

ANTHONY/FOE BRIEF IN SUPPORT OF OUR APPEAL FROM THE ASLB THIRD PARTIAL INITIAL DECISION, LBP-85-14, SERVED 5/7/85, TO FOLLOW UP OUR NOTIFICATION OF APPEAL, 5/10/85.

June 6, 1985

ASLB ERROR IN RELATION TO FEMA'S ROLE.

1. On page 5 of LBP-85-14 (hereafter LPB-) LB appears to acknowledge an important role for FEMA in, "FEMA is required, in addition to any responsibilities under 44 CFR Part 350 for final, formal approval of State and local emergency plans, to provide findings and determinations.. ." LB thus accepts the relevance of 44 CFR 350 to the offsite emergency planning process, and LB also cites the relation of "MOU" to the NRC and FEMA responsibilities. We do not question the relevance of 10 CFR * 50.47 but we point out to the Board that NUREG-0654 has been deleted from that section of the Code, so it is no longer cited as "appropriate guidance". (Fn. 1. page 425, 50.47 (b), citing NUREG-0654, is not included in the 1/85 revision of Title 10 of the U.S. Code, nor can we find it mentioned at all in 10 CFR-50.47 of the current 1/85 revision.) We agree with the Board that NUREG-0654 FEMA-REP-1 Rev. 1 does offer guidance, since it is cited as guidance in 44 CFR* 350 which the Board did cite. (LPB-p.5.)

however,

2. We believe the Board, erred in apparently focusing on NUREG-0654 to the exclusion of certain requirements of 44 CFR*350 (" Generally, the guidance and criteria for judging the adequacy of onsite and offsite emergency response plans are contained in NUREG-0654." (LBP- p.5)) As an example we find that the Board and FEMA allowed a serious violation of 44 CFR*350.7 (b) in the setting up of the Limerick EPZ.. Sect. 350.7 (b) states, " the exact size and configuration of the EPZs surrounding a particular nuclear power facility shall be determined by State and local governments in consultation with FEMA and NRC.." (Emphasis added) The testimony of FEMA witnesses Kinard and Asher on 1/25/85 before the Board prove that FEMA ignored the requirement that it consult on "the exact size and configuration of the EPZ.." Trans. 20,234 : (The witnesses were asked about the reference to EPZ size, as affected by demography, etc. in 10 CFR 50.47 (c) (2). The same conditions are listed in 44 CFR 350 (b))

Q. (Anthony) Are you aware of any special aspects, demography, topography, characteristics and access routes and jurisdictional boundaries, are you aware of some of those items in relation to the EPZ for Limerick ?

A. (Asher) Only as they have been related to us by the state or the Commonwealth of Pennsylvania and the department of transportation and PennDOT.

Q. You mean you have no responsibility to understand or to help to see that these -- that the requirement is complied with ?

A. Our obligation, as defined in NUREG 0654, is, the choice of the size of the emergency planning zone represents the judgment of the extent of detailed planning which must be performed to assure an adequate response base.

That detailed planning we accept from PEMA and their expertise in PennDOT, and it is reviewed by the expert on our radiological assistance committee from the federal department of transportation.

This exchange proves FEMA's "hands off" position in relation to the Limerick EPZ, and FEMA's failure to assume the responsibility under 44 CFR 350.7 (b) to consult.

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3. It appears, therefore, that the Limerick EPZ was not determined in conformance with FEMA regulations. From this it follows that emergency planning, times for evacuation and all aspects of the off-site plans are brought into doubt as to their ability to be implemented since the base from which they derive, the EPZ, was not set^{up} with the consultation of FEMA, the U.S agency with ultimate authority and expertise in the protection of the public in the event of a nuclear emergency. Further evidence of this failure of FEMA to comply with 44 CFR 350.7 (b) is contained in a letter from P.P.Giordano, FEMA Regional Director, to R.L.Anthony, 2/21/85, included as attachment 1. Mr. Giordano says FEMA has no record of any "matter pertaining to the establishment of the Limerick..(EPZ)". He cites NUEG-0654/FEMA-REP-1, Rev.1 as "the recommended guidelines" but does not mention any FEMA responsibility under 44 CFR 350.7 (b) for the exact size and configuration of the EPZ,"etc., a fatal^{omission} ^

4. We do not know the extent of the Licensing Board's or the Appeal Board's jurisdiction in regard to requiring FEMA compliance with 44 CFR 350 ,but we know that LB cut off our cross examination of the FEMA witnesses so that we were prevented from eliciting further evidence on the process of establishing the configuration of the EPZ (tr. 20,248) We refer the Board to our appeal of 1/31/85 which was not accepted by the Board, in which we asked the Board to require LB to set aside the findings schedule on emergency planning and to recall witnesses for further evidence. We also call the Board's attention to our Findings filed 3/2/85, "under protest since the record on emergency offsite planning is incomplete because of the cutting off of our legitimate and essential opportunity to crossexamine witnesses, thereby prejudicing our case and depriving the record of evidence needed by the Board to make a fair and balanced decision on our contention.."

