 )  
 vs. )  
 )  
 THE UNITED STATES NUCLEAR REGULATORY )  
 COMMISSION; JOHN AHEARNE; VICTOR )  
 GILINSKY; RICHARD T. KENNEDY; JOSEPH )  
 M. HENDRIE; and PETER A. BRADFORD, in )  
 their individual capacities and THE )  
 UNITED STATES, )  
 )  
 Respondents. )



MOTION FOR AN ORDER SETTING ASIDE THE NRC'S TWO  
 JUNE 12, 1980 FINDING: (A) THAT THE NRC ORDER  
 TEMPORARILY MODIFYING NUCLEAR OPERATING LICENSE DPR-73  
 DID NOT CONSTITUTE A LICENSE AMENDMENT RAISING ANY  
 SIGNIFICANT HAZARD CONSIDERATIONS AND (B) THAT THE  
 PUBLIC HEALTH AND SAFETY REQUIRED THE IMMEDIATE RELEASE  
 OF THE RADIOACTIVE MATERIALS FROM  
 THREE MILE ISLAND UNIT 2 NUCLEAR REACTOR

NOW COME the Petitioners, People Against Nuclear Energy,  
 and move this Court of Appeals to enter an Order setting aside  
 the two NRC findings made on June 12, 1980.

In support of these motions, the Petitioners assert that:  
 Both findings are "arbitrary, capricious, a gross abuse  
 of discretion and are otherwise not in accordance with the law.

Respectfully submitted,

PEOPLE AGAINST NUCLEAR ENERGY

*Daniel P. Sheehan*

Daniel P. Sheehan and  
 Robert Hager  
 Christic Institute  
 1324 North Capitol St.  
 Washington, D.C. 20002  
 (202) 797-8106  
 (202) 526-4183

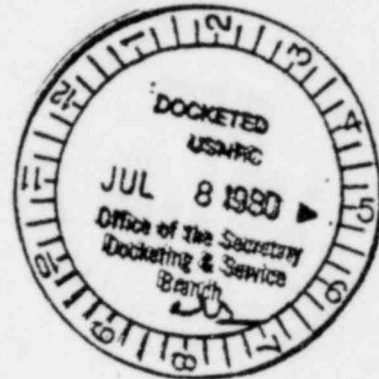
PEOPLE AGAINST NUCLEAR ENERGY, )

Petitioners, )

vs. )

THE UNITED STATES NUCLEAR REGULATORY )  
COMMISSION; JOHN AHEARNE; VICTOR )  
GILINSKY; RICHARD T. KENNEDY; JOSEPH )  
M. HENDRIE; and PETER A. BRADFORD, in )  
their individual capacities and THE )  
UNITED STATES, )

Respondents. )



ORDER SETTING ASIDE THE NUCLEAR REGULATORY COMMISSION'S  
JUNE 12, 1980 ORDER MAKING FINAL ITS JUNE 12, 1980  
TEMPORARY MODIFICATION OF NUCLEAR OPERATING LICENSE DPR-73

Upon consideration of Petitioner PANE's Motion for an Order Setting Aside the Nuclear Regulatory Commission's June 12, 1980 Order Making Final Its June 12, 1980 Temporary Modification of Nuclear Operating License DPR-73; and

Upon consideration of the Briefs and Oral Argument of all parties and Intervenors in this cause of action, it is

ORDERED that said June 12, 1980 Order of the Nuclear Regulatory Commission is hereby set aside and that said Order amending Nuclear Operating License DPR-73 shall have no effect pending the conclusion of a public hearing at which all considerations of any significance relating to potential hazards resulting from said proposed license amendment shall be discussed with the public.

