

messages, the Licensing Board should ensure that any EBS/beach public address message proposed for use relative to condition (1) makes clear the steps that all members of the beach population are to take in the event that a "shelter-in-place," as now described by the State, is recommended." Footnotes omitted. ALAB-939 at 179.

As indicated in the Licensing Board's Order of January 24, 1991 during the course of a pre-hearing conference conducted via telephone on January 23, 1991, the Licensing Board decided to certify a question to the Appeal Board with the intention that an affirmative response by the Appeal Board would provide a framework for a resolution of the remanded sheltering issue. In determining to certify a question to the Appeal Board the Licensing Board apparently is seeking to avoid reopening the evidentiary record and holding further hearings on the beach sheltering issue. Seemingly, the purpose of the certified question is to gain approval from the Appeal Board for accepting as part of the record the submission of the Assistant Attorney General Bisbee, as endorsed orally by George Iverson during the course of the January 23 pre-hearing conference. Presumably, if such approval is given, the Licensing Board then intends to enter a finding that since the only protective action that will be taken in ERPA A will be evacuation, not sheltering, the beach sheltering issue is moot. Thus, the need for any further proceedings on the sheltering issue would be obviated. The Massachusetts Attorney General and New England Coalition on Nuclear Pollution submit that the proposal to certify the question to the Appeal Board is ill conceived for the reasons provided below.

The proposed certified question does not address the

concerns identified by the Appeal Board in ALAB-939. In that decision the Appeal Board was reacting to an apparent conflict in the record between the State of New Hampshire's stated purpose for PAR's, ie. achieving maximum dose reduction, and the updated shelter-in-place concept in which some portion of the beach population will be evacuating under conditions, where by established PAR calculations sheltering would afford the greatest dose savings. The State of New Hampshire has previously identified certain conditions under which it believes that sheltering will afford the greatest dose savings including a Condition (1) release. Now, under their updated shelter-in-place concept they are proposing the evacuation of a portion of the population even in those circumstances where sheltering would afford the greatest of savings.

The certified question proposed by the Applicants, and the intended resolution of the issue that it contemplates does not address the problem posed by an emergency plan that seems to call for evacuation even when sheltering would maximize dose savings. Indeed, if one reads the recent submission by Assistant Attorney General Bisbee on behalf of the State of New Hampshire as indicating the elimination of sheltering as a protective action option for ERPA A, then the problem is compounded rather than resolved. In ALAB-939 the Appeal Board observed that;

"Instead, interpreting the "shelter-in-place" option's proviso that "access to an indoor location" means actually being indoors, the State now avers that what is contemplated for the general beach population is that under condition (1), those beachgoers who have their own

transportation will be directed to employ sheltering as a protective action option only if they are already in a building. Everyone else in the beach area with transportation will be advised to go to their vehicles and to evacuate (although they may of their own volition and without direction from emergency management officials elect to enter a building in the immediate vicinity). Footnote omitted.

The Appeal Board's observations were based upon the filings of the state of New Hampshire prior to September 1990.

When the Appeal Board expressed concern in ALAB-939 that the portion of the beach population who would be directed to go to their cars and evacuate under the above described shelter-in-place concept would receive the benefit of no sheltering factor, its concern was only addressed to a portion of the population in ERPA A, ie. the non-transit dependent transient beach population. Now it appears that if everyone in ERPA A is going to be called on to evacuate, including the full-time residents with access to year round domiciles, an even larger number of people will be at risk of receiving no dose reduction.

Presumably, the Licensing Board seeks to avoid the necessity of further hearings on the beach sheltering issue by means of obtaining an affirmative response to the proposed certified question from the Appeal Board. Such a procedure would appear to violate the Intervenors' hearing rights under the Atomic Energy Act and the Commissions own regulations. A finding that there is reasonable assurance for adequate protective measures by a Licensing Board is to be based upon an adjudicatory record. By means of a certified question, the Licensing Board appears to be looking for a way to open the

adjudicatory record for acceptance of one piece of evidence, ie. New Hampshire's most recent submission as endorsed by Iverson, and then shut the record without providing Interveners an opportunity to present countervailing evidence, or to even examine the foundations of the submitted piece of evidence. If the statements of Assistant Attorney General Bisbee and Mr. Iverson are to be accepted as evidence, the Interveners should be allowed to inquire into the factual underpinnings of that submission and whether they are consistent with maximum dose savings.

