

The listed sections include the criteria for determining appropriate permit terms and conditions. Section 404 allows the "Secretary of the Army, acting through the Corps of Engineers, to issue permits for the discharge of dredged or fill material" through application of the 404 (b)(1) Guidelines, which are prepared by E.P.A. in consultation with the corps. By following the requirements of section 404(c) E.P.A. may prevent the discharge of dredged or fill material in certain sites.

The C.W.A. does not define "fill material." The legislative history does not explain inclusion of "fill" in section 404 or discuss what the term means. The most recent regulatory definition appears in the corps regulation at 33 C.F.R.-323.2(M) 42 Fed. Reg. 37145, July 9, 1977 that section states, the term "fill material" means any material used for the primary purpose of placing an aquatic area with dry land or of changing the bottom elevation of a water body. The regulations are silent as to whether E.P.A. or the corps should decide whether the primary purpose of a discharge of waste which replaces an aquatic area with dry land or changes the bottom elevation of a water body, such decision necessarily determines whether the 402 or the 404 permit program requirements will apply to the discharge in question.

It is clear from statutory scheme that any discharge of a pollutant as defined in section 502(12) not subject to section 404 is subject to section 402 - it is also clear from section 402(a) that a particular discharge must have either a 402 or a 404 permit, but not both.

The close connection between sections 402 and 404 is also shown by language in sections 404(f) and 404(r). The exemptions added by the 1977 amendments. Each of these provisions states that certain discharges of dredged and fill material are not subject to regulation under either section 404 or 402. This suggests that, in Congress' view, providing only section 404 exemption for those discharges was not enough, since E.P.A. would still be able to step in and require a section 402 permit.

The previous definition defined fill material as "any pollutant used to create fill in the traditional sense of replacing an aquatic area with dry land or of changing the bottom elevation of a water body for any purpose." 33 C.F.R. 209, 120 (d)(6), July 25, 1975 40 Fed. Reg. 31325. This definition was incorporated by reference in E.P.A.'s 404(b)(1) guidelines, 40 E.T.R. 230.2(b) September 5, 1975.

Where determinations that effect the applicability of an E.P.A. statute are not clearly committed by Congress to another Agency, E.P.A. should make these determinations.

Corps regulation, this is only a fortuity. E.P.A. has proposed two sets of regulations. The consolidated permit regulations and the section 404(b)(1) guidelines, each of which contain the same definition of fill material. If the final regulation retain these provisions, these will be two agencies with the same definitions making a nullity of any argument that the corps has a unique proprietary interest in the definition. If E.P.A. adopts a different definition, it will supersede the one at issue here. The history of the Act does not lend much support to this argument. H.R. 11986 authorized the Secretary of the Army to continue to issue permits for dredged and fill material. After consultation with E.P.A. S.2770, as Amended allowed the Secretary to recommend discharge sites for dredged material alone, subject to E.P.A.'s approval. The Conference committee allowed the corps to issue permits for dredged and fill material using E.P.A. Guidelines and subject to E.P.A. veto. In explaining the Conference committee version, Senator Muskie stated,

Section 501(a) states, "The Administrator is authorized to prescribe such regulations as are necessary to carry out the functions under the act."

101(d) "The Administrator is responsible for administering the C.W.A., except as explicitly provided otherwise. Since the primary purpose decision is effectively a decision to which the program applies, and since the latter decision has not explicitly been assigned to the Corps, it follows that it is the administrator's prerogative to make it.

A recent opinion of the U.S. Attorney General concerning the administrator's authority to determine jurisdiction under section 404 supports our interpretation (Attorney General Civiletti to Clifford Alexander, Sept. 1979 noting the Administrator's role under Section 101(d), the dual role of E.P.A. and the Corps under section 404) and that a jurisdictional decision by the corps would necessarily effect parts of the program administered by E.P.A. The Attorney General concluded "that E.P.A., not the Corps, had the authority to determine the jurisdictional reach of the waters of the United States."

While that opinion involved a term, "waters of the United States" which appears in a General provision of the Act (section 502(7)) and the term "fill" appears only in section 404 (and related parts of section 208). In each case the interpretation of the term clearly impacts other programs under the act. In fact, in the instant situation an interpretation by the corps could conceivably even effect the applicability of the Resource Conservation and Recovery Act, which is also an E.P.A. statute. R.C.R.A. excludes from "solid waste" those industrial

which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act."

