7165

September 26, 1988

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

before the

ATOMIC SAFETY AND LICENSING BOARD

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 Off-site Emergency Planning Issues

APPLICANTS' MOTION TO COMPEL
ANSWERS TO INTERROGATORIES AND
PRODUCTION OF DOCUMENTS BY AMESBURY,
HAVERHILL, AND MERRIMAC

Pursuant to 10 C.F.R. § 2.740(f), Applicants hereby move that the town of Amesbury ("TOA"), City of Haverhill ("COH"), and Town of Merrimac ("TOM") [hereinafter collectively the "Towns"] be compelled to answer certain interrogatories and produce certain documents requested of them in Applicants' First Set of Interrogatories and First Request For Production of Documents to All Parties and Participating Local Government Regarding Contentions on the Seabrook Plan for Massachusetts Communities (August 31, 1988) [hereinafter "SPMC Interrogatories"].

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Applicants filed their SPMC Interrogatories on August 31, 1988. On September 14, 1988, TOA filed its interrogatory answers, production response, and a motion for protective order. TOA objected to all but one of the interrogatories, and refused to produce even a single document. On September 16, 1988, COH and TOM filed their answers, responses, and protective order motions.[1] With one minor exception, TOM's and COH's answers and objectives are word-for-word the same as those of TOA.[2] In light of this singular lack of originality on the parts of COH and TOM, a single motion to compel directed at all three identical answers seems the most appropriate and economical response by Applicants.

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[1] Counsel for TOM, who also is counsel for COH, served two copies to TOM's responses on Applicants, but no copy of COH's responses. After calling TOM's counsel about this oversight, Applicants finally received a copy of COH's responses on Septmber 26, 1988.

[2] See infra note 6 and accompanying text. Indeed, it appears that the COH and TOM responses were prepared by whiting out references to Amesbury in the TOA pleading and typing into (most of) the blanks references to Haverhill and Merrimac, as appropriate. See infra note 11.

1. Motion to Compel Production of Documents at the Offices of Applicants' Counsel

Requests 2, 3, 4 and 6(b) of Applicants' SPMC Interrogatories call upon the Towns to produce certain documents. In their prefatory instructions, Applicants state that the "production of the documents requested herein shall take place at the offices of Ropes & Gray, 225 Franklin Street, Boston, Massachusetts, at 10 a.m. on Monday, October 3, 1988."

To this instruction, the Towns made the following response:

> [Fill in name of town] objects to Applicants' request that any documents to be produced by [fill in] must be provided at the offices of Applicants' attorneys in Boston, Massachusetts. The request is unduly burdensome and costly to [fill in], is disruptive of recordkeeping maintained by the Town [sic], and could unreasonably compel [fill in] to transfer documents outside the EPZ. Consistent with Applicants' past practice of making its own documents available for inspection to Intervenors at Seabrook Station, Applicants may similarly assume the burden of coming to [fill in] to inspect any relevant documents of [fill in], provided, however, that said inspection is conducted during the discovery period, during normal business hours, at a mutually agreeable time, following reasonable notice to [fill in].

This objection should be rejected, and the Towns ordered to produce documents at the offices of Ropes & Gray as requested.

Section 2.741(c) of 10 C.F.R. specifies that production of documents shall occur at "a reasonable time, place, and manner." Under the circumstances of these proceedings, the most reasonable place and manner[3] of production is for all ten Intervenors to send copies of their responsive documents to the offices of Ropes & Gray.

The alternative proposed by the Towns would require Applicants to send representatives to ten or more locations,[4] in two different states plus the District of Columbia. The imposition of such an unreasonable and unnecessary burden on Applicants is wholly inconsistent with prior practice in the this proceeding. In the past, Applicants have made documents available to the numerous Intervenors at one central location, i.e. the document production room at Seabrook Station, so that every Intervenor could have equal and continuous access to the voluminous (and, in many cases, protected confidential) documents in the proceedings. It

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[3] The Towns appear not to be making any separate objection as to timing.