FOR THE COURT

Judge, U.S. Court of Appeals

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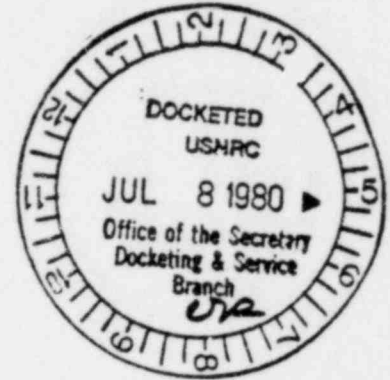
PEOPLE AGAINST NUCLEAR ENERGY, )

Petitioners, )

vs. )

THE UNITED STATES NUCLEAR REGULATORY )  
COMMISSION; JOHN AHEARNE; VICTOR )  
GILINSKY; RICHARD T. KENNEDY; JOSEPH )  
M. HENDRIE; and PETER A. BRADFORD, in )  
their individual capacities and THE )  
UNITED STATES, )

Respondents. )



ORDER GRANTING PETITIONERS' REQUEST FOR THE  
ENTRANCE OF A DECLARATORY JUDGMENT  
DECLARING THE NRC LICENSE AMENDMENT OF  
NUCLEAR OPERATING LICENSE DPR-73 TO BE A  
LICENSE AMENDMENT RAISING  
SIGNIFICANT HAZARD CONSIDERATIONS

Upon consideration of Petitioners' Complaint requesting  
the entrance of a Declaratory Judgment;

Upon consideration of the Briefs, and Oral Arguments of  
all parties and Intervenors in this action, it is

ORDERED that the Petitioners' request for a Declaratory  
Judgment is granted,

FURTHER ORDERED that the Court shall file such Declaratory  
Judgment in the near future granting the Petitioners' requested  
relief.

FOR THE COURT

Judge, United States Court of Appeals

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

80-

PEOPLE AGAINST NUCLEAR ENERGY, )  
 )  
 Petitioners, )  
 )  
 vs. )  
 )  
 THE UNITED STATES NUCLEAR REGULATORY )  
 COMMISSION; JOHN AHEARNE; VICTOR )  
 GILINSKY; RICHARD T. KENNEDY; JOSEPH )  
 M. HENDRIE; and PETER A. BRADFORD, in )  
 their individual capacities and THE )  
 UNITED STATES; )  
 )  
 Respondents. )



MOTION FOR AN ORDER SETTING ASIDE THE NRC'S  
 JUNE 12, 1980 ORDER MAKING FINAL ITS JUNE 12, 1980  
 ORDER TEMPORARILY MODIFYING NUCLEAR OPERATOR'S  
 LICENSE DPR-73 PRIOR TO ANY PUBLIC HEARING ON  
 SAID FINAL LICENSE AMENDMENT

NOW COME the Petitioners, People Against Nuclear Energy,  
 and move this Court of Appeals to enter an Order Setting Aside  
 the NRC's June 12, 1980 Order Making Final its June 12, 1980  
 Order Temporarily Modifying Nuclear Operating License DPR-73  
 Prior to Any Public Hearing.

In support of this Motion, the Petitioners assert that:

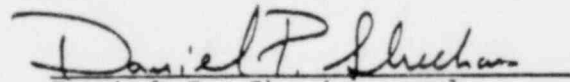
1. Said Order is in violation of Section 189 of the Atomic Energy Act, 42 U.S.C.A. Section 2239;
2. That said Order is based upon an arbitrary and capricious exercise of power on the part of the NRC, prohibited by Title 42 U.S.C.A. Section 706 (2) (A), pursuant to which the NRC Com-

missioners made two separate findings of fact which are clearly contrary to the evidence and unsupported by reason; and

3. That said Order subjects the Petitioners and other persons with an interest that might be effected to potential significant hazards without the statutorily-mandated due process right to consider these potential hazards in a public hearing.

Respectfully submitted, .

PEOPLE AGAINST NUCLEAR ENERGY



Daniel P. Sheehan and  
Robert Hager  
Christic Institute  
1324 N. Capitol St.  
Washington, D.C. 20002  
(202) 797-8106  
(202) 526-4183

ATTORNEYS FOR PETITIONERS



IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

80-

PEOPLE AGAINST NUCLEAR ENERGY,

Petitioners,

vs.

THE UNITED STATES NUCLEAR REGULATORY  
COMMISSION; JOHN AHEARNE; VICTOR  
GILINSKY; RICHARD T. KENNEDY; JOSEPH  
M. HENDRIE; and PETER A BRADFORD, in  
their individual capacities and THE  
UNITED STATES,

Respondents.