The state of the record on this issue is at best extremely murky. In the State of New Hampshire's January 10, 1991 submission to the Licensing Board it was averged that:

The state of New Hampshire reaffirms here that with respect to Condition (1), the short duration non-articulate gaseous puff release, evacuation - not shelter-in-place - is the planned protective action. See State of New Hampshire's Comments Regarding Applicants' Response to Licensing Board Order of January 11, 1990 (February 16, 1990) and Comments of the State of New Hampshire Regarding NHREPP Sheltering and LBP-90-12 (May 28, 1990). (Emphasis added.)

Nevertheless, the State of New Hampshire has never stated that evacuation is the only protective action for ERPA A. It has only gone so far as to characterize evacuation as "the planned" protective action. That is in reality saying no more than it is the preferred protective action for ERPA A, and the only protective action for which the NHRERP contains specific emergency planning provisions. In other words, sheltering-in-place will have to be implemented on an ad hoc basis by the beach population..

If one interprets the word "planned" to mean that it is the

only protective action that the State of New Hampshire will ever recommend for ERPA A, then the January 10, 1991 filing of the State of New Hampshire appears to be to contradict the state's February 16, 1990 and May 28, 1990 submissions. Those submissions dealt directly with the issue of sheltering the beach population. In both of those submissions the State of New Hampshire asserted that shelter-in-place was still a protective action option under certain circumstances for the beach populations. Indeed, the State of New Hampshire in its February 16, 1990 submission stated specifically that: "The Applicant erred in inferring that the October 1988 amendments to the NHRERP Volume 4, Appendix F precludes sheltering ERPA A in response to a general emergency classification." In New Hampshire's January 10, 1991 filing it claims to "reaffirm" its previous statements and cites to its filings of January 11, 1990 and May 28, 1990.

The NHRERP states that: "For ERPA A, evacuation is the preferred protective action." NHRERP Rev 3 2/90 at 6.4-1. Licensees' Common Reference Document dated January 28, 1991, Global Page 85. The clear implication of the NHRERP's statement that evacuation is the preferred protective action is that there are other protective actions, such as sheltering which may be implemented in the event of an emergency. If one is to make any sense of the various statements of the State of New Hampshire, the only interpretation that can be given to the January 10, 1991 submission that is consistent with the other statements is that it is saying nothing more than: (1)

evacuation is the preferred protective action for ERPA A; and (2) it is the only one for which the State of New Hampshire has done any affirmative planning by placing provisions in the NHRERP. The shelter-in-place option as described by the Appeal Board in ALAB-939 is still a protective action option, but the State of New Hampshire has not included in the NHRERP any specific provisions for implementing that option. While evacuation is a "planned" for option, sheltering is an unplanned option. For example, the State of New Hampshire has not identified any buildings that would be suitable beach shelters.

It appears then that certifying the question proposed by the Applicants will not in any way further a resolution of the beach sheltering issue. One is still left with the stated intent of the State of New Hampshire to in some instances, such as a Condition (1) release, implement sheltering as a PAR for the beach population in ERPA A. See New Hampshire's February 16, 1990 and May 28, 1990 pleadings. The three directives of the Appeal Board to the Licensing Board retain their vitality.

If the Licensing Board feels compelled to certify a question to the Appeal Board, it is suggested that the Licensing Board consider certifying the following question in lieu of the one posed by the Applicants:

"If shelter-in-place as described in ALAB-939 remains a protective action option under the NHRERP, should there be evidence in the adjudicatory record to establish that the non-transit dependent transient beach population, ie. that portion of the beach population who will be evacuating under a shelter-in-place option, will be afforded maximum dose savings by this option."

The positions taken by the Intervenors during the January 23, 1991 pre-hearing conference are reiterated herein by reference. It is the position of the Intervenors that the Licensing Board should reopen the record, permit discovery, and hold a hearing on the beach sheltering issues. The Licensing Board should not simply certify a question back to the Appeal Board. If the Licensing Board is determined to certify a question back to the Appeal Board, it should not be the one proposed by the Applicants, but rather the one set forth above.

Respectfully submitted,

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Date: February 14, 1991

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'91 FEB 15 P4:02

In the Matter of)

PUBLIC SERVICE COMPANY)
OF NEW HAMPSHIRE, ET AL.)

(Seabrook Station, Units 1 and 2))

Docket Nos. 50-443-OL)
50-444-OL)

February 14, 1991)

CERTIFICATE OF SERVICE

I, Leslie Greer, hereby certify that on February 14, 1991, I made service of the enclosed Mass AG's and NECNP Response to the Licensing Board's Order of January 24, 1991 by Federal Express as indicated by (*) and by first class mail to:

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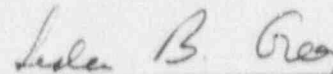
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Date: February 14, 1991