[4] If all or most of the Intervenors follow the lead of the Mass AG and insist that Applicants go to each separate office and location where the different types of documents are kept, Applicants would be required to make many more than ten trips. See Massachusetts Attorney General James M. Shannon's Answers and Responses to the Applicants' First Set of Interrogatories and First Request for Documents at 2 (September 23, 1988). If the Intervenors wish to create their own joint centralized documents repository, Applicants would have no objection to examining all the documents there.

likewise is both fairer and more logical to have the numerous Intervenors each send their documents to a single central location.

Moreover, the grounds that the Towns state for their objection do not even begin to establish that centralized production is unreasonable. In light of the refusal of the Towns to identify or produce even a single document, their argument that to produce in Boston would be "unduly burdensome", "costly", and "disruptive to recordkeeping" is incongruous and wholly unsubstantiated. Likewise, universally available and accepted photocopying technology eliminates any danger that the Towns would have to "transfer documents outside the EPZ."[5] There being little if any burden on the Towns from Applicants' choice of production method, and a substantial burden of Applicants from the Towns' choice, both reasonableness and prior practice weigh against the Towns' objection, and it should accordingly be denied.

2. Motion to Compel Answers to Specific Interrogatories.

a. Interrogatory 2

Interrogatory 2 and its response read as follows:

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[5] Presumably the Towns are expressing a concern about transferring the originals of the documents outside the EPZ. If they instead are arguing that all copies must remain within the geographic confines of the EPZ, Applicants are totally at a loss to perceive the basis for that asserted requirement.

"2. Please identify and produce all documents, and describe in detail all conversations not otherwise reflected in such documents, which reflect or refer to what actions any Massachusetts state or local government entity or official would, could, might, would not, could not, or might not take in the event of an actual radiological emergency at Seabrook Station."

"ANSWER:

This interrogatory is objected to on grounds of attorney-client privilege and work product. This interrogatory is further objected to on grounds that it is so overly broad and vague as to be incomprehensible. Whatever actions a [fill in name of town] official 'might not take in the event of an actual radiological emergency at Seabrook Station' could include a decision to postpone a luncheon engagement. Obviously the interrogatory is defective for inquiring into wholly irrelevant matters. [Without waiving any of the foregoing objections, to the extent this interrogatory presents an attempt to determine the response of TOA officials to an emergency at Seabrook Station, TOA has already identified numerous impediments to a planned and organized response. See TOA Contentions 2, 3 and 4, with bases. Among other issues, these contentions assert that the response by TOA officials to an emergency at Seabrook would be ad hoc, and would rely upon whatever personnel or other resources happen to be available at the particular day and time the emergency occurs. For example, since each of the five members of the Town of Amesbury Board of Selectmen hold full time jobs unrelated to their duties as elected town officials, and most are required to travel out of town on some regular basis, it is likely that many, if not all, Selectmen would not be available to provide leadership during an emergency. In addition, as referenced in TOA Contention 4(B), on weekdays during the summer, the TOA Police Department typically has only approximately 7 police officers on duty. In an actual emergency, these officers would be directed by the police chief to take whatever actions he deemed most appropriate and essential given the limited and inadequate resources of the Department to meet a Seabrook emergency. These duties could include

traffic management, security, or rescue.] Since this interrogatory is so vague, however, and wholly fails to specify the nature, scope, or extent of the particular 'emergency' at Seabrook Station contemplated by the question, necessarily [fill in] cannot respond more specifically to this question."[6]

Section 2.740(b)91) permits discovery of any and all "information...reasonably calculated to lead to the discovery of admissible evidence". Interrogatory 2 clearly meets this standard. Far from "inquiring into wholly irrelevant matters", the interrogatory is squarely aimed at the documentation and conversations relevant to the assertions made by various Intervenors (including) in at least six admitted contentions in these proceedings.

At least six of the contentions being litigated before this Board consist of assertions by Intervenors as to what various state and local officers would or would not, could or could not, or might or might not do in the event of a radiological emergency[7] at Seabrook Station. See Joint Intervenor Contentions 22 (state/local officials will always

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[6] The material in brackets was omitted from the response of TOM and COH. This omission is the only difference between the three responses.