MOTION FOR THE ENTRY OF A DECLARATORY JUDGMENT

NOW COME the Petitioners, People Against Nuclear Energy, and move this Court of Appeals to enter a Declaratory Judgment, pursuant to the authority vested in it by Title 28 U.S.C.A. Sections 2201-2202, declaring that the NRC's June 12, 1980 amendment of Nuclear Operating License DPR-73 allowing the atmospheric venting into populated neighborhoods of radioactive materials at levels above levels which are "as low as reasonably achievable" for such cleanup operations constitutes a license amendment which raises at least a "significant hazards con-  
sideration" which Congress intended to have subjected to the opportunity of a public hearing when it passed Section 189 of the Atomic Energy Act, so long as such a public hearing is demanded within the 30-day statutory period provided by that law.

In support of this request, the Petitioners assert that:

1. Title 42 U.S.C.A. 2239, Section 189 is a Congressional mandate directing that the NRC stay the finalization of any amendment of a Nuclear Operating License which so much as raises a "consideration" of any significance relating to potential health hazards which might arise if said license amendment were effectuated - to give the public a 30-day opportunity to appraise the potential public health effects of such proposed license amendment and to demand that a public hearing be held at which such potential health effects could be explained to the public by expert scientists, prior to that amendment going into effect;

2. That this same Congressional enactment mandates that the Nuclear Regulatory Commission hold such a demanded public hearing prior to effectuating any such proposed amendment to a Nuclear Operating License when the proposed license amendment so much as raises a consideration of any significance relating to potential health hazards which the public would reasonably want to consider and discuss at a public hearing prior to being subjected to such potential risks;

3. That the amendment to Nuclear Operating License DPR-73 proposed by the NRC on June 12, 1980 more than raised simple "considerations" of potential health hazards which ought to be discussed in a public hearing prior to their being imposed on the public; the proposed amendment, in fact, amended the Nuclear Operating License of the first commercial nuclear power station in the world which had suffered a massive nuclear accident so as to authorize that nuclear facility to start effectuating guidelines for the cleanup of that nuclear accident

which allowed the facility to avoid the ALARA ("as low as reasonably achievable") standards for cleanup, which standards are incorporated in the license provisions applicable to the facility.

The NRC, instead of applying ALARA standards computed on criteria applicable to maintaining radioactive releases as low as reasonably achievable for cleanup (given present technology), applied pre-existent emission standards established for operating reactors - a level significantly higher than the levels perfectly reasonably achievable for a cleanup operation. This is most certainly a consideration of some significance to the health of the people to be exposed to unnecessarily high levels of radiation during the NRC-proposed cleanup.

4. That, in fact, at the only truly "public" meeting ever held by the NRC on the issue of its proposal to vent into the atmosphere the radioactive gases inside Unit 2, the NRC representatives were faced with near riot conditions due to public outrage at the hazards expected from venting. Now the NRC tries to assert that its precipitous decision to vent does not even raise a "consideration" of any significance to the Petitioners regarding potential hazards of the licensed venting.

5. That the Court must enter this Declaratory Judgment to stop the NRC from issuing future such blatantly illegal Orders designed simply to avoid public discussion and review of its highly unpopular decisions which generate extreme concern among members of the public - and which clearly raise at least "considerations" of potential public hazards which

cannot be said to be insignificant - in light of the public concern over this proposal.

6. That the Petitioners do not have a remedy at law for this denial of their due process rights.


For this reason, the Declaratory Relief contemplated by Congress when it passed Title 28 U.S.C.A. Sections 2201-2202 is perfectly suited to the needs of this case.

WHEREFORE, the Petitioners request that this Court enter the Declaratory Judgment requested.

Respectfully submitted,

PEOPLE AGAINST NUCLEAR ENERGY

BY



Daniel P. Sheehan and  
Robert Hager  
Christic Institute  
1324 North Capitol St.  
Washington, D.C. 20002  
(202) 797-8106  
(202) 526-4183

ATTORNEYS FOR PETITIONERS

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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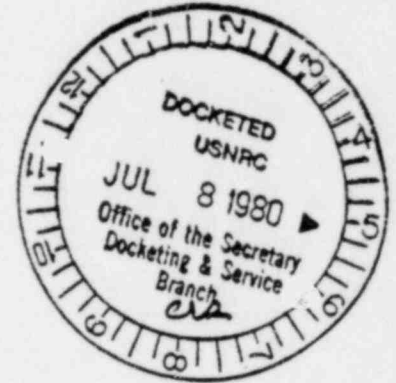
PEOPLE AGAINST NUCLEAR ENERGY,

Petitioners,

vs.