E.P.A. also approves and oversees State 404 programs, approves B.M.P.s which may serve in lieu of permits. Section 208(b)(4)(B) has the power to veto discharge sites and shores enforcement authority. Section 501(A) states, "The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under the act," and did not believe there could be any justification for permitting the Secretary of the Army to make the determination as to the environmental implications of either the "site" to be selected or the specific spoil to be disposed of in the site (1972 Legislative History 177). Thus Congress retained a separate program for dredged and "fill" material for administrative reasons but made it clear that such administrative interests did not override the Administrator's responsibility for environmental concerns. While Congress clearly did not anticipate the specific question addressed by this opinion, these general views concerning 404 program are consistent with my conclusion that the Administrator may properly determine the primary purpose test.

The Transcript Recites:

1. The corps of Engineers Survey maps prepared under the auspices of the Detroit, Michigan office of the U.S. Army Corp of Engineers showing the "site" of the Midland Nuclear Plant situated in a flood plain as attested to by the 82nd Congress of the U.S.A. Witness geogeological earth mechanic Kane, expert witness for N.R.C. properly sworn under oath swore that the permit to construct nuclear plant at this site was issued by the Army Corp of Engineers and not the E.P.A. Also - as to the Aquatic fill. Dr. Peck as well as Kane discussed this briefly. The departure from the P.S.A.R. to the F.S.A.R. was to present a moot legal question as to, void or voidable construction permit at the licensing stage.

The transcript recites as relates to safety related Generator Building sinking more to date than was expected for the entire life of the structure and still settling downward. D. Hood, a N.R.C. Project Engineer, stated if not for the cost he would recommend demolition of the Safety related Generator Building and rebuild it from scratch. The Vice President Howell for Consumers Power stated under oath that "the top priority of Consumers Power Company was to be at any cost public health and safety. The Mapleton Intervenors in the transcript charged the board was without authorization to make a determination over the Soils subject or subject matter for the Consumers and/or the N.R.C. that they, the Board, to entertain both the soils jurisdiction below the surface of applicants described parcel was an "Abuse of discretion" not voidable but rather "void" from its very inception and plead that the board was without jurisdiction over the Soils either the subject or subject matter and that statutory authority had

been exceeded by the Army Corp. of Engineers. See Riverside Irrigation Dist. vs. Stipo C.A.No. 80 2142 Sept. 2, 1981, Oliver Seth, Chief Judge. See Freimanis v. Sealand Service, Inc. C.A.5 No. 80-3441 Sept. 4, 1981, Thomas Gibbs, Circuit Judge, see O'Leary v. Mayer's Landfill Inc. E.D.PA No. 80-3849 June 9 and Aug. 27, 1981, Louis H. Pollak, District Judge. See F.S.A.R. and study Meltzer v. Zoller D.C.N.J. No. C79-3176 Aug. 17, 1981, Lawrence A. Whipple, Senior District Judge.

Likewise, the refusal of a subpoena Duces Steakan August 25, 1981 Federal Registrar Vol. 46 No. 165 - p. 42968. See Coalition for Fair Utility Rates, Inc. v. Baker C.A.10 No. 81-1334, Aug. 7, 1981 per curiam. See American Paper Institute v. U.S. Environmental Protection Agency C.A.4 No 79-1511. July 28, 1981, Sam J. Irvin, III, Circuit Judge. James Dickson Phillips, Circuit Judge. Filed a concurring and dissenting opinion. See Environmental Defense Fund, Inc. v. Higginson C.A.D.C. No 80-1123, May 14, 1981, George E. MacKinnan, Circuit Judge. See Moore v. Burger C.A.D.C. No 80-2414, May 22, 1981, per curiam; Harry L. Edwards, Circuit Judge filed a concurring opinion. See Hardison v. Alexander C.A.D.C. No 79-2485, May 26, 1981, Malcolm Richard Wilkey, Circuit Judge, David L. Bazelon, Senior Circuit Judge. Filed a concurring opinion.

We the Mapleton Intervenors charge the Consumers Power Company is constructing a nuclear power plant - 1 & 2 - without proper authority from Congress and we feel this would result in a violation of due process for recourse from future impacts against the health that might result and include death of the citizenry of Mapleton and/or deaths among the general public. It's a safety related matter. See August 4, 1981, Federal Register Vol. 46 No. 149, p. 39583. Also see August 5, 1981 Federal Register Vol. 46 No. 150 p. 39854. The Mapleton Intervenors charge the construction of the Consumers Nuclear Power Plant under a permit issued by the Army Corp of Engineers in a flood plain which was mapped as a flood plain and permitted the construction over a parcel of land having a void 4,200 feet below was negligence unauthorized and a violation of due process as to the general public health and safety. See Conset Corp. v. Community Services Administration C.A.D.S. No 79-1174 June 5, 1981, Harry T. Edwards, Circuit Judge.