[7] Applicants plan for an array of possible radiological emergencies. In light of that fact, and in light of the fact that Intervenors' contentions do not distinguish between different types of emergencies, the Towns' objection that the interrogatory should have been more specific as to "the nature, scope, or extent of the particular 'emergency' contemplated" is groundless. Further specificity is neither possible nor necessary.

reject Applicants' PARs, and the officials' own ad hoc PARs will be inadequate); 24 (delays in briefing state officials); 44A (unlawful to delegate authority to implement SPMC); 61 (responses by state/local officials under Mode 1 of SPMC); 62 (lack of preparedness of state/local officials); 63 (inadequate state/local facilities and equipment). Given the breadth and variety of these assertions by Intervenors, Interrogatory 2 is no more broad or general than is necessary to reach all the documents and conversations which would tend to prove or disprove the truth of those various assertions.[8]

As for the argument that the interrogatory is "incomprehensible", TOA's own response and the examples of information it cites disprove the Towns' own assertion. The interrogatory does indeed seek to determine what response Towns and other officials would or could make to a radiological emergency at Seabrook Station. Documents and conversations showing how many policemen would be available and what duties they would be assigned, or how many selectmen would likely be in town and able to provide leadership, are

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[8] Just about the only objection not raised by the Towns was duplication. However, to anticipate any after-the-fact arguments by them, Applicants note that Interrogatory 2 does not duplicate Interrogatory 6. If the Towns had grouped some or all of the Joint Intervenor Contentions 22, 24, 44A, 61, 62, and 63 into the not-litigated category in response to Interrogatory 5, the Towns could have avoided answering as to those contentions under Interrogatory 6. Interrogatory 2 was therefore necessary to prevent any gaps in the evidence available to Applicants on those six contentions.

excellent examples of the type of information sought.[9] Of course, Applicants' question could not be cast any more specifically, since at this point in the proceedings only the Towns know what their capabilities, limitations, and intentions are.

The Towns' claim of attorney-client privilege should be rejected out of hand as vague, conclusory, and wholly unsubstantiated. If the Towns claim that all documents and conversations responsive to the interrogatory are privileged, such an assertion is simply unbelievable.[10] If they assert that only some material is privileged, they should list the privileged material as requested in Applicants' Instruction 5, and should respond as to all non-privileged information.

The Towns' claim of work product privilege is also defective, for the same reasons. The Towns have abjectly failed to carry their burden of establishing the existence of attorney work product privilege. Public Service Company of

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[9] Even the Town's reductio ad absurdum example, of an official's decision to "postpone a luncheon engagement", tends to show that these supposedly unavailable local officials could in fact be reached in a real crisis, and so is not so absurd. If the Towns have documented the fact that their principal officials can be reached quickly in an emergency, then those documents are responsive and should be identified and produced.

[10] It would, moreover, raise questions of fundamental fairness under due process if Towns were able to conceal all their evidence relevant to the six contentions behind the cloak of attorney-client confidentiality.

New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 495 (1983). Moreover, even if the Towns had carried their burden, Applicants could nonetheless show that Applicants' substantial need for the information overrides the privilege. 10 C.F.R. § 2.740(b)(2). As noted above, only the Towns know what their capabilities, limitations, and intentions are. Accordingly, Applicants would suffer "undue hardship", within the meaning of 10 C.F.R. § 2.740(b)(2), if the Town were allowed to withhold their evidence relevant to the six contentions discussed above.

In sum, Interrogatory 2 clearly and directly calls for identification of documents and conversations directly relevant to the six contentions that deal with what state and local officials could or would do in an actual emergency at Seabrook Station. The Towns have shown neither attorney-client nor work-product privilege to apply, whereas Applicants have shown a substantial need for the material. According, the Board should order that all responsive documents and conversations be listed, and all documents listed be produced.

b. Interrogatory 3

Interrogatory 3 and its response read as follows:

"3. Please identify and produce all documents, and describe in detail all conversations not otherwise reflected in such documents, which reflect, refer to, or relate in any way to any action by any Massachusetts state or local government official or

entity to block, hinder, or delay the licensing of Seabrook Station."