In LBP-85-14 LB apparently did not respond to our summary in the last paragraph of our Findings 3/2/85, "We think LB has a responsibility to review the performance of PEMA and FEMA in the discharging of their mandates under 10 CFR 50.47 and NUREG-0654". (And we add 44 CFR 350, which we did not have a chance to develop in the record because we were cut off.) See tr.20,239, 20,242, 20,245.

In the light of FEMA's failure to consult on the setting up of the EPZ and PEMA's disregard of the requirements under the regulations above, as they apply to the congested areas specified in LEA-24/FOE-1 , March Creek State Park/Exton area and Valley Forge Park/King of Prussia area, we petition the Board to require these areas to be included in the EPZ (The first alternative in para.2 of LEA-24/FOE-1). Because the extent of EPZ is in question and because all emergency planning starts with EPZ as a base, we petition the Board to require PEMA and the local authorities to re-study the boundaries of the EPZ, in consultation with FEMA as required, and to include any changes in the emergency plans indicated by variations in this reconsidered EPZ. We further petition the Board to remand^{to LB for} a hearing on LEA-24/FOE-1 all matters requiring the management of emergency traffic as it relates to the safety of workers, students, shoppers and transients who would be subject to spontaneous evacuation or planned evacuation as it would be worked out by townships and counties.

5. On 12/5/84 Ranger Fewless of Valley Forge Park testified that he had never been consulted on including the Park in the EPZ and there is no record of the National Park Service ever being consulted in relation to the extent of the EPZ, or inclusion of the Park, despite a section of the Park falling within the 10 mile circle. A letter from J.W. Coleman, Jr. Director of the Mid-Atlantic Region, ^{NPS} 2/21/85 corroborates this. (See Attachment 2.) From this it appears that FEMA failed also to comply with 44 CFR 350.3 (d) which specifies " a cooperative effort with State and local governments and other Federal agencies. (Emphasis added)

Further evidence of FEMA's neglect of its responsibilities under 44 CFR 350 came from Mr. Asher when he was asked (tr. 20,238)"Q. Have you had any part of the deliberations that were considering whether that (the Park) should be included in the EPZ ? A. No. Q. Have you heard any talk about it at all ? A. Only from you.(i.e. R.Anthony) ". (See also Anthony/FOE findings page 3.)

There is nothing in the record to show that FEMA ever opposed the inclusion of Valley Forge Park in the EPZ and FEMA ,significantly , did not file any written testimony on contention LEA-24/FOE-1., and we conclude that FEMA by its silence^{also} does not contest the inclusion of the Park in the EPZ (See our findings, p. 2 and 3.)

We believe that the Board will find that there is overwhelming evidence in the record to support the inclusion of Valley Forge Park in the EPZ (Our findings P.3 & 4) We petition the Board to order the inclusion of the Park in EPZ for the protection of the users of this park, almost 13 million in the year 1983. tr. 14,642.

6. LB's decision is not only based on a EPZ that is flawed because it was set up in violation of FEMA regulations, but its decision is dependent on an Evacuation Time Estimate prepared by Energy Consultants whom AB found ^(LBP- p.13) " to be qualified by position, training and experience", and stated about the consultant Robert Klimm that it "relied on his testimony" yet this Time Estimate was not endorsed by the NRC witness, Dr. Urbanik who was the only Ph.D. traffic expert called to testify. We cite here evidence from Dr. Urbanik's testimony which casts doubts on the reliability of Energy Consultants' time estimate study and evacuation planning.

Tr. 19,226. Dr. Urbanik was asked about the time estimates prepared by HMM Assoc. Q..."are you satisfied that adequate traffic access and traffic control points have been established to adequately manage traffic in the areas of the EPZ as well as beyond the EPZ ?" A. "No."