THE UNITED STATES NUCLEAR REGULATORY  
COMMISSION; JOHN AHEARNE; VICTOR  
GILINSKY; RICHARD T. KENNEDY; JOSEPH  
M. HENDRIE; and PETER A. BRADFORD, in  
their individual capacities and THE  
UNITED STATES,

Respondents.



MOTION FOR AN ORDER GRANTING PETITIONERS' REQUEST  
FOR EXPEDITED BRIEFING, ORAL ARGUMENT AND  
DISPOSITION OF THEIR PETITION TO REVIEW FINAL  
NRC ORDER AND REQUEST FOR THE ISSUANCE OF A  
WRIT OF MANDAMUS

NOW COME THE PETITIONERS, PEOPLE AGAINST NUCLEAR ENERGY,  
and move this Court of Appeals to enter an Order granting the  
Petitioners' request for the expedited briefing, oral argument  
and disposition of their Petition to Review the June 12, 1980  
Final Order of the United States Nuclear Regulatory Commission  
and their Request for the Issuance of a Writ of Mandamus. In  
support of this Motion, the Petitioners assert as follows:

1. That as of Tuesday, July 8, 1980, the NRC is going  
to authorize the Metropolitan Edison Company to rapidly vent  
all of the radioactive gases and radionuclides presently in  
Unit 2 of the Three Mile Island nuclear facility out into the  
atmosphere in their neighborhoods within a several days period



of time, thereby releasing radioactive material in effluents which exceeds even those amounts which the TMI Operating License, Appendix B, 2.1.2 permits for an operating reactor.

2. That the Petitioners want to have the disposition of this "atmospheric venting issue" resolved - through the Courts - in as short a time as the NRC would unilaterally "resolve" it by precipitously venting it into the Petitioners' neighborhoods, so as to abbreviate, to whatever extent the Petitioners can, the extreme psychological stress which the NRC and the Metropolitan Edison Company are imposing upon the citizens of the Three Mile Island area by leaving this hazard of significant health damage hanging, unresolved.

WHEREFORE, the Petitioners request that this Court grant the Petitioners' Motion for Expedited Briefing, Oral Argument and Disposition - even if the Court grants the Petitioners' Motion for a Temporary Stay or suspension pending the Courts disposition of Petitioners' Petition to Review and Request for the Issuance of a Writ of Mandamus.

Respectfully submitted,

PEOPLE AGAINST NUCLEAR ENERGY

By Daniel P. Sheehan

Daniel P. Sheehan and  
Robert Hager  
Christic Institute  
1324 North Capitol St.  
Washington, D.C. 20002  
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ATTORNEYS FOR PETITIONERS

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

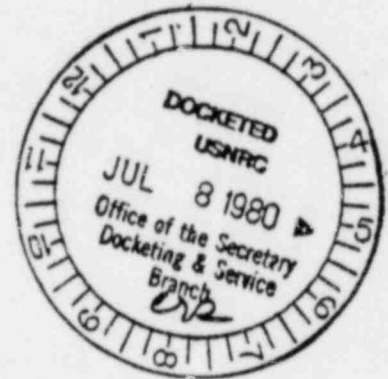
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PEOPLE AGAINST NUCLEAR ENERGY,  
Petitioners,

vs.

THE UNITED STATES NUCLEAR REGULATORY  
COMMISSION; JOHN AHEARNE; VICTOR  
GILINSKY; RICHARD T. KENNEDY; JOSEPH  
M. HENDRIE; and PETER A BRADFORD, in  
their individual capacities and THE  
UNITED STATES,

Respondents.



ORDER GRANTING REQUEST FOR EXPEDITED BRIEFING,  
ORAL ARGUMENT AND DISPOSITION

Upon consideration of Petitioners Motion for an Order for Expedited Briefing, Oral Argument and Disposition of their Petition to Review a Final Order of the NRC and their Request for the Issuance of a Writ of Mandamus, and

Upon consideration of the Petitioners' Brief In Support of Said Motion and the Respondents' Brief Filed in Opposition thereto, it is

ORDERED that the aforesaid motion is granted.

