

6523.

DOCKETED
USNRC

'88 JUN 13 AIO:30

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Ivan W. Smith, Chairman
Gustave A. Linenberger, Jr.
Dr. Jerry Harbour

In the Matter of)	Docket Nos. 50-443-OL
)	50-444-OL
PUBLIC SERVICE COMPANY)	(ASLBP No. 82-471-02-OL)
OF NEW HAMPSHIRE, et al))	(Offsite Emergency Planning)
)	
(Seabrook Station,)	
Units 1 and 2))	June <u>10</u> , 1988

SEACOAST ANTI-POLLUTION LEAGUE'S REPLY
TO APPLICANTS' AND STAFF'S RESPONSES
TO SAPL'S SPMC CONTENTIONS 1-10
AND SAPL'S LATE-FILED CONTENTION 11

Now comes the Seacoast Anti-Pollution League and submits its reply to Applicants' and Staff's Responses to SAPL's SPMC Contentions 1-10 filed April 11, 1988 and SAPL's Late-Filed Contention 11 filed on May 13, 1988.1

SAPL Contention 1

Contrary to the requirements of 10 CFR §50.47(a)(1), 10 CFR Part 50 Appendix E, Sections IV.A.8. and IV.D.3. and NUREG-0654, Rev. 1, Supp. 1, II.A.2.a. and b., II.A.3, II.E.1. and 3. and NUREG-0654, Rev. 1 I.E., the responsibilities, authorities and concept of operations between the NHY-ORO, State of New Hampshire and the Commonwealth of Massachusetts in ordering any protective action have not been sufficiently defined nor set forth in advance in any written agreement to ensure a prompt and adequate emergency response. Further, the Implementing Procedures for coordination of response are inefficient and inadequate.

1/SAPL misnumbered its late-filed contention "SAPL Contention 10." It should be numbered "SAPL Contention 11."

D503

SAPL's Position

The Applicants' urge that this contention should be rejected because they claim there is no regulation or guidance related to the resolution of differences between the governors of states regarding protective action decision-making. The Staff states slightly differently that there is no regulatory basis for a written agreement between state governmental officials. There is indeed a regulatory requirement for definition of authorities and responsibilities of state officials in deciding on and controlling appropriate protective actions at 10 CFR Part 50 Appendix E at IV A. 8 and IV D. 3. Whether a letter of agreement is necessary may be an issue that can be argued, but there is no denying that the concept of operations between response organizations, including state governments, must be clearly set forth in the plans. The Staff's argument that this decision-making issue is a speculative one is senseless because at this point any difficulties that could arise during a radiological emergency at Seabrook are a matter of speculation. One of the purposes of emergency planning is to put in place the framework for arriving at rapid protective action decisions, to anticipate in advance any difficulties that may arise and to establish the mechanisms for resolving those difficulties. Even when the presumption that the governors of the two states will use their "best efforts" is accepted, the potential for conflicting protective action recommendations leading to a chaotic and ineffective response is not thereby

eliminated. An emergency response must be coordinated and organized in order to be effective.

SAPL cited a specific representative example in its contention basis of an inefficiency in the implementing procedures for coordination of the response. SAPL did not merely make a "broad assertion" without "basis and specificity" as the Staff asserts. The staff claims that the circuitous communication is at least an indirect result of the lack of participation by state and local entities. In the case of SAPL's cited example, this allegation does not make sense since a non-participating state agency is called prior to the non-participating Governor's office being called. Why this is necessary is not illuminated by the Staff's discussion.

Applicants' claim that the notification of offsite authorities is under the jurisdiction of the onsite board. The only issue which that Board is addressing is offsite notification of the public via the public alerting and notification system.

SAPL Contention 2

The SPMC fails to provide reasonable assurance of an adequate protective response because the staging area in Haverhill (see Figure 5.2-3) for buses designated in the plans will not be available for use. Therefore, there is no available location designated in the SPMC at which buses can be coordinated and staged to pick up transit dependent, special needs and special facilities populations in the 6 Massachusetts communities. Effective use of assistance resources is therefore not reasonably assured and the SPMC therefore fails to meet the requirements of 10 CFR §50.47(a)(1), §50.47(b)(3), §50.47(b)(10) and NUREG - 0654, Rev. 1, Supp. 1, II.J.10.g and II.J.10.k.

