

AFFIDAVIT OF MYRON M. CHERRY

STATE OF MARYLAND }
COUNTY OF MONTGOMERY } SS.

Myron M. Cherry, being duly sworn on oath, states:

1. My name is Myron M. Cherry. I am counsel for the following intervenors: Saginaw Valley Nuclear Study Group; Sierra Club; United Auto Workers of America International; Trout Unlimited, Michigan Chapter; West Michigan Environmental Action Council; Michigan Citizens for a Better Environment; and University of Michigan Environmental Law Society.

2. For convenience in this hearing, these seven intervenors have consolidated their position and have been referred to as the Saginaw Valley Intervenors. The Saginaw group represents a broad series of interests in contrast to the personal and property interests of the several persons who intervened as residents of Mapleton, Michigan. The only factually permissible consolidation of interests has already taken place.

3. From the inception of this case, it has been the Saginaw Valley Intervenors who have taken the laboring oar and have done a substantial portion of the work of preparation for this intervention. For a long period of time the Mapleton Intervenors were not in attendance regularly at the hearing. Even after Mr. Like entered his appearance, there were periods when the Mapleton Intervenors did not have counsel present at the hearing. To suggest that there is an identity of representation between the Saginaw

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Valley Intervenors and the Mapleton Intervenors is not factually accurate.

4. Any consolidation of the Saginaw Valley Intervenors with the Mapleton Intervenors would prejudice the rights of Saginaw. The Saginaw Valley Intervenors filed environmental contentions numbering 70 pages and covering 190 contentions. The safety matters raised by Saginaw were different in scope and content than those of Mapleton.

5. Nothing in this affidavit is meant to suggest that the Mapleton Intervenors have not pursued their interests. It is only meant to demonstrate that factually there is no basis for suggesting that Mapleton and Saginaw are of the same mind or that their positions or manner of presenting such positions are identical. This might be true if the Saginaw Valley Intervenors were permitted to be present but the Mapleton Intervenors were not present, since the Saginaw Valley Intervenors appear to have raised all of the contentions raised by Mapleton.

6. It is true that Dr. Lawrence Holcomb was a consultant to the Saginaw Valley Intervenors in connection with the preparation of the environmental contentions of the Saginaw Valley Intervenors. He is no longer and has not been for some weeks a consultant to Saginaw. In fact, the Saginaw environmental contentions had input from many sources other than Dr. Holcomb.

7. Mr. Like asked me the name and address of Dr. Holcomb to determine for himself whether the Mapleton Intervenors would like to use Dr. Holcomb with respect to the contentions and matters

they were going to raise. I brought Dr. Holcomb and Mr. Like together at Mr. Like's request and there is no truth at all to the suggestion that Dr. Holcomb is sub silentio working for the Saginaw Valley Intervenors.

8. There is no truth to the suggestion that the removal of myself from the hearing was any stratagem or attempt to delay these proceedings. The reason I am not there is as stated in my earlier letter and affidavit and it still remains true; that is, I cannot be there and be at the ECCS hearings at the same time.

9. Mr. Like informed me that he represents only the Mapleton Intervenors and their interests in these dockets.

10. My clients made a valid attempt to secure another attorney to represent their interests. They found no one who could or would represent their interests, considering the facts that (1) there were over 5,000 pages of transcript; (2) there was much work and preparation done by myself which could not be readily duplicated by another attorney in a short period of time; and (3) there are not very many attorneys readily available who are familiar and knowledgeable in the relevant areas.

11. Intervenors in these dockets are participants in AEC Docket RM-50-1. The ASLB cannot validly require a party to choose between participating in these dockets or in RM-50-1 when (1) the AEC (and its delegates) has scheduled both hearings at the same time with full knowledge that the intervenors-participants were active in both hearings and represented by the same attorney; (2) the intervenors made reasonable attempts under the circumstances to seek continuances and other legal counsel but neither were forth-

claim; and (3) the ASLB has ruled that the intervenors are, in effect, getting their ECCS hearing in these dockets by participating in RM-50-1, thereby requiring their participation there.

12. The motion of Dow Chemical is nothing more than an attempt (a poor one) to try to find some legal basis to support the Board's earlier decision to deny Saginaw Valley Intervenors the right to counsel by virtue of the fact that it scheduled a hearing here when I was unavailable and scheduled in another Commission proceeding, one indeed which will take precedence over and affect directly these dockets. The motion by Dow Chemical is a sham attempt to suggest that the efforts of the seven groups which I represent will somehow be represented in my absence or in the absence of an attorney specifically speaking for them.

13. As some day all will realize, the purpose of the Midland intervention (as any contested hearing) is to attempt to get a true and correct picture of the facts prior to the granting or denial of a construction permit. It is well known that the purpose of some of the participants (and perhaps others) is to get the hearing over as quickly as possible and get on with giving Midland its dual purpose nuclear power plant. Since the real issue is whether the facts will be analyzed, the decision to schedule hearings, so as to prevent the Saginaw Valley Intervenors and their attorney who has worked almost two years on the case from participating in these hearings, is nothing short of a decision in aid of those who wish

the hearing over at any cost, even the waiving of the right to counsel. We would have thought that given the ardor, energy and selflessness of the Saginaw Valley Intervenors, the ASLB would have gone to great pains to permit them to participate, if for no other reason but to record their hard work and effort toward seeing that a public hearing is really public. If this Board grants Dow Chemical's motion, it will not change the fact that there is no support for the motion; rather, it will further deprive the Saginaw Valley Intervenors from their independent right to participate on behalf of the thousands of persons they represent.