FURTHER ORDERED that all parties to this action shall file with this Court their Briefs by 10:00 a.m. on July , 1980;

FURTHER ORDERED that Oral Argument shall be heard on the Petitioners' Petition to Review and on Petitioners' Request

for the Issuance of a Writ of Mandamus before this Court at  
10:00 a.m. on July , 1980;

FURTHER ORDERED that this Court shall render its decision  
on the Petitioners' Petition and Request by \_\_\_\_\_.

FOR THE COURT,

\_\_\_\_\_  
Judge, United States Court of Appeals

IN THE UNITED STATES COURT OF APPEALS  
 FOR THE THIRD CIRCUIT

80-

PEOPLE AGAINST NUCLEAR ENERGY, )

Petitioners, )

vs. )

THE UNITED STATES NUCLEAR REGULATORY )  
 COMMISSION; JOHN AHEARNE; VICTOR )  
 GILINSKY; RICHARD T. KENNEDY; JOSEPH )  
 M. HENDRIE; and PETER A. BRADFORD, in )  
 their individual capacities and THE )  
 UNITED STATES, )

Respondents. )



APPLICATION FOR TEMPORARY STAY OR SUSPENSION OF THE  
 OPERATION OF TWO JUNE 12, 1980 NRC ORDERS,  
 PENDING THE HEARING ON PETITIONERS' APPLICATION FOR  
 STAY PENDING REVIEW, AND FOR EARLY HEARING THEREFORE

NOW COME the Petitioners, People Against Nuclear Energy,  
 and move this Court of Appeals to enter an Order temporarily  
 staying or suspending, pending the hearing on Petitioners'  
 application for an interlocutory injunction, the operation of  
 the two June 12, 1980 NRC Orders authorizing the venting of  
 radioactive materials from the Three Mile Island Unit 2 nuclear  
 reactor into the air in the vicinity of Petitioners' neighbor-  
 hoods nearby Three Mile Island.

In support of this Motion, the Petitioners assert that:

1. The NRC's Orders of June 12, 1980 amending Nuclear Operating License DPR-73 to authorize such venting without any public hearing to discuss the "significant hazard considerations"

of the license amendment is based upon two separate findings made by the NRC in gross abuse of its discretion and contrary to the clear evidence;

2. The NRC plans, on Tuesday, July 8, 1980 to authorize the accelerated venting of the radioactive materials from said nuclear reactor into the Petitioners' neighborhoods generating "significant hazard considerations" which have never been made the subject of public hearings as is mandated by Section 189 of the Atomic Energy Act, 42 U.S.C.A. Section 2239. This "fast" venting will be complete in a matter of several days unless the NRC Orders of June 12, 1980 are stayed or suspended;

3. Unless this Court of Appeals enters an Order staying the operation of the NRC's June 12, 1980 Final Order amending Nuclear Operating License DPR-73 authorizing this venting, (a) the Petitioners will have been finally, and irrevocably, subjected to potential "significant hazards" from this venting without ever being able to consider the potential hazards of this venting at a public hearing, as is required by Section 189 of the Atomic Energy Act - and (b) the lawful requirement for such a hearing prior to the final effectuation of this unlawful Temporary Modification of License will be moot, thus depriving this Court of a "ripe" cause of action. Indeed, Petitioners' cause of action will have "evaporated" along with their due process rights before the Court could get to the substance of the case - due to the precipitous pace the NRC has established for carrying out its Orders permitting this venting.



4. Thus, this stay is required to preserve the jurisdiction of this Court;

5. The irreparable damage which the Petitioners will continue to suffer as a result of the continued operation of the two NRC Orders is the denial of the statutory due process rights which are the very means of protection Congress has provided persons affected by NRC licensing activities under its broad delegation of power in the Atomic Energy Act. A hearing has been requested in accordance with Section 189 of the Atomic Energy Act. Petitioners are prepared to participate as a party in this hearing in order to present evidence concerning

(a) the significant hazards which will arise, and are now being created, by the NRC's venting of radioactive materials from the Three Mile Island Unit 2 containment building;

(b) the reasonable alternative methods for decontaminating the containment building atmosphere which would maintain releases of radioactive materials into the ambient air near the Three Mile Island facility "as low as reasonably achievable" (ALARA).