The Mapleton Intervenors claim "a protected liberty interest" under the U.S. Constitution. Failure to obtain the E.P.A. permit may give rise to a private cause of action for failure and the action may be brought to force "specific performance." See People of Illinois v. Celotex Corp. C.D.

Ill. No. 80-1225, June 19, 1981, Robert D. Morgan, Chief Judge. See Flood Control Act - Immunity. 33 U.S.C., 703c Britt U.S. (M.D.Ala.), No. 80-171-N, May 29, 1981, Myron H. Thompson, District Judge. Jurisdiction Equal Rights to Equal Protection privileges and immunities under the laws - Lomei V. Finley, N.D. Ill, No. 81C 1715, June 30, 1981, Milton I. Shadur, District Judge.

The Mapleton intervenors never consented to failure of Consumers Power Company and/or N.R.C. to obtain a construction permit from the E.P.A. as set forth by delegation of U.S. Congress. The Mapleton intervenors have never waived any rights of any kind or nature whatsoever, nor gave consent to waive congressional mandate to E.P.A. to issue Consumers Construction Permit. We were not even consulted as to the assumption of risk. See Michigan Law - adequate warning - Government breached its duty violating our guaranteed constitutional rights. See Hasler v. U.S. (E.D. Mich) No. 78-70130, July 15, 1981, Horace W. Gilmore, District Judge. See Equal Protection - State Residency Hawaii Boating Association C.A. 9 No. 79-4836, July 20, 1981, John F. Kilkenny, Senior Court Judge.

Court denies jurisdiction to enforce the issuance of a subpoena duces tecum. See F.T.C. v. Jim Waler Corp. (C.A.5) No. 80-1597, July 6, 1981; Alvin B. Rubin, Circuit Judge.

The fact that Mapleton intervenors claims violations of their constitutional rights both state and federal - during a hearing for "Order of Temporary Modification of a Violation Before Issuance of a License". See 189(a) of The Atomic Energy Act. See Sholly v. U.S. Nuclear Regulatory Commission (C.A.D.C.) No. 80-1691, March 4, 1981 per curiam; Edward A. Tamm, George E. MacKinnon. See Oil, Chemical and Atomic Workers Intern Union, Local No. 4-16000 v. Ethyl Corp. C.A.5 No. 79-3471, May 11, 1981, Irving L. Goldberg, Senior Circuit Judge. For the Corps of Engineers to issue a construction permit in a flood plain Mapleton intervenors claim this to be and constitute "Abuse of Process" which is a tort. See Sherrod v. Piedmont Aviation, Inc. (ED. Tenn.) No Cir. 2 79-213, Dec. 3, 1980, C. G. Neese, District Judge. We the Mapleton intervenors take exception to the issuance of the construction permit to Consumers in a flood plain despite their claim of having met its environmental impact statement under its obligation to conform with N.E.P.A. Clean Water Act. See (C.A.D.C.) No. 79-2432, April 21, 1981; Halington Wood, Jr., Circuit Judge for the Court of Appeals for the seventh Circuit, sitting by designation.

Denied subpoena - where rate payers are asked to pay for obligations. See Florida Power & Light Co. v. Westinghouse Electric Corporation (ED Va.) No. 75-1677-R, June 25, 1981; Robert R. Merhige, Jr., District Judge. See Transcript - Witness Kane 3577. Docket No. 50 3290-L OM 50-330 OL & OM, August 7, 1981 - Site removal aquatic land removal. Kane assumed that the Army Corps of Engineers issued or a permit would be required from then and he assumed that was followed. "I think they did, yes." Failure to force President Selby of Consumers Power to present before the board subpoenaed contract construction we feel was a violation of the Sunshine Act. See Common Cause v. Nuclear Regulatory Commission (D.C.D.C.) No. 80-2347, July 2, 1981; Edward M. Curran, Senior District Judge. See Transcript - Darl Hood. See Dr. Hendron, Transcript Docket No. 50-329-OL & OM, 50-330-OL & OM, August 11, 1981, page 3975 - transcript pages through 3979. See Kane transcript page 4123. Require more rip rap protection on the slope to prevent erosion. N.R.C. would want to address this aspect. When the P.M.F. level is finally resolved. See page 4125 Kane. See Marshall, page 4127. See Kane 4128 and 4129. See Kane page 4131. Transcript page 2442, August 7, 1981, Dr. Ralph B. Peck. Bechtel Consultant and not to Consumers Power Company 1979 year January - August 1979. See Dr. Peck top of page 3445 regarding grouting - See Peck bottom of transcript page 3446 - also page 3447 line 12 through twenty five. See transcript Dr. Peck 3448 complete 3449 transcript. See Kane transcript page 3555, also 3556 lines 17 and 18. See line 20. See Zamiran lines 14 through 18. See Kane on fill 3558, lines 15 through 17. See Kane 3550 transcript lines 14 to 18. Kane 3560 lines 2 through 4. See line 5 and Kane line 9 through 11. See Kane 3562 lines 7 through 10 transcript. See Marshall transcript 3567 lines 2 through 9. See transcript all of pages 3568 and 3569, page 3570 and 3571. See page 3585 August 8, 1981. See Nuclear Power Safety Analysis Report, June 29, 1981, September 8, 1981, Federal Register Vol. 46, No. 127, p. 34595. Darl Hood transcript page 4462 lines 18 through 25, pages 4463 and 4464 lines 7 and 8. "Hood yes I would like them to demolish it and go with another option."