14. The history of these proceedings records the following:

- (a) Without the Saginaw Valley Intervenors, the hearing in these dockets would have been uncontested on many major issues;
- (b) Without the Saginaw Valley Intervenors, a construction permit may have issued before the Calvert Cliffs decision and thus without any environmental review;
- (c) Without the Saginaw Valley Intervenors, a construction permit would very likely have issued without any contest on ECCS issues;
- (d) Without the Saginaw Valley Intervenors, an emergency plan would have been adopted which was grossly insupportable; and
- (e) Without the Saginaw Valley Intervenors, there would have been no searching independent check on the prehearing agreements made among the Regulatory Staff, the Applicant and Dow Chemical, particularly about safety matters.

Without the Saginaw Valley Intervenors, it is improbable that a full and complete hearing will be had. Attempts to consolidate their interest with the interest of an intervenor who has

adopted a different role in these proceedings fails to recognize the prior role of the Saginaw Valley Intervenors and their desire to have participated in these proceedings, a desire which was prevented by the very simple fact that this Board failed to recognize: (1) that there are few attorneys in the United States who opt for and can adequately represent public interest groups; (2) that one of those attorneys who had represented the Saginaw Valley Intervenors for almost two years and was thoroughly familiar with the case, its preparation and manner of presenting the Saginaw interests, was scheduled and participating in the National ECCS Hearings at a time when this Board decided to schedule the hearings in these dockets; and (3) that the decision to hold a hearing was made without any showing of prejudice by Applicant, Dow Chemical or the Regulatory Staff, in the event that the hearing was delayed until subsequent to the ECCS hearings.

15. Granting the motion of Dow Chemical will severely prejudice Saginaw Valley Nuclear Study Group, Sierra Club, United Auto Workers of America International, Trout Unlimited, Michigan Chapter, West Michigan Environmental Action Council, Michigan Citizens for a Better Environment, and University of Michigan Environmental Law Society, in that they would be denied an independent right to pursue their broader interests in their own manner and with counsel of their choice.

16. Denial of Dow's motion will not adversely affect any other participant's rights in these proceedings. Whether any other participant's rights have been adversely affected is solely

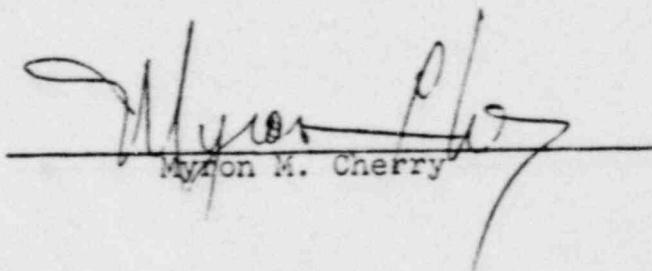
in function of the validity vel non of the Board's earlier decision to schedule a hearing when seven of the intervenors could not participate with their counsel, a decision we have earlier characterized as a denial of due process, and based on a lack of recognition of the real issues which face the Atomic Energy Commission, the nuclear community and this Board. The time has come (it is long past) when the public, not the private interests, is to be given a fair shake in AEC proceedings, particularly when it has not been the private interests which have unearthed the problems of nuclear safety and environmental protection.

17. The granting of Dow's motion, and in fact its denial without a strong statement as to the role, contribution and effort made by the Saginaw Valley Intervenors, a role they wish to continue, would do an injustice to the public's right to participate.

18. Intervenors submitted a verified statement of their prejudice in support of their earlier motion for a continuance. No party opposing the motion for a continuance submitted any facts to support prejudice on their part if the motion were granted and did not dispute by competent testimony or affidavit the facts submitted by Intervenors, even though such opposing parties had an opportunity to do so at the prehearing conference on April 28, 1972. Since the Board, therefore, in its denial of our motion, did not have any facts other than those submitted by the Saginaw Group, the decision to hold a hearing was in violation of 5 U.S.C. Section 554(b) which provides, inter alia, that:

"In fixing the time and place of hearing, due regard shall be had for the convenience and necessity of the parties or their representative."

In fact no regard was given to the convenience and necessity of the Saginaw Valley Intervenors, comprising seven of the eleven parties to these dockets. Moreover, the Board even failed to decide prior to the hearing the Saginaw Valley Intervenors' written motion filed on May 8, 1972 and requested to be filed by the Board at transcript p. 5292. Finally, no certification of the Board's decision was made, despite the novelty of the issue and the obvious and crucial importance of the decision vis-a-vis the rights of the Saginaw Valley Intervenors.



Myron M. Cherry

Subscribed and sworn to before
me this 24th day of May, 1972.

Myron M. Cherry

Notary Public