As a result of their participation in such a hearing, Petitioners hope to reduce the risk to themselves and others from radiation hazards by convincing the NRC to choose a clean-up method which reduces releases of radioactive materials in compliance with "ALARA". By denying Petitioners the opportunity to participate in such a hearing prior to the execution of the NRC authorized venting, the NRC has irreparably damaged Petitioners' due process rights.

6. If the Court deems a 28 U.S.C. Section 2349 hearing requisite to issuance of a temporary stay or suspension, it will be necessary to hold this hearing on Wednesday, July 9, 1980 in order to preserve the jurisdiction of this Court to grant an effective remedy. Once the "fast" vent begins as projected on Tuesday, July 8, 1980, the radioactive materials now remaining in the containment building will be irrevocably released into the ambient air within several days. Each day lost represents a serious injury and irrevocable deprivation of rights to Petitioners.

WHEREFORE, the Petitioners move this Court for the entrance of a Temporary Stay or Suspension, in whole or in part, of the operation of the two June 12, 1980 NRC Orders authorizing the venting of radioactive material from the Three Mile Island Nuclear Facility into the Petitioners' neighborhoods, pending the hearing on the Petitioners' Application for Stay Pending Review; and for an Order setting a hearing on this motion for Wednesday, July 9, 1980.

Respectfully submitted,

PEOPLE AGAINST NUCLEAR ENERGY



Daniel P. Sheehan and  
Robert Hager  
Christic Institute  
1324 N. Capitol St.  
Washington, D.C. 20002  
(202) 797-8106  
(202) 526-183

ATTORNEYS FOR PETITIONERS

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

80-

PEOPLE AGAINST NUCLEAR ENERGY,

Petitioners,

vs.

THE UNITED STATES NUCLEAR REGULATORY  
COMMISSION; JOHN AHEARNE; VICTOR  
GILINSKY; RICHARD T. KENNEDY; JOSEPH  
M. HENDRIE; and PETER A. BRADFORD, in  
their individual capacities and THE  
UNITED STATES,

Respondents.



ORDER FOR TEMPORARY STAY OR SUSPENSION OF THE  
OPERATION OF TWO JUNE 12, 1980 NRC ORDERS,  
PENDING THE HEARING ON PETITIONERS' APPLICATION FOR  
STAY PENDING REVIEW, AND FOR EARLY HEARING THEREFORE

Upon consideration of the Petitioner PANE's Motion for  
a Temporary Stay or Suspension of the Operation of the two June  
12, 1980 Orders of the Nuclear Regulatory Commission Amending  
Nuclear Operating License DPR-73, and

Upon consideration of the Petitioners' Brief In Support  
of their Motion and the Respondents' Brief In Opposition of  
the Petitioners' Motion, it is

ORDERED that the aforesaid Motion is granted.

The Nuclear Regulatory Commission, through its Chairman,  
John Ahearne, shall, forthwith, take all steps necessary to  
see to it that any and all atmospheric venting of radioactive

gases and other effluents from the Three Mile Island nuclear facility undertaken pursuant to the NRC's Order of June 12, 1980 cease and desist, for a period ending no later than August 11, 1980, immediately upon receipt of this order.

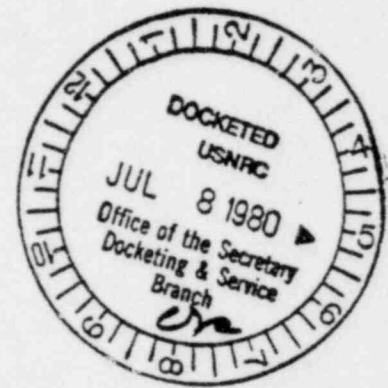
FOR THE COURT,

Judge, U.S. Court of Appeals

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

80-

PEOPLE AGAINST NUCLEAR ENERGY, )  
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 in their individual capacities and THE )  
 UNITED STATES, )  
 )  
 Respondents. )



NOTICE OF APPEARANCE

Robert Hager and Daniel P. Sheehan hereby given notice that they are appearing in this action on behalf of the Petitioners People Against Nuclear Energy.