In his written testimony (p.3 Q.7 ,he was asked, "Is traffic beyond the EPZ unmanageable...? " This changed the wording of the contention (p.2 A.5)"evacuation of the ten mile radius will not be impeded by traffic congestion " to unmanageable. Thus Dr. Urbanik's answers such as on tr. 19,228 are not relevant to the contention. He was relevant, however, at 19,229 when he was asked whether his reservations "related solely to areas outside the EPZ"." A. No. I guess I wouldn't characterize that as being exactly the case."

Dr. Urbanik stressed, tr. 19,231, " one has to look at outside the EPZ as a whole system of highways and that anyone that could relate needs to at least be considered." Tr. 19,238 "A.....If, in fact we have no way to control people getting on the Turnpike on Exit 23, then an assumption-- an assumption has been made..." "But there is nothing in the plans to preclude them from getting on Interstate 76." (Pa Turnpike)

(Dr.Urbanik's testimony continued.)

Dr.Urbanik went on to describe the variations that could cause (tr. 19,240) " a peak condition on the population side " and concluded that " we would have a list that would be so long that it would make the plan useless-- or the estimates useless,I should say. "

It is ,however,these peaks which could make the time estimate study useless. In his testimony Mr.R.Wagenmann responded to a question about KING of Prussia where he is the township manager,"Q. so that at peak times there could be 300,000 individuals who would be shopping or working or visiting in the King of Prussia area?" " A. (tr. 17,437) Yes. That figure I have no problem accepting since the shopping malls themselves, by their own estimate, during the peak shopping periods,each mall can get in excess of 100,000 shoppers. So within the mall itself,during a normal heavy shopping day,you could have approximately a quarter of a million shoppers."

These are apparently not isolated events but "normal heavy shopping " days. It is this kind of traffic demand that could invalidate the time estimates for evacuation from, and through Valley Forge Park/King of Prussia and Marsh Creek/Exton.

7. In addition Dr.Urbanik raised the question of traffic travelling through the EPZ at the time of a radiological emergency, (tr.19,238) "A. The Turnpike is being used as an evacuation route." He points out that, " we can't ignore the fact that there may be ^{some} people from beyond the EPZ using the Pennsylvania Turnpike at the time that it is being desired to use it for evacuation.."

He points out that there will be independent choice of evacuation routes by evacuating individuals.(tr. 19,237) These same routes ,like the turnpike,and other through routes could already be carrying traffic through the EPZ at the time of an evacuation. Dr. Urbanik cited the Turnpike,but what he said about traffic from beyond the EPZ meeting evacuation traffic and competing with this,applies to all the through routes which traverse the EPZ. The significant ones, beside the Turnpike ^(along EPZ), are : Route 422 which is a main through route from Philadelphia to Reading, Pottsville and Sunbury; Rt. 100 from Wilmington and West Chester to Allentown; Rt. 29 and Rt. 252 from Chester to Allentown; and Rt. 73 from North Phila. to Pottsville and Williamsport.All of these routes through the EPZ carry a considerable proportion of through traffic which cannot be ignored,as Dr.Urbanik claims,correctly.

It is apparent,however that the Time Estimate Study took no account of this through traffic when it estimated access to these evacuation routes and movement along them. Dr.Urbanik hints at ways to block off the Turnpike or regulate traffic on it but he does not conclude how much confusion or blockage this would cause, perhaps to the extent of slowing or halting all traffic. Even less does Dr.Urbanik project the impact on evacuation ^{derived} from through traffic on the main arteries traversing the EPZ, but he could have had that in mind when he answered "No." to the question on "adequate traffic access and traffic control points,"tr. 19,226,above.

Dr.Urbanik's opinion that people evacuating will choose their own evacuation routes (tr.19,238) above, seems to assure traffic blockades,even more inside the EPZ than outside, as evacuees choose their own routes and destinations. He sums

it up thus, tr. 19,238, " A....The basis of this is, there is -- you know, experience with evacuations would suggest that not everybody is going to use shelters, some folks are going to opt to go other places.....And the concern I have is that people, you know, may do that. " It appears significant that he says "people", not some people which seems to indicate an appreciable number of evacuees.

In its decision LB does not apply Dr. Urbanik's warnings to the whole framework of emergency evacuation plans and the time estimates. It merely focused on the suggestion of traffic control points outside the EPZ. We ask the Board to remedy this oversight and to give Dr. Urbanik's testimony on the impact of through traffic and " folks..going to opt to go other places" on evacuation from the EPZ, ^{proper weight.} On the strength of Dr. Urbanik's testimony we ask the Board to require a new time study and a complete reconsideration of the emergency evacuation plans. We ask the Board to require LB to recall D. Urbanik as a witness so that the record can be completed. Our cross-examination was cut off at tr. 19,271.