See "Nuclear Power Plant Construction Permits" adopted final rule on review procedures for licensing board decisions, as amended September 23, 1981 - September 30, 1981 Federal Register Vol. 46 No. 189, p. 47764. It has been said, "Judicial intervention on fundamental issues are most clearly justified (only) when there is no other remedy for a situation that threatens the national fabric." N.Y. Times, Nov. 15, 1981, at 41. When the political change is blocked, to which we should add, however, the central caveat that the Court must always consider is whether it possesses a constitutional warrant. The question is not whether the Court can do everything, but whether it can do something, and do that in the proper sphere. See Freund, The Supreme Court of the United States (Cleveland and New York: The World Publishing Co., 1961). The Supreme

Court, the living voice of the constitution and as such, both arbiter and educator acting "Collective conscience of a sovereign people. See Lewis, N.Y. Times, June 17, 1962 at 38.

Do we desire constitutional questions to be determined by political assemblies and partisan divisions? Asked Charles Evans Hughes (see The Supreme Court of the United States, 236 New York: Columbia University Press, 1928), the Congress entrusted the granting of construction of a nuclear plant permit adjacent to a navigable stream to the exclusive authority of the E.P.A. and failed to grant dual authorization to the Army Corps of Engineers at Midland, Michigan. See aspects of the 1967 Mallory decision entitled Mallory v. United States, 354 U.S. 449. Also see The Omnibus Crime Control Act of 1968 - 31.7 Wall 506 (1868).

The Consumers Power Company as relates to the rate payers finances reflects, "George Reedy, Press Secretary for President Lyndon Johnson gauged the matter rather perceptively, when he said that he, 'liked what the Court was doing, but could not avoid the apprehension that it was taking an awful lot of money out of the bank and would do well to put a little of it back from time to time.'" This Court might well ponder the shrewd insight of that message. It must also be remembered that Congress can, by a simple majority, undo or alter some Court decisions. Article III, Section 2 reads, "the Supreme Court shall have jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make." These may be "wine in words" as Justice Holmes and E. M. Foster were fond of saying. The words of Article III are crystal clear. See Abraham, Line drawing between judicial restraint and judicial activism: the Supreme Court of the United States in the political process in McDowell (Ed), Taking The Constitution Seriously, pp. 89-98 (Dubuque Iowa: Kendall/Hunt Publishing Co., 1981).

And in conclusion: out of hand law making on the issue by the executive branch through over zealous administrators. At this point we address ourselves to the fine point - the line between law-finding and law-making. See Berger, Government By Judiciary (Cambridge: Harvard University Press, 1977), Choper Judicial Review and the National Political Process (Chicago: University of Chicago Press, 1980). Ely, Democracy and Distrust: A Theory of Judicial Review (Cambridge: Harvard University Press, 1980); Gavin, Judicial Review and the Reasonable Doubt Test (New York: Kennikat Press, 1980).

Article III, See Cary v. Curtis 3 Harv. 236 11 L.Ed. 576 (1845) - Judicial power of the Court is dependent for its modes of exercise limited entirely upon the action of Congress, who possesses the sole power of creating the tribunals (inferior to the Supreme Court) and limiting and withholding jurisdiction from them in the exact degree and character which to Congress may seem proper for the public good.