"ANSWER:

This interrogatory is objected to on grounds it is vague, overly broad, argumentative, and, even if more properly drafted, appears to seek communications and documents not subject to discovery by reason of the attorney-client privilege or work product. [Fill in name of town] has never undertaken any actions with the fundamental goal merely to 'block, hinder or delay The licensing of Seabrook Station.' At all times governing officials of [fill in[11]] have taken whatever actions deemed appropriate and necessary to protect the health and safety of their citizens. The intimation in the interrogatory that [fill in]'s motives or methods have been purely obstructionist is highly objectionable."

Intervenors have asserted that Applicants must "demonstrate" that any failure of the SPMC to comply with the standards of 10 C.F.R. § 50.47(b) is the direct result of action or inaction by state and/or local officials in order for Applicants' plan to be accepted under 10 C.F.R. § 50.47(c). Mass AG Contention 2(c). While Applicants disagree with the assertion,[12] as an evidentiary matter Applicants must be allowed to collect the information it

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[11] TOM failed to fill in this blank.

[12] It is unclear whether this assertion, which the Board rejected as a stand-alone contention but accepted as a procedural or organizational point related to the other admitted contentions, has some effect on the scope of discovery under other contentions. See Memorandum and Order (Ruling on Contentions on the Seabrook Plan for Massachusetts Communities, Part I at 15-18 (July 22, 1988); see also Tr. 14390-14391.

would need to make such a showing if required to do so. Since it is impossible now to know which contention(s) might subsequently be found to identify a deviation from the standards of § 50.47(b), Applicants perforce need evidence of the state and local activities and obstacles relevant to all the admitted contentions. Interrogatory 3, therefore, is no broader or more general than is absolutely necessary to reach the evidence that Intervenors assert Applicants must adduce in order to make their case.

The Towns' response as to their "fundamental" goal is evasive. If state and local officials have pursued that "fundamental" goal by actions aimed at blocking or delaying the licensing of Seabrook Station, the documents and conversations relating to those actions should be identified and produced.[13]

Again the Towns raise conclusory and unsubstantiated claims of attorney-client and work-product privilege. Again these vague claims should be rejected. Moreover, since only the Towns know what they have done, and since the Intervenors themselves argue that Applicants will have to prove a nexus between state/local actions and any SPMC deficiency in order

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[13] Applicants' interrogatory made no attempt to characterize the Towns' conduct. If the Towns feel that acts intended to "block, hinder, or delay the licensing of Seabrook Station" are "purely obstructionist" and "highly objectionable", that judgment is entirely their own.

to prevail, Applicants clearly can overcome any claim of privilege made under 10 C.F.R. § 2.740(b)(2).

Given that Intervenors control this evidence, which they allege Applicants must adduce in order to prevail, given that the Interrogatory is no broader than necessary to account for the fact that Intervenors' argument extends to every contention in litigation, and given Applicants' clear and substantial need for the information, a full and responsive answer to Interrogatory 3, and produce of all documents identified therein, should be compelled.

c. Interrogatory 4

Interrogatory 4 and its response read as follows:

> "4. Please identify and produce all documents generated after January 1, 1980 that reflect or refer to any emergency planning (other than that engaged in by Applicants) conducted or contemplated for the Massachusetts EPZ or any portion thereof, including but not limited to emergency planning required pursuant to the Emergency Planning Act. Such documents should include, but not be limited to, documents that reflect or refer to whether the SPMC or any other plan for dealing with a radiological emergency at Seabrook Station has or has not been, or will or will not be, used in planning for emergency situations other than those involving Seabrook Station."[14]
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> "ANSWER:

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[14] The SPMC Interrogatories further define "the Emergency Planning Act" as "the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001 et seq., and all federal and state regulations promulgated pursuant thereto." This statute imposes comprehensive emergency planning requirements on all states and localities, which must be complied with no later than October 17, 1988.