8. We ask the Board to decide whether LB in LBP-pp 15-19 fairly addressed our claims that our cross-examination was unfairly cut off, the record was left incomplete and prejudice was used against our case by LB, thereby damaging our rights as an intervenor. (See our findings p.1) We believe that LB used the pretext of LEA serving as lead intervenor on our contentions to unlawfully curtail our participation . We believe that LB further showed prejudice in its decision by confusing our use of hearing time with that of LEA.

Because of our lack of legal training we submitted "appeals" to the Board during the course of the hearings because of our desperation over the violation of our rights by LB. The Board reminded us that these should have been submitted as requests for directed certification. We are appreciative of the Board's thoughtful response of 12/14/84 to our "appeal" of 12/10/84. We ask the Board to consider again the record of abuses of the judicial process set forth in our 12/10 "appeal". We also call the Board's attention to the instances of the cutting off of our cross-examination of witnesses Asher, Kinard, and Urbanik, (See above) and of Wagenmann (tr. 17,456) and PECO's witness Klimm (1/4/85 hearing). We ask the Board to find these serious abuses, and as such, must appropriately be assigned relief by a reopening of the record and a recall of these witnesses.

SUMMARY. We petition the Board to reverse LB's decision on our contentions and to order LB to reopen the record and to recall the witnesses whose examination by us was cut off, for further questioning. We petition the Board to require that the boundaries of the EPZ be again set up with full FEMA consultation, that the Valley Forge Park/King of Prussia and Marsh Creek Park/Exton be included in the EPZ, and emergency plans be set up for these ^{areas,} and integrated into re-formed total EPZ plan

cc:WRC- ALAB Judges, ASLB, Staff Counsel, Docketing,
FEMA, PEMA, PECO, LEA, Others on Serv. List

Respectfully submitted,

Robert L. Anthony
Boz 186 Moylan, Pa 19066



Federal Emergency Management Agency

Region III 105 South 7th Street Philadelphia, Pennsylvania 19106

FEB 21 1985

Mr. Robert L. Anthony
Box 186
Moylan, Pennsylvania 19065

Dear Mr. Anthony:

After a review of our files, we have found no correspondence, notes, drawings or any other matter pertaining to the establishment of the Limerick plume exposure emergency planning zone (EPZ).

As Messrs. Asher and Kinard testified during the recent Atomic Safety and Licensing Board hearings, FEMA Region III feels that the plume exposure EPZ delineated for Limerick meets the recommended guidelines established in the Introduction to NUREG-0654/FEMA-REP-1, Rev. 1 (copy attached).

If we can be of further assistance, please let me know.

Sincerely,

A handwritten signature in cursive script, which appears to read "Paul P. Giordano".

Paul P. Giordano
Regional Director

Enclosure

ATTACHMENT 1



United States Department of the Interior

NATIONAL PARK SERVICE

MID-ATLANTIC REGION
143 SOUTH THIRD STREET
PHILADELPHIA, PA. 19106

IN REPLY REFER TO:

K14 (MAR-PD)

February 21, 1985

Mr. Robert L. Anthony
Box 186
Moylan, Pennsylvania 19065

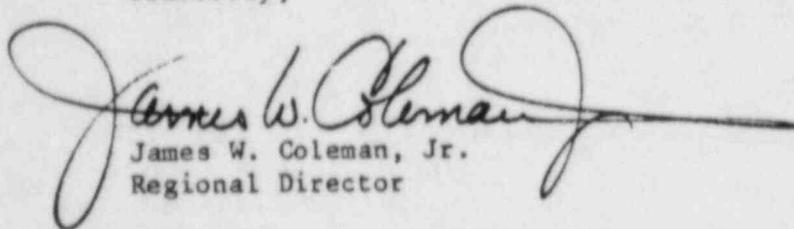
Dear Mr. Anthony:

This is in reply to your Freedom of Information request of February 9, 1985.

We have no information in our files, including the files at Valley Forge National Historical Park, on the Limerick nuclear plant, Plume Exposure Emergency Planning Zone.

Enclosed for your information is a copy of the Department of the Interior's letter to the U.S. Nuclear Regulatory Commission regarding the Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania. As discussed, you are welcome to examine our complete files associated with Limerick.

Sincerely,



James W. Coleman, Jr.
Regional Director

Enclosure

cc: Superintendent, Valley Forge NHP

ATTACHMENT 2

Year of
the
Visitor