In 1810 in Durousseau v. U.S., Chief Justice Marshall emphasized that the Court is bound even by implied exceptions to appellant jurisdiction, so that, in effect it can exercise it only where expressly granted by Congress. 10 U.S. Cranch 307.313 (1810). Shapiro points out that judging is "an integral part of the mainstream of political authority rather ... than ... a separate entity." See Shapiro, Courts: A Comparative press 1981. The critics forget that judiciary's very task is to protect civil liberties, because the statements in the Bill of Rights are only rights in theory, they need all the help they can get if they are to survive in fact. Emphasizing our nations constitutional ideals, "We are also told that Judges are preoccupied with individual cases, and thus do not think about whether the cases before them represent a typical situation from which precedent for later cases might be properly derived, or are extremes and thus to be confined to their facts."

Enclosed and attached hereto is Docket No. 50-329 and 50-330 under date of October 22, 1981 United States Nuclear Regulatory Commission over the signature of Elinor G. Allensam, Chief Licensing Branch No. 4, Division of Licensing. Enclosures: Maps. For this purpose a cover letter and two maps herewith annexed. Figure 2-1-2 under the title and designation of Towns and Cities within 10 Miles of Midland Plant Units 1 and 2, Consumers Power Company which purports to be evacuation maps. No where does it indicate how long it will take in the interest of public health and safety for the first time in seventy five years to completely shut down, safety first in mind, without loss of life. The largest chemical complex of its kind in the entire world - which is separated from the Consumers Power Company Nuclear Plants 1 & 2 by just a navigable stream known and described as the Tittabawassee River, estimated to employ from 4,400 to 5,500 people at all times. Three shifts, twenty-four hours per day, seven days per week, 365 days per year. To subject these people who as chemical workers are harnessed to their jobs much like a canal horse until relieved works mental anguish upon them subjecting them to the constant fear of nuclear problems in addition to the problems of safety they work under and in connection within the chemical industry.

"It is mandatory that the regulatory commission enforce and uphold their own regulations" and it is a clear violation to under N.R.C. regulations to site a nuclear plant in a densely populated area certified by the Army Corps of Engineers as being situated in a flood plan and without the advantageous endorsement of Congress who delegated in the instant case the undeviated authorization to issue a construction permit to the E.P.A., not the U.S. Army Corps of Engineers.

We, the Mapleton intervenors ask in this petition that the A.S.L.B. not grant an operating license to Consumers Power Company of any kind or nature whatsoever. Administrative agencies as well as Courts have long been criticized for

predominant reliance on a case by case approach instead of rule-making, although rule-making is also criticized when it produces disliked results. We must also remember that most legislative action does not commence until after a series of constituent interest group complaints. Yet it is equally the case that agencies charged with enforcing legislation do not continuously monitor many matters under their jurisdiction - to argue that Judges are not prepared by training and experience to supervise administrative agencies, or of being adequately informed about disputes and in their relation with experts. See Howard, Adjudication Considered As A Process of Conflict Resolution: A Variation of the Separation of Powers, 18 J. Pub. L. 339, 350 (1969). See Jones speculative augmentation in Federal Air Pollution Policy-Making. See Carter, When Courts Should Make Policy: An Institutional Approach. In Gardner (Ed) Public Law and Public Policy, 145 New York: Praeger (1977). Familiarity with the language in which a policy problem is articulated and understanding about cause and effect beliefs that define the existence of a problem in the first place. The public's belief that authority and competence match the problem. Then it is true a decision must be in line with community social and political values; moreover producing more soul-searching by judges in decisions and constraints imposed by Courts. They must look to the law. See Dixon, The New Substantive Due Process and Democratic Ethic 1977 B.Y.U.L. Rev. 43.73N.134. See the abuse of discretion doctrine. See Baum, Lower Court Response to Supreme Court reconsidering a picture. 3 Just. sys J. 208. 216 Spring, 1978. See Baum, supra N. 52. It follows like the night follows the day and has been said. "Lawyers simultaneously play a large role in judicial selection and are members of the political elite."

Not withstanding this fact the Mapleton intervenors through their President, Wendell H. Marshall in pro-pria persona, in compliance with the foregoing respectfully petition for a redress of grievance and respectfully request that A.S.L.B. Board deny, set aside and comply with the N.R.C. regulations prevailing against the unlawful encroachment of the public rights and public health and safety by absolutely unconditionally disallowing a license to issue to Consumers Power Company to degrade the atmosphere of Midland, Michigan and surrounding area by authorizing the licensing of a Crippled Unsafe Nuclear Plants Nos. 1 & 2, contrary to the existing written N.R.C. regulations and contrary to both State and U.S. Government laws. To date the nuclear industry's arguments have been so readily accepted that the Midland Nuclear Plant's defects must be openly exposed to the satire and contempt of the citizenry who has been reluctant as captives, forced as rate-payers to contribute to the foregoing dispute - the broader public concern for their greater public health and

safety to date have met with non-compliance with accountable views of important segments of the public and expressed public opinion demanding accountability for their actions in the construction of a dangerous instrumentality in the form of a sinking fund of the rate payers money in the form of a safety related sinking generator building which has to date started its downward trend more than it should sink in forty years. All of this constructed in direct violation of the N.R.C.'s own rules and regulations as to site location and I do not have to remind this board that the N.R.C. is held bound by its own regulations.

