

February 1, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

'85 FEB -5 A9:47

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
THE CLEVELAND ELECTRIC )  
ILLUMINATING COMPANY )  
 )  
(Perry Nuclear Power Plant, )  
Units 1 and 2 )

Docket Nos. 50-440 OL  
50-441 OL

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

APPLICANTS' MOTION FOR  
SUMMARY DISPOSITION OF CONTENTION U

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company ("Applicants") hereby move the Atomic Safety and Licensing Board ("Board"), pursuant to 10 C.F.R. § 2.749, for summary disposition in Applicants' favor of Contention U. As discussed herein, there is no genuine issue as to any fact material to Contention U, and Applicants are entitled to a decision in their favor on Contention U as a matter of law.

This motion is supported by:

1. "Applicants' Statement of Material Facts As To Which There Is No Genuine Issue To Be Heard On Contention U";
2. "Affidavit of John Baer on Contention U" ("Baer Affidavit"); and
3. Section II.A of "Applicants' Motion For Summary Disposition of Issue 14" (January 14, 1985) (articulating the legal standards applicable to a motion for summary disposition).

## I. PROCEDURAL BACKGROUND

Prior to the availability of offsite emergency plans for the plume exposure pathway emergency planning zone ("EPZ") for the Perry Nuclear Power Plant, the Board admitted a very broad emergency planning contention, Issue 1:

Applicants' emergency evacuation plans do not demonstrate that they provide reasonable assurance that adequate protective measures can and will be taken in the event of an emergency.

See LBP-81-24, 14 N.R.C. 175, 189 (1981), as modified by LBP-81-35, 14 N.R.C. 682, 686 (1981). The Board subsequently noted that the words "State and local" should be substituted for the word "Applicants'" in the wording of the contention. See LBP-84-28, 20 N.R.C. 129, 130 n.1 (1984).

After well-developed offsite plans had been publicly available for some time, Applicants (with the support of the Staff) moved for a Board order requiring the particularization of the broad contention. The Board granted Applicants' motion, directing Intervenor to "specify in a written filing the specific inadequacies alleged to exist in the draft local and State emergency plans \* \* \*." See LBP-84-28, 20 N.R.C. at 132.

Contention U was initially advanced in "Sunflower Alliance's Particularized Objections To Proposed Emergency Plans In Support of Issue No. I" (August 20, 1984). Over the opposition of Applicants and the Staff, the Board admitted a form of that contention. As admitted by the Board,<sup>1/</sup>

---

<sup>1/</sup> The Board expressly rejected all allegations of the proposed contention which are not included in the contention as framed by the Board. See January 10, 1985 Memorandum and Order, at 5.

Contention U alleges:

Reception centers do not have the means or facilities for handling contaminated property.

"Memorandum and Order (Admissibility of Contentions on Emergency Plans and Motion To Dismiss)" (January 10, 1985), at 7.

As the Board has noted, discovery on emergency planning issues in this proceeding has been completed. See January 10, 1985 Memorandum and Order, at 5. Further, the schedule proposed by Applicants establishes February 5, 1985 as the last day for filing summary disposition motions. See January 18, 1985 Letter, Counsel for Applicants to Licensing Board. Accordingly, the instant motion is timely, and Contention U is ripe for summary disposition.

## II. GOVERNING LEGAL STANDARDS

### A. Summary Disposition

Section II.A of "Applicants' Motion For Summary Disposition of Issue 14" (January 14, 1985) sets forth the legal standards applicable to a motion for summary disposition. The discussion there is fully applicable to this Motion and is incorporated by reference herein.

### B. Substantive Law

The Commission's emergency planning regulations, at 10 C.F.R. § 50.47(b)(10), require, in relevant part, that:

A range of protective actions have been developed for the plume exposure pathway for \* \* \* the public.

This planning standard is further addressed by NUREG-0654/FEMA-REP-1, "Criteria For Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness In Support of Nuclear Power Plants" (Rev. 1, November 1980). NUREG-0654 Criterion J.12 provides, in part:

Each organization shall describe the means for registering and monitoring of evacuees at relocation centers in host areas.

### III. ARGUMENT

Applying the Commission's summary disposition standards to the facts of this case, it is clear that the instant motion for summary disposition of Contention U should be granted. Contention U states that reception centers do not have the means or facilities to handle contaminated property. Sunflower supported this allegation by alleging that "the draft plans did not have any means or facilities" for handling such material, Sunflower Alliance's Particularized Objections to Proposed Emergency Plans in Support of Issue No. I, dated August 20, 1984, at 22, notwithstanding the treatment of this issue in the plans. See Applicants' Motion to Dismiss, dated September 20, 1984 at 43-44.

The evidence presented by the Baer Affidavit clearly demonstrates that the reception centers do have the means and facilities to handle contaminated property. The emergency

plans and procedures for each of the three counties comprising the plume exposure pathway EPZ provide for monitoring, decontamination and isolation of vehicles and property at reception centers, including the establishment of standard action levels. Baer Affidavit, ¶ 3. Procedures in each county provide guidance and direction to the fire department personnel, who are responsible for monitoring and decontamination at reception centers, on the handling of contaminated property and vehicles. Id., ¶ 4. More than enough fire department personnel will have been trained, prior to fuel load, on handling contaminated property and vehicles. Id., ¶ 5.

Prior to fuel load, each reception center will have in place emergency kits containing the equipment and supplies needed for monitoring and decontamination, together with specific instructions for temporarily storing contaminated property and impounding contaminated vehicles. Id., ¶ 6. Because each reception center is a public educational institution, parking lots and recreational fields are available for isolating contaminated vehicles. Id.

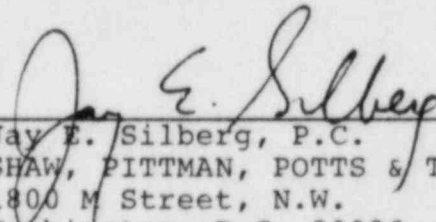
Any personal property which is sufficiently contaminated that it must be disposed, would be sealed in plastic bags and its disposal with a licensed commercial radioactive waste disposal firm arranged by the Ohio EPA. Id., ¶ 4. No advance agreement is required with such commercial firms. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-26, 20 N.R.C. 53, 110 (1984).

Based upon this evidence, it is clear that the reception centers do have the means and facilities for handling contaminated property.

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on the issue of handling contaminated property at reception centers, Applicants' Motion For Summary Disposition of Contention U should be granted.

Respectfully submitted,

  
\_\_\_\_\_  
Jay E. Silberg, P.C.  
SHAW, PITTMAN, POTTS & TROWBRIDGE  
1800 M Street, N.W.  
Washington, D.C. 20036  
(202) 822-1000

Counsel for Applicants

Dated: February 1, 1985