SAPL
Seacoast Anti-Pollution League
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November 22, 1982

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Samuel J. Chilk, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chilk:

I am writing on behalf of the Seacoast Anti-Pollution League to express deep opposition to the Commission's October 25, 1982 proposal at 47 Fed. Reg. 47260 to amend its rules of practise to allow a limited Commission review of licensing board construction permit decisions to determine whether such decisions should go into effect prior to the completion of administrative appeals.

The rationale for this proposed procedural abuse is "to avoid unnecessary delay in the issuance of construction permits." Perhaps SAPL is lacking in the requisite tact and politeness of these formal public comment proceedings when we so openly point out that what the Commission is proposing is a "procedural abuse", but perhaps this breach of etiquette can be forgiven when it is recalled that SAPL has spent many years embattled over a nuclear plant which would not be in its present ill-chosen location but for the type of procedural abuse the Commission seeks to reinstate with this proposal.

Please recollect what happened at Seabrook. The Appeal Board, upon reviewing the factual record of the construction permit proceeding, reversed the Licensing Board's decision on site-related issues. However, by the time the Appeal Board made its findings, the plant site had been bulldozed, cleared and a substantial amount of construction had been done at the site. This work as carried forth was then allowed to prejudice the Commission's later rulings because the financial investment in the site (approximately 350 million by March 1, 1978) was added as a factor weighed against alternative sites. As a consequence, construction was allowed to continue at Seabrook and we have there today a gargantuan monument to this injustice.

The Commission has stated that construction on a site is at the "peril" of the applicant. Public Service Company of New Hampshire is proceeding with construction at its "peril" to this date at Seabrook because no findings or determinations have yet been made as to the feasibility of emergency plans to adequately protect the public health and safety and the Commission has deferred any hearings on evacuation feasibility until the operating license proceedings. If history repeats itself, the only true "peril" will have been to the public interest. It is our fear that once again the weight of financial investment, and by now it is a huge one, will weigh against and crush any fair determinations with respect to the safety issues in this case. However, we

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are digressing here. Let us go back to the proposal at hand.

In January 1979, the Commission established a committee to conduct a study to assess the immediate effectiveness issue, and the report it prepared, the "Milhollin study", pointed out that the NRC no longer had its original basis for the immediate effectiveness rule, i.e. nuclear promotion, and it alone of federal agencies even allowed such a practise. Commissioner Ahearne points out in his dissenting views that he believes that the Commission has neither addressed the concerns identified in the Seabrook case nor given the Milhollin study due consideration. SAPL concurs with Commissioner Ahearne in this particular view.

Rather than proceeding with this proposed rulemaking, SAPL would urge instead that the Commission act to revoke its September 1981 immediate effectiveness rule for operating license proceedings. The Union of Concerned Scientists, in its comments on this proposed rule, pointed out in cogent fashion that the rule as applied to operating license decisions has been unworkable and prejudicial to petitioners. SAPL is in accord with UCS's comments.

The U.S. Court of Appeals for the First Circuit remarked in connection with a Seabrook issue and the immediate effectiveness rule and stay standard:

> We are unable to identify any other field of publicly regulated private activity where momentous decisions to commit funds are made on the strength of preliminary decisions by several agencies which are open to reevaluation and redetermination ... (T)he risk of public agencies and courts accepting less desirable and limited options or, worse, countenancing a fait accompli are foreboding. Audubon Society of New Hampshire v. United States, Memo Opinion (unpublished) (1st Cir. 1976).

To reiterate, SAPL urges that the Commission eliminate the possibility of any further injustices being wrought by the immediate effectiveness rule by allowing its application in neither construction permit nor operating licensing proceedings.

Yours truly,

Jane Doughty

Jane Doughty
Field Director