Once again the Mapleton intervenors dispute these potentially divergent strains as above recited and request the A.S.L.B. Board to unconditionally deny the licensing of the Midland Nuclear Plants of Consumers Power Company Nos. 1 and 2:

- 1) Non-conforming permit
- 2) Dangerous to public health and safety related buildings
- 3) Applicants site and the entire parcel of land is unfit for the purpose and is a non conforming site for such a use and without question is a contributing factor to pose a threat to public health and safety.

Furthermore there is no insurance company that will carry the risk or the assumption of risk to indemnity against loss of life or to subjugate the loss of the Dow Chemical Company and those insurance companies carrying the risk as to the real property loss and personal property loss. Last but not least the possible life of 5,500 employees. We do not wish to pay "too much for our whistle."

Kindly look down from your lofty perch and see this as we, the natives see it - a nuisance, both public and private and a threat to the domestic tranquility of our everyday lives.

The foregoing is respectfully submitted for your deliberations and from the law and facts. We wish you to find for us and grant judgement in our favor by denying a license to Consumers Power Company for operation at any level of these nuclear plants that once again, we can restore to Mapleton and Michigan domestic tranquility, which is our right under the Michigan constitution as well as the U.S. constitution.

We the Mapleton intervenors wish to record at this time that Michigan is still a sovereign state and accordingly ask this board to take "judicial notice" that his excellency the Governor of Michigan "by executive order" presently in full force and effect, has stopped the transportation of nuclear waste materials across the highways and byways of the sovereign states of Michigan. Moreover the Senators have held meetings in our state for a moratorium against the licensing of nuclear plants in Michigan.

Accordingly take judicial notice that the Attorney General Frank Kelley has represented the people of the State of Michigan before the Courts and also as an intervenor has presented the facts that Michigan on the basis of need does not need this needless millstone and/or albatross around our neck. It does not have a use; that is to say it is useless and represents Consumers Power Company's "white elephant" and/or their wild spending folly which can be equated with what they say about enebriated sailors.

At this time, I wish the board to take judicial notice that United States Senator from Michigan Don Riegle serves on the committee on commerce, science, and transportation. Moreover, that he has presently co-sponsored a bill given to state participation in the decision-making process concerning radioactive materials which provides for formal process of state participation and concurrence regarding the management and storage of radioactive materials.

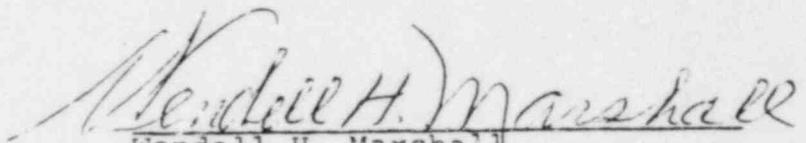
I wish to request my presentation addressed to the United States of America. Nuclear Regulatory Commission. A.S.L.B., Washington, D.C. filed and dated the 16th day of January, 1981 at Midland, Michigan be incorporated by reference under separate cover into and annexed to this brief.

"Environment jurisdiction" expense borne by whom. See U.S. v. Price D.C. N.J. No. 80-4104, Sept. 23, 1981; Stanley S. Bratman, District Judge. Mapleton, and Freeland, Michigan represented by Barbara Stamiris. Both villages water supply comes from water wells located downstream from the applicant's Nuclear Plants constructed in a flood plain over "bad fill material" and also poor quality fill as sworn under oath by N.R.C.'s citizen Kane to make up the Cooling Pond Dikes, which according to Kane seeps into the Tittabawassee River.

