

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

82 SEP 13 A10:27

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH *emp*

In the Matter of)
)
NUCLEAR FUEL SERVICES, INC.)
)
)
AND)
)
NEW YORK STATE ENERGY RESEARCH)
AND DEVELOPMENT AUTHORITY)
(Western New York Nuclear)
Service Center))

Docket No. 50-201 OLA

The material in the ruling of John G. Davis dated August 23, 1982, particularly in section G (Denial of Public Review) can be read as an admission that I was denied due process by the NRC handling of Change No. 32 (and so was the Sierra Club).

The motivation for the actions of the NRC staff in the handling of Change No. 32 and for the subsequent NRC rulings is made clear in the statement on page 22 with reference to the action of the staff in issuing Change No. 32 nine working days after receipt of the application:

"Indeed, had this action not been taken, the commencement of the demonstration project could have been set back indefinitely."

Earlier it is stated:

"Further, it appeared to the staff that issuance of Change No. 32 could avoid further delay in the transfer of the facility to DOE."

The staff considered that it had a charge to expedite by any means possible the transfer of the facility to DOE in accordance with the Commission decision on Change No. 31 which "emphasized that the

DS03

solidification program at West Valley should not be delayed." With this top priority given to implementing the transfer of West Valley to a sister federal agency, other responsibilities such as the provision of due process, following NRC regulations, or protecting the public health and safety got short shrift.

The failure to provide public notice and the denial of public review are part of the effort to bypass mandatory NRC procedures to accomplish the transfer to DOE. As noted on page 20, public notice was required if a "significant hazards consideration" was involved. At this time, in Docket No. 50-201, there was extensive material to support my request for a hearing on Change No. 31, a hearing specifically on the "significant hazards consideration" issue. As NRC admits, "The new application could properly have been characterized as having the same objective as the earlier one", so the evidence of hazard to the health and safety of Western New Yorkers applied to Change No. 32 as well as Change No. 31. Since this was an issue before the administrative judges, a Staff Safety Evaluation Report which was hastily prepared and did not consider the facts that had been previously submitted by me to Docket No. 50-201 OLA is questionable on both substantive and procedural grounds. Alleged statements in the staff report which "explained why the requested amendment did not involve a significant hazards" provide only a lame after-the-fact excuse for the failure of NRC to give the mandatory public notice on Change No. 32.

In an effort to cover up its malfeasance, NRC does not stop short of outright falsification of the historical record. Thus it

asserts that "Over the next three months, neither the Sierra Club nor any other member of the public gave any indication of any interest in the subject matter of the application." Unless NRC considers me a non-person, it has simply ignored what is in the record for Docket No. 50-201 OLA, including a specific request for a public hearing on Change No. 32. The argument that "Under these circumstances, bearing in mind the absence of response to the earlier announcement in the Federal Register, it was entirely reasonable to take action without further notice" is a flawed alibi for NRC's failure to follow mandatory procedures for public notice.

Consequently, the claim on the ruling of August 23, 1982 that "the issuance of Change No. 32 is in all respects in accordance with applicable laws and regulations" is patently false.

There are two theories that can account for the peculiar circumstances in the August 23 ruling. One is a conspiracy theory and the other is a miracle theory.

The action of the staff in issuing Change 32 nine working days after the receipt of the application--in an agency that takes six months to dot an "i"--might have been a miracle. On the other hand it might have been the result of secret discussions involving NRC, DOE, and Senator Patrick Moynihan (who has claimed credit in his campaign literature for brokering this arrangement).

To judge the relative likelihood of the miracle and conspiracy theories, it is necessary to outline the scenario for the latter:

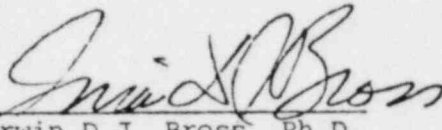
The West Valley Act, the circumstances leading up to the issuance of Change No. 32, the August 23, 1982 rulings, are all in the name of "public health". But if "public health" is really the issue, why has NRC consistently refused to permit a public hearing on this matter and why did it take secret and hasty action to evade the mandatory public notice that could have led to such a hearing? This action is hardly consistent with an interest in protecting the public health, but it makes sense if the purpose is to protect the health of the nuclear industry.

DOE, NRC, and Senator Moynihan have a public record of great solicitude for the health of the nuclear industry but poor public records of actions to protect the public health. Hence the conspiracy scenario would be the following. The West Valley Act, the scheme originally set up by Senator Moynihan to bail out the nuclear industry from another waste disposal fiasco was coming apart because of NSF intransigence. This bail-out of the nuclear industry at the expense of U.S. and New York State taxpayers was rescued by Change No. 32. The conspirators could not afford to have a public hearing where the facts might come out, so NRC procedures and due process were dispensed with. The August 23, 1982 rulings are a post-hoc rationalization of the the conspiratorial decisions and there really isn't a 9-day-miracle.

If the conspiratorial theory seems more likely than the miracle theory, then it follows that it will be impossible to get due process or to protect the health and safety of the citizens of Western New York within the NRC quasi-judicial system since NRC is a party to the conspiracy

against the public health. The only hope, then, is for the federal courts to take jurisdiction in this matter since constitutional issues of civil rights and due process are involved in this denial of a public hearing on Change No. 32.

Respectfully submitted,


Irwin D.J. Bross, Ph.D.

DATED: September 9, 1982

DOCKETED
USNRC-

'82 SEP 13 A10:27

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH *enyl*

In the Matter of)
)
NUCLEAR FUEL SERVICES, INC.)
)
AND)
)
NEW YORK STATE ENERGY RESEARCH)
AND DEVELOPMENT AUTHORITY)
(Western New York Nuclear)
Service Center))

Docket No. 50-201 OLA

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served as of this date by first class mail, postage prepaid, to the following:

Lawrence Brenner, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Philip H. Gitlen, Esquire
Whiteman, Osterman & Hanna
99 Washington Avenue
Albany, N.Y. 12210

Dr. Jerry Harbour
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Orris S. Hiestand, Esquire
Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, D.C. 20036

Mr. Peter A. Morris
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Warren E. Bergholz, Jr., Esquire
Office of General Counsel
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20587

Carmine J. Clemente, Esquire
General Counsel
New York State Energy Research
and Development Authority
Two Rockefeller Plaza
Albany, N.Y. 12223

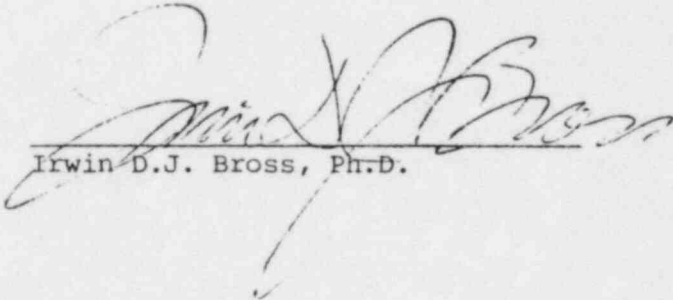
James R. Wolf
Counsel for NRC Staff
Office of the Executive Legal
Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Atomic Safety and Licensing
Appeal Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Marvin Resnikoff
Technical Consultant
Sierra Club Radioactive Waste Campaign
78 Elmwood Avenue
Buffalo, New York 14201



Irwin D.J. Bross, Ph.D.

DATED: September 9, 1982