> This interrogatory is objectionable to the extent it seeks to invade the attorney-client privilege or to obtain work product prepared by or on behalf of counsel for [fill in] or [fill in] officials for purposes of litigation. [Fill in] further objects to this interrogatory on the grounds that, to the best of TOA's [sic] knowledge and belief, Applicants are already in possession of all planning documents for the Seabrook EPZ, and further that Applicants "engaged in," or were involved with generating these documents prior to decisions by the Commonwealth and Massachusetts EPZ communities that emergency planning for Seabrook is not feasible. TOA [sic] is not in possession of any planning documents, within the scope of the request, generated since that date. [Fill in] acknowledges, however, its responsibilities to the extent required under the Emergency Planning Act, although no such planning document has been approved by the Town [sic]."

The Towns make no relevance or overbreadth objection to Interrogatory 4 -- and for good reasons. As Towns' officials have publicly acknowledged, the emergency plans drawn up by the localities and the Commonwealth for non-radiological emergencies in the geographic area of the Seabrook EPZ are directly relevant to the truth of the assertions contained in the various admitted contentions in these proceedings. See "No conclusion drawn on drill's impact", Newburyport Daily News, May 3, 1988 (William Lord and other Amesbury officials express concern that local emergency planning will be used to

prove feasibility of Seabrook planning), attached hereto as Exhibit A.[15]

In light of that fact, the Towns' answer is blatantly evasive. The assertion that Applicants possess all documents concerning non-radiological emergency planning in the EPZ is false -- only the Towns and the Commonwealth have all of that concededly probative information. Nor is the statement that "no such planning document has been approved by the Town" responsive. The interrogatory calls for all documents relating to planning being "conducted or contemplated", not just for the final approved plans.[16]

The Towns' pro forma claims of attorney-client and work-product privilege, as well as being conclusory and unsubstantiated, are inappropriate. It simply is inconceivable that the documents possessed by, for example, the Towns' civil defense departments are "work product

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[15] The evidentiary value of local non-radiological emergency plans is nearly as far-reaching as the contentions themselves. Does Merrimac rely on commercial telephones for communications during a hurricane? If so, that is probative evidence as to Joint Intervenor Contention 30. What schools, nursing homes, and other institutions has Amesbury identified for evacuation in the event of a chemical spill? That list could be compared to Applicants', under Joint Intervenor Contentions 45 and 48. Similar examples abound -- equipment availability, evacuation routes, etc. Mr. Lord's sense of what evidence would be relevant is, in this instance, well founded.

[16] Had Applicants asked only for the final, approved plans, the Towns in theory could have withheld the information by delaying approval.

prepared . . . for purposes of litigation", let alone privileged attorney-client communications. Moreover, even if the Towns had made a showing of work product privilege, Applicants are able to overcome it by showing a substantial need for these otherwise inaccessible documents.

Only the Towns know what non-radiological emergency planning they have done or are doing. Identification and production of this clearly probative material should be compelled.

d. Interrogatory 5

Interrogatory 5 and its response read as follows:

"5. Please list every admitted SPMC contention which you do not intend to participate in litigating, i.e., concerning which you will not take discovery, present evidence, make arguments, conduct cross-examination, or submit proposed findings."

"ANSWER:

As Applicants should be aware, this interrogatory is premature. Presently, the Commonwealth, EPZ Towns in Massachusetts, and Applicants, are engaged in streamlining and consolidating the numerous admitted contentions for submission as "joint intervenor" contentions. As of the date of these answers,[17] that process has not been completed. Identification of contentions that [fill in name of town] may choose to litigate is wholly premature and speculative. In addition, any responses Applicants may make to [fill in]

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[17] That the statement is questionable as of September 14, when TOA filed its answers, and even more dubious as of September 16, when COH and TOM filed their derivative responses. The last negotiating session, in which the final changes to the Joint Intervenor Contentions were hammered out, occurred at the offices of Applicants' counsel on September 13. Counsel for TOA, TOM, and COH were not present.

discovery requests may impact on [fill in]'s decision whether to proceed with further litigation of particular contentions."