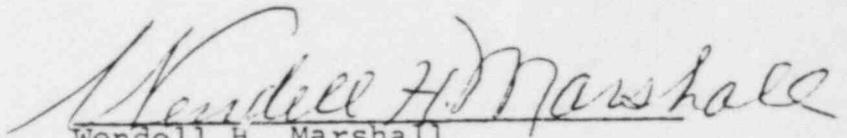
CONCLUSION

Based on the foregoing presentation of evidence, I am of the considered opinion that it is just, wise, necessary, and correct for the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission to deny operating licenses to the Consumers Power Company (Midland Plant, Units 1 and 2); and I hereby humbly petition and request the Atomic Safety and Licensing Board to do so.

Dated this 21st day of
November, 1981 A.D., at
Midland, Michigan



Wendell H. Marshall
President, Mapleton Intervenors
Route #10
Midland, Michigan 48640



Wendell H. Marshall
In Pro Pria Persona

Addendum:

Presentation For Pre-hearing Conference dated January 16, 1981.
Mapleton's Exhibit 2 (consisting of letter to Mr. Harvey
Nelson & 3 maps)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Washington, D.C.

DUCKETED
SERIAL

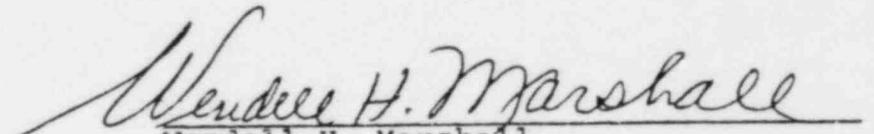
THE ATOMIC SAFETY AND LICENSING BOARD

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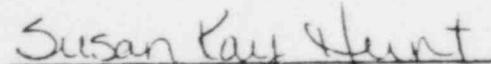
In the Matter of) Docket Nos. 50-329 OL
) 50-330 OL
CONSUMERS POWER COMPANY) 50-329 BRANCH
) 50-330 OM
)
Midland Plant, Units 1 & 2)

Certificate of Service

I, Wendell H. Marshall, attorney pro se for the Mapleton intervenors, hereby certify that a copy of Mapleton intervenors' proposed Findings of Fact and Conclusions of Law was served upon all persons shown in the attached service list by deposit in The United States Mail, first class, at Freeland, Michigan this 21st day of November, 1981.


Wendell H. Marshall

Subscribed and sworn to before me, a Notary Public,
this 21st day of November, 1981.


Susan Kay Hunt
Notary Public
Midland County, Michigan
My Commission expires June 2, 1982



SERVICE LIST

DOCKETED
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Route 3
Freeland, Michigan 48623

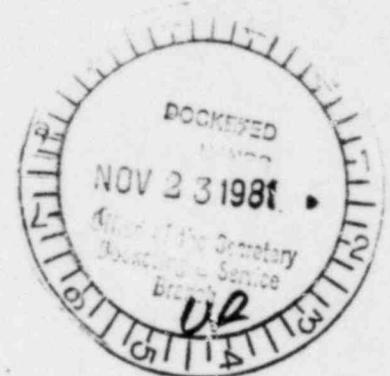
Jerry Harbour
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

OCT 22 1981

Docket Nos. 50-329
50-330

Mr. Harvey Nelson
Regional Director, Region 3
U.S. Fish and Wildlife Service
Federal Building
Fort Snelling
Twin Cities, Minnesota 55111



Dear Mr. Nelson:

The Consumers Power Company, Jackson, Michigan, has applied to the U.S. Nuclear Regulatory Commission for an operating license for the Midland Nuclear Generating Station, Units 1 and 2.

We are preparing an environmental impact statement as part of our operating license review. Based on our interpretation of Section 7(c) of the Endangered Species Act Amendments of 1978 (PL 95-632), 16 U.S.C. §1536(c), and the fact that construction of the Midland Plant began prior to November 10, 1978, initiation of a Section 7(c) information requirement is not required. However, to assure a thorough environmental review, we request that your office provide NRC with information concerning proposed or listed plant and/or animal species that may be present in the vicinity of the Midland plant site or along the associated transmission corridors.

We anticipate that a draft environmental impact statement, which will assess only impacts of operation of the Midland plant and associated transmission systems, will be available for public comment during February, 1982.

The Midland site is in Midland County, Michigan, within the southern part of Midland city limits. Approximately 1,235 acres are enclosed by the site boundary. Maps showing the plant site location and associated transmission lines are enclosed.

If your office does not have copies of the Midland Environmental Report-Operating License Stage and the 1977 Final Environmental Statement-Construction Permit Stage, we will arrange to forward them to you.