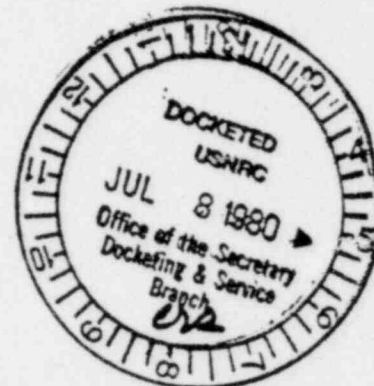
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 (202) 526-4183



IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

PEOPLE AGAINST NUCLEAR ENERGY, )  
 )  
 Petitioners, )  
 )  
 vs. )  
 )  
 THE UNITED STATES NUCLEAR REGULATORY )  
 COMMISSION; JOHN AHEARNE; VICTOR )  
 GILINSKY; RICHARD T. KENNEDY; JOSEPH )  
 M. HENDRIE; and PETER A. BRADFORD, )  
 in their individual capacities and )  
 THE UNITED STATES, )  
 )  
 Respondents )



CERTIFICATE OF SERVICE

The undersigned certifies that copies of (1) Petition to Review the June 12, 1980 Final Orders of the United States Nuclear Regulatory Commission Amending Nuclear Operating License DPR-73 (Three Mile Island) Without Holding the Statutorily Required Public Hearing and Action for the Issuance of a Federal Declaratory Judgment, Writ of Mandamus and Other Relief, (2) Motion for an Order Directing that Briefs be Submitted Within Three (3) Days Time and That a Hearing be Held Within Five (5) Days Time of Filing This Petition; (3) Petition for the Issuance of a Writ of Mandamus, (4) Affidavit of Attorney Daniel P. Sheehan, Esq. Filed in Support of Petitioner PANE's Motions for the Temporary Stay and The Stay of the June 16, 1980 Order of the Nuclear Regulatory Commission

Making Final Its Amendment of Nuclear Operating License DPR-73, (5) Motion for an Order Setting Aside the NRC's Two June 12, 1980 Finding: (A) That the NRC Order Temporarily Modifying Nuclear Operating License DPR-73 Did Not Constitute a License Amendment Raising any Significant Hazard Considerations and (B) That the Public Health and Safety Required the Immediate Release of the Radioactive Materials from Three Mile Island Unit 2 Nuclear Reactor, (6) Order Setting Aside the NRC's Two Factual Findings of June 12, 1980 Pertaining to the NRC's June 12, 1980 Proposed Amendment of Nuclear Operating License DPR-73, (7) Motion for an Order Setting Aside the NRC's June 12, 1980 Order Making Final its June 12, 1980 Order Temporarily Modifying Nuclear Operator's License DPR-73 Prior to Any Public Hearing on Said Final License Amendment, (8) Order Setting Aside the Nuclear Regulatory Commission's June 12, 1980 Order Making Final Its June 12, 1980 Temporary Modification of Nuclear Operating License DPR-73, (9) Motion for the Entry of a Declaratory Judgment, (10) Order Granting Petitioners' Request for the Entrance of A Ceclaratory Judgment Declaring the NRC License Amendment of Nuclear Operating License DPR-73 to be a License Amendment Raising Significant Hazard Considerations, (11) Motion for an Order Granting Petitioners' Request for Expedited Briefing, Oral Argument and Disposition of Their Petition to Review Final NRC Order and Request for the Issuance of Writ of Mandamus, (12) Order Granting Request for Expedited Briefing, Oral Argument and Disposition, (13) Application for Temporary Stay or Suspension of the Operation of Two June 12, 1980 NRC Orders, Pending the Hearing on Petitioners' Application

for Stay Pending Review, and for Early Hearing Therefore, (14) Order for Temporary Stay or Suspension of the Operation of Two June 12, 1980 NRC Orders, Pending the Hearing on Petitioners' Application for Stay Pending Review, and for Early Hearing Therefore, (15) Application for Stay Pending Review of Petition for Review of Two NRC Final Orders, (16) Notice of Appearance, have been served by hand on this 8th day of July on the following:

Stephen F. Eilpern  
Solicitor, Nuclear Regulatory Commission  
Washington, D.C. 20555

Peter R. Steenland, Jr.  
Chief Appellate Section  
Justice Department  
Washington, D.C.

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