The refusal of the Towns to answer Interrogatory 5 is mystifying. By indicating what contentions they presently intended to litigate, the Towns would have been able to control not only the scope of the reply they needed to make to Interrogatory 6, but also the number and subject of follow-up interrogatories that they would receive from Applicants in the future. As discussed under Interrogatory 6 below, Applicants have no desire to burden either themselves or any particular intervenor with interrogatories concerning subjects about which the intervenor is unlikely to have information and which the intervenor does not intend to litigate. Interrogatory 5 gave the Towns the ability to opt out of large amounts of potentially empty discovery practice. Yet the Towns deliberately threw away that option.[18]

If the Towns' response is intended to mean that they presently have no intentions as to whether they will litigate any of the admitted contentions, that in turn has very disturbing implications. If TOA is no longer sure that it even wants to litigate its own contentions, it should

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[18] Applicants' attempt, through Interrogatory 5, to learn which Intervenors presently intend to be involved in litigating which contentions is entirely consistent with the Board attempt to bring some sort of order, and achieve some measure of economy of effort, in these proceedings. Tr. at 14290-14291

withdraw those contentions, in accordance with the Board's instructions at the pre-hearing conference. Tr. 14295-14296. Likewise, COH and TOM are participating in these proceedings pursuant to 10 C.F.R. § 2.715(c) as "interested" municipalities. If COH and TOM are no longer even sure that they are "interested" in litigating any particular contentions, then they should withdraw rather than waste the Board's and the other parties' time with frivolous participation. Tr. at 14503, 14505, 14510.

The Towns know what their present intentions are. There is no good reason why they should not state those intentions. There are excellent reason of economy of effort -- including the Towns' own efforts -- that they should state their intentions. Responses to Interrogatory 5 should be compelled.

e. Interrogatory 6

Interrogatory 6 and its response read as follows:

"6. For every admitted SPMC contention that you submitted and do not hereby withdraw, and for every other admitted SPMC contention that you did not list in response to Interrogatory 5 above, individually for each such contention please:

(a) State in detail all the facts underlying each assertion contained in the contention;

(b) State the source of each such fact. If the source is the personal knowledge of one or more persons, identify the person(s). If the source is one or more documents, identify and produce the document(s);

(c) Identify any expert witness who is to testify concerning the contention, and state the substance of the facts, opinions, and grounds for opinions to which the expert is expected to testify;

(d) Identify any non-expert witness who is to testify concerning the contention, and state the substance of the facts to which the witness is expected to testify; and

(e) Identify and produce any documents which reflect or refer to any type of study, calculation or analysis bearing upon the substance of the contention."

"ANSWER:

a. See Answer to Interrogatory 5. By way of further objection, this interrogatory is objected to as vague and unduly burdensome. [Fill in name of town] asserts that 'the facts underlying each assertion contained in the contention' are stated with reasonable specifity in the basis for each contention proffered by TOA. Absent a reasonably specific request by Applicants for particular information, [fill in] objects to Applicants' fishing expedition for 'all the facts' which may possibly pertain to any particular contention.

b. See answer to Interrogatory 5 and 6a.

c. See answer to Interrogatory 5 and 6a. By way of further answer, [fill in] has not yet identified any experts who will testify on behalf of [fill in].

d. See answer to Interrogatory 5 and 6a. By way of further answer, this interrogatory is objected to as outside the scope of permissible discovery, as premature, and as constituting a fishing expedition intended to intrude into the litigation strategies, [sic] and mental impressions of [fill in] counsel and officials.

e. See answers to Interrogatories 5, 6a, and 6d. By way of further objection, this interrogatory, which seeks any document 'bearing upon' a contention is so broad and vague as to be incomprehensible."

The Towns mischaracterize the scope of Interrogatory 6. Far from seeking all the facts "which may possibly pertain to

any particular contention," Applicants asked only for the facts "underlying" each Town's own contentions and those other contentions which the Town intends to litigate. In other words, Interrogatory 6 called upon the Towns to reveal the facts upon which they relied in making the assertions contained in their own admitted contentions,[19] and the facts they possess concerning these other contentions which they presently intend to litigate. Far from being a "fishing expedition",[20] the interrogatory only asked for those facts already known to the Towns concerning those specific issues in which they have taken an interest.