Sincerely,

Elinor G. Adensam

Elinor G. Adensam, Chief
Licensing Branch No. 4
Division of Licensing

Enclosures:
Maps

*dupes of
8111020005*



FIGURE 2.1-2

TOWNS AND CITIES
WITHIN 10 MILES

MIDLAND PLANT UNITS 1 & 2
CONSUMERS POWER COMPANY

LEGENO

- | | | | |
|-----------|---------------|---------------|---------------|
| EXIST. 66 | FUTURE 765 KV | FUTURE 765 KV | - PLANTS |
| □ | ○ | ● | - SUBSTATIONS |
| — | --- | --- | - LINES |

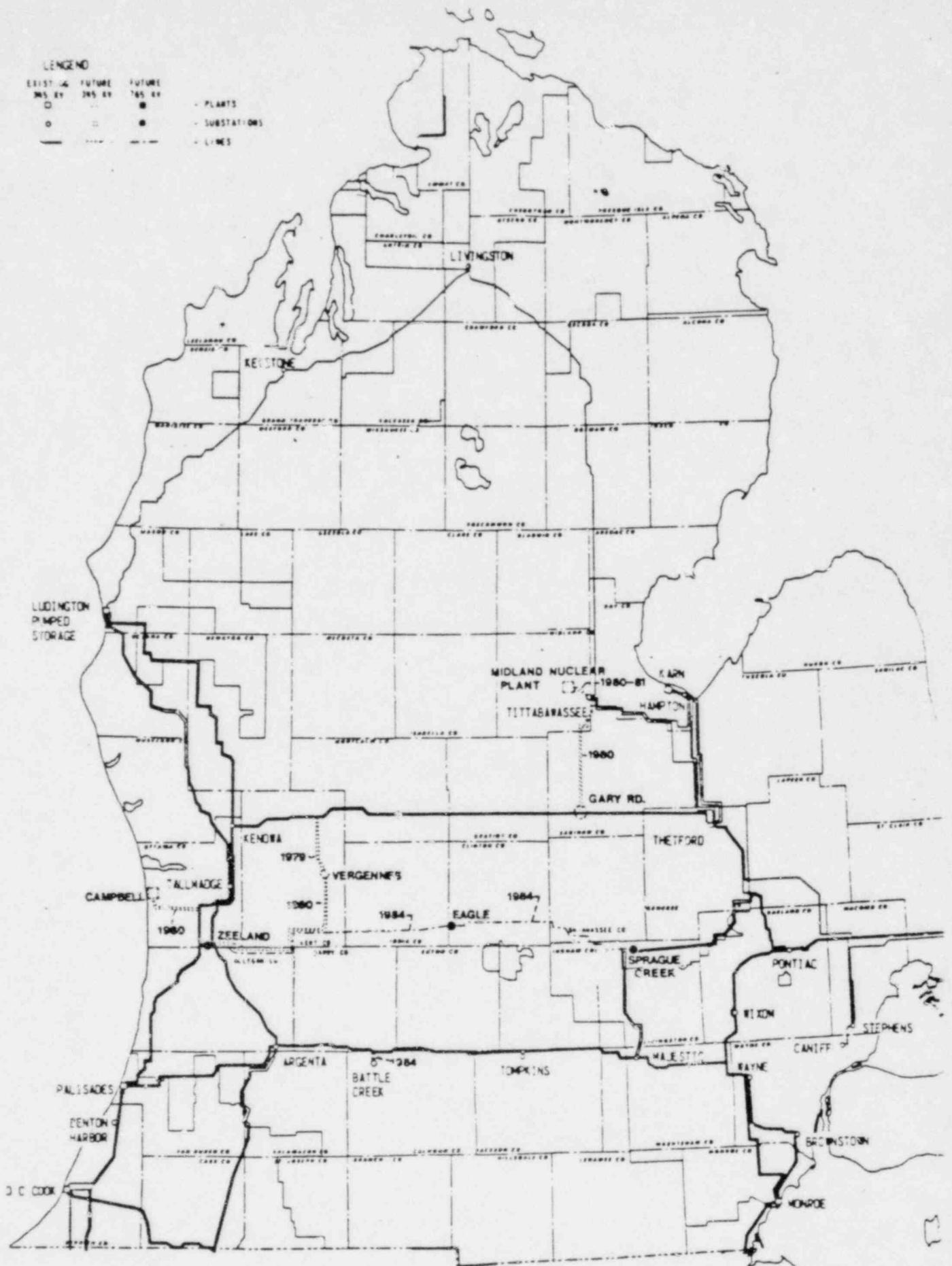




FIGURE 3.9-1

TRANSMISSION LINES
ORIENTATION MAPS

MIDLAND PLANT UNITS 1 & 2
CONSUMERS POWER COMPANY