

AA61-2 PDR

Mr. Robert Lowenstein, Esq.
Lowenstein, Newman, Reis & Axelrad
1025 Connecticut Avenue, N.W.
Suite 1214
Washington, D.C. 20036

Dear Mr. Lowenstein:

This is to close out the petition for proposed rule making we received from you on May 7, 1976. As you know, events such as the Sholly case and new legislation have superseded your petition. Though we have denied your petition, as explained in the three Commission papers we enclose for your information (SECY 83-16, 83-16A and 83-16B), we believe we have met the spirit of your proposal by promulgating an interim final rule containing standards (for reviewing significant hazards issues) that are as precise and predictable as possible. We are also promulgating an interim final rule on public notice and comment and State consultation procedures, as described in the enclosed documents.

We would be pleased to review whatever comments you may have on the interim final rules.

Sincerely yours,

Guy H. Cunningham, III
Executive Legal Director

Enclosures:
As stated

bcc: JPhilips, RPB

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

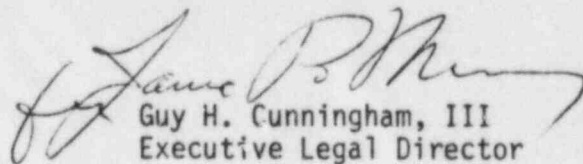
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GEORGE A. FISHER
CLERK

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON, D. C. 20001

April 4, 1983

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RE: No. 80-1691 - Steven Sholly, Donald E. Hossler v. U.S. Nuclear
et al. Regulatory Commission, et al., and the United
States of America

Dear Counsel:

I am enclosing herewith a copy of an order entered today in the
above entitled case.

Yours,

Christine M. Smith
Opinions Clerk

Enclosure
Distribution:

- Daniel P. Sheehan, Esquire
- Stanford Sagalkin, Esquire
- Stephen F. Eilperin, Esquire
- George F. Trowbridge, Esquire

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1691

September Term, 1982

Steven Sholly, Donald E. Hossler,
Petitioners,

v.

U.S. Nuclear Regulatory Commission, et al., and
United States of America,
Respondents,

and

Metropolitan Edison Company, et al.,
Intervenors.

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 4 1983

Nos. 80-1783, 80-1784

GEORGE A. FISHER
CLERK

People Against Nuclear Energy,
Petitioners,

v.

U.S. Nuclear Regulatory Commission, et al., and
United States of America,
Respondents,

and

Metropolitan Edison Company, et al.,
Intervenor-Respondents,

Before: WRIGHT, MIKVA, EDWARDS, Circuit Judges.

ORDER

These cases came before the Court for consideration on petitions to review two orders of the Nuclear Regulatory Commission (NRC). The orders modified the operating license of Metropolitan Edison Company, authorizing it to release radioactive gas into the atmosphere at a faster rate than the existing specifications allowed and to vent the atmosphere of the nuclear containment building at the Three Mile Island plant. On November 19, 1980 this Court held that the orders were license amendments within the scope of § 189(a) of the Atomic Energy Act (Act), 42 U.S.C. § 2239(a)

(1979), and that, as such, NRC's failure to hold a requested hearing prior to the issuance of these orders was a violation of the Act. Sholly v. Nuclear Regulatory Commission, 651 F.2d 780 (D.C. Cir. 1980) (per curiam). Both the NRC and Metropolitan Edison Company petitioned for and were granted a writ of certiorari. On February 22, 1983 the Supreme Court vacated this Court's opinion as moot and directed this Court to reconsider the case in light of Pub. L. No. 97-415, 96 Stat. 2067 (1983).

Public Law 97-415 is an act authorizing appropriations for the NRC. It also includes, however, a substantive amendment to § 189(a), which is set out in section 12. 96 Stat. 2073-74 (to be codified at 42 U.S.C. § 2239(a)(2)). This amendment allows the NRC to issue and make a license amendment immediately effective if it makes a finding that no significant hazards consideration is involved. The legislative history of this amendment makes clear that the only legal significance of this change is the timing of the hearing; a hearing is still required, but, if no significant hazards considerations exist, it need not be held prior to the effective date of a license amendment. H.R. Rep. No. 97-884, 97th Cong., 2d Sess. 37 (1982). In furtherance of this change, Congress also directed the NRC to promulgate regulations establishing standards for determining whether significant hazards are involved and criteria for providing prior notice in emergency situations. NRC's authority to issue and make immediately effective a license amendment does not itself take effect until these regulations are promulgated.

Having considered Public Law 97-415, we find that the portion of our opinion holding that a hearing requested under § 189(a) of the Act must be held prior to a license amendment's becoming effective will be moot as soon as NRC promulgates the regulations to which we refer above. We also find, however, that the NRC is still under a statutory mandate to hold a post hoc hearing, if requested by the parties. Upon consideration of the foregoing, it is

ORDERED, by the Court, that our opinion in Appeal Nos. 80-1691, 80-1783, and 80-1784 is vacated as moot. And it is

FURTHERED ORDERED, by the Court, that the case is remanded to the NRC so that, if the petitioners so desire, the hearing required by 42 U.S.C. § 2239(a) may be held. And it is

FURTHERED ORDERED, by the Court, that the Clerk shall issue the mandate herein on the seventh day following entry of this order.

Per Curiam
For the Court

George A. Fisher

George A. Fisher
Clerk

Bills of costs must be filed within 10 days after entry of judgment. The Court locks with disfavor upon motions to file bills of costs out of time.

GEORGE A. FISHER
CLERK

AA61-2 PDR
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON, D. C. 20001

✓
April 4, 1983

RE: No. 80-1691 - Steven Sholly, Donald E. Hossler v. U.S. Nuclear
et al. Regulatory Commission, et al., and the United
States of America

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Christine M. Smith
Opinions Clerk

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CLERK

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Per Curiam
For the Court

George A. Fisher

George A. Fisher
Clerk

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