If the Towns find it "unduly burdensome" to respond to the Interrogatory, they have no one to blame but themselves. Applicants made every attempt, by allowing the Towns to use Interrogatory 5 to opt out of discussing contentions of no interest to the Towns, to confine the scope of each Town's responsibility to the issues which it itself raised and/or in which it presently is actively interested. Applicants cannot

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[19] Since COH and TOM do not have admitted contentions, this prong of the interrogatory goes only to TOA.

[20] For obvious reasons, the signer of the SPMC Interrogatories is amused by the characterization of his efforts as a "fishing expedition." To alter the metaphor slightly, it appears that the erstwhile hunters suddenly perceive themselves as the hunted.

be blamed for the Towns' short-sightedness in spurning Interrogatory 5.[21]

The Towns' underlying response, that "'the facts underlying each assertion contained in the contentions' are stated with with reasonable specificity in the basis for each contention proffered by TOA", is evasive, for several reasons.[22] First, Applicants carefully defined the term "contention", for the purposes of these interrogatories, to include the bases and sub-bases as well as the contentions themselves. Towns' answer is thus circular.

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[21] Apparently the Towns would have preferred that Applicants list every single assertion contained in every admitted contention, basis, and sub-basis, and require every party to state all it knew concerning each individual question. Of course, if Applicants had done so, the interrogatories would have had to be served on each party in a box, due to their bulk. This approach would also have required the Towns to respond to many questions (possibly a vast majority) in which they had no real interest.

Also, as the Towns note elsewhere, the SPMC Interrogatories were filed during the period when the Intervenors were revising and consolidating their contentions. During this period, Intervenors were in control of the language to be used in the final contentions. Thus, it made little sense to Applicants to ask questions about assertions which the Intervenors may have been revising or abandoning during the consolidation process. Apparently the Towns object to this attempt by Applicants to save effort too.

[22] Moreover, the answer is incomplete, since it only addresses TOA's assertions. Having refused to answer Interrogatory 5, the Towns obligated themselves to address all the admitted contentions in Interrogatory 6.

Second, the contentions and bases contain assertions, not facts.[23] The Intervenors (including TOA) assert, for example, that Applicants have not identified all special facilities in the EPZ. See Joint Intervenor Contention 50. The facts underlying that assertion would be all the facilities known to the Towns that Applicants have not identified. Likewise, the Intervenors (including TOA) assert that they have inadequate equipment or personnel to follow the SPMC. The facts underlying that assertion would be a list of all types of equipment and personnel that are inadequate, and a factual explanation of the inadequacy (similar to Mr. Lord's dissertion at page 3 of TOA's response). In short, all Applicants asked for were the facts known to the Towns in framing their contentions. Surely the Towns must have had such facts -- otherwise they could not in good faith have made the assertions.

Turning to the Towns' "further" objections, subsection d of Interrogatory 6 asks only for the identity of certain witnesses, known to the Towns but to no one else, whom the Towns contend have probative evidence to offer on the contentions in issue. Such a request clearly is permissible,

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[23] Even if the Towns were correct in arguing that the bases contained all the facts available to them, moreover, the Towns' abject failure to state the sources of those facts, as required by sub-part b of Interrogatory 6, is simply inexcusable.

and in no way impinges on the "litigation strategy" or "mental impressions" of counsel.

Likewise, the Towns' objection to subsection e is groundless. This narrow question asks only for studies, calculations, and analyses -- a very narrow subset of documents -- which the Towns possess concerning the issues they intend to litigate. It does not seek "any documents 'bearing upon' a contention." Far from being "broad", "vague", or "incomprehensible", the question goes directly to the heart of the issues the Towns themselves have chosen to raise.

CONCLUSION

For the reasons stated above, answers to Interrogatories 2, 3, 4, 5, 6(a), 6(b), 6(d), and 6(e), and production of all responsive documents, should be compelled by the Board.

By their attorneys,

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EXHIBIT A

No conclusion drawn on drill's impact

By ANNE MARIE REIDY
Daily News staff

AMESBURY — How much planning can be done to protect residents against emergencies such as chemical spills, without endangering Amesbury's legal fight to block the licensing of the Seabrook nuclear power plant?

Amesbury town officials came to no conclusions last night.

Tension and sharp words marked an hour long discussion by the selectmen, Town Manager Michael Basque and Civil Defense Director Richard Clark.

But the selectmen — without taking any votes — simply agreed that more communication was called for. They asked Clark to give them a month's notice of future drills, even if they seem not to be related to evacuation plans for the Seabrook plant, so the legal implications can be considered.

Whether Clark would be allowed to draw up emergency plans to deal with a potential chemical spill at a local industry or the town's water treatment plant, train his workers, and test those plans, was not resolved.

"Where do we draw the lines protecting the citizenry in relation to a chemical release, which may not be very different from any other kind of release?" asked Selectman Donald St. Marie.

Board members had called Clark to their meeting following the cancelation of Amesbury's participation in an April 23 civil defense drill.

After hearing it announced at an area civil defense director's meeting, Clark said, he decided the April 23 drill would be good training for his volunteers, and a chance to develop contacts with the Civil Air Patrol.

It would have involved land and air tracking, still and video photography of Tuxbury Pond, Lake Attitash, Lake Gardner and the Powow River, and radio communication drills using several alternative networks, he said.

He said he informed the town manager on April 19 of what was involved. There was no Seabrook connection, Clark said.

Selectmen William Lord, Neil Morrissey and James Thivierge said they became aware of the drill when newspaper stories appeared on April 22.

They said they were concerned the drill results could be used by Seabrook operators to back up their claims that evacuation plans for Amesbury could work effectively, and asked Basque to cancel it.

Lord said he had asked Basque to block Amesbury's participation in the April 23 drill, because he was convinced it could harm the town's legal standing on the Seabrook cases.

Amesbury is party to several legal challenges that could affect the licensing and opening of the Seabrook plant.

New Hampshire Yankee, operator of the Seabrook plant, hopes to demonstrate to the federal Nuclear Regulatory Commission (NRC) that evacuation plans developed by them reflect real conditions that would exist during emergency evacuations in the event of an accident at the Seabrook plant.

Lord said the governor and the state attorney general's office were upset with state Civil Defense's decision to run the April 23 drill, and predicted the state would pressure state Civil Defense to cancel a planned May 17 drill.

"The problem seems to be a double standard," Clark said. He said he has been told to follow some state Civil Defense directives on removing Seabrook warning sirens, but is not being allowed to do state mandated planning for non-Seabrook emergencies, such as chemical spills.

The town must meet an October deadline set by the federal government. Clark said he is preparing emergency evacuation plans for every business and industry in town that uses any of 401 substances listed as hazardous.

"It requires lists of hospitals, schools, special needs facilities in the area," Clark said. "If you look at this, we're going to run into the same thing over again — it refers to evacuation."

Basque said, "They (NH Yankee) can take anything we do and use it on their legal arguments. We've been purposely dragging our feet on this (hazards plan) because of that."

Tom Monahan, executive director of the anti-Seabrook group CAN, said that, based on their comments, he did not believe Clark, Basque and Gaudet "understand the sensitivity of the litigation the town is involved in."

Monahan suggested the selectmen create a review board to weigh whether future drills could affect the town's legal standing on Seabrook cases.

He also suggested a workshop be held to update town officials on the utility's strategy, and that the town inventory all items received from NH Yankee, to see if they include things not immediately useful to the town.

'88 SEP 28 P5:39

CERTIFICATE OF SERVICE

I, Jeffrey P. Trout, one of the attorneys for the Applicants herein, hereby certify that on September 26, 1988, I made service of the within document by depositing copies thereof with Federal Express, prepaid, for delivery to (or, wnere indicated, by depositing in the United States mail, first class postage paid, addressed to):

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