SAPL's Position

The Applicants' claimed that there was no basis for this contention since the City of Haverhill withdrew its suit and the matter of use of the staging area was before the Zoning Board of Appeals.

SAPL has been informed that the Zoning Board of Appeals denied the Applicants' request to use the staging area and the matter is under appeal by Applicants in Superior Court. Clearly, the current status is that the staging area is not available. The burden is upon the Applicants to show the existence of a viable staging area.

The Staff takes the position that a matter of local zoning is beyond the jurisdiction of this Board. SAPL is not seeking to get the Board to enter this zoning dispute but simply to deal with the adequacy of the SPMC in light of the fact that the staging area is not legally available. The Staff then argues that even though the area was not available for a drill, there is no showing it will not be available in a general emergency. SAPL would argue that the area will not be available for drills and exercises and that, therefore, any use of the area in an emergency would be an ad hoc response, if it could be used at all.

SAPL Contention_3

The SPMC fails to provide reasonable assurance that adequate personnel, equipment and facilities for radiological monitoring and decontamination of general public evacuees, emergency workers and special facility evacuees (e.g. nursing home residents) have been established. Furthermore, the definition of "contamination"

is 600 cpm above normal background radiation in the SPMC, which allows a greater level of contamination of Massachusetts residents to remain unaddressed while New Hampshire residents are decontaminated at 100 cpm under the NHRERP. Therefore, the requirements of 10 CFR §50.47(a)(1), §50.47(b)(8), §50.47(b)(10), §50.47(b)(11) and NUREG - 0654, Rev. 1, Supp. 1 II.H.4, II.J.10.d, II.J.12, II, K.5.a and K.5.b. have not been met.

SAPL's Position

Applicants do not contest the admission of the first sentence of the contention. The Applicants argue that the balance of the contention, related to comparison of allowable contamination levels in the two states, should be rejected as having no regulatory basis. SAPL would state that 10 CFR §50.47(a)(1) requires that there be reasonable assurance of "adequate" public protection and that a determination as to what is "adequate" must be made and applied to the entire plant site. That the difference in cpm's is due to the use of different instrumentation has not been demonstrated. The plans on both sides of the border should also state the exposure levels in millirems per unit time to eliminate this ambiguity and assure adequate public protection. SAPL notes with interest that Amendment 5 to the SPMC now states that the allowable contamination level on the Massachusetts side of the border is 200 cpm.

The Staff argues that there is no regulatory requirement for the decontamination of general public evacuees. The Applicants do not go quite this far. They simply argue that there is no time limit within which decontamination of evacuees must be accomplished. The Federal Emergency Management Agency witnesses

have asserted the position in the New Hampshire case that decontamination falls within the meaning of the phrase "range of protective actions." A range of protective actions is required at 10 CFR §50.47(b)(10). Further, the guidance that evacuees must be monitored, as the requirements are interpreted at NUREG-0654, FEMA-REP-1 Rev. 1, Supp. 1 at J.12, is rendered absurd by the notion that nothing is to be done about the contamination after it is detected. SAPL would argue that the proper interpretation of the regulations is that since monitoring should be accomplished within 12 hours, the concatenate activity of decontamination of contaminated individuals should be accomplished within the same time frame.

The parts of SAPL's contention basis regarding the lack of capacity of monitoring trailers is very specific and includes a calculation of the total number of people who, under optimistic conditions, could reasonably be expected to receive adequate services at the trailers. Please see "SAPL Contention 2" above for a reply to the Staff's "best efforts" argument in regard to the Haverhill staging area. SAPL would further state that it does not buy the argument that "best efforts" are the appropriate legal standard for judging plan adequacy or that, even if they were, it could be construed to be a "best effort" to choose a legally unavailable staging area.

SAPL Contention 4

The SPMC fails to provide adequate means for the handling and disposal of contaminated waste water and contaminated materials,

contrary to the requirements of 10 CFR §50.47(a)(1), §50.47(b)(9) §50.47(b)(11) and NUREG - 0654 II.I.8 and k.5.b.

SAPL's Positic

Applicants do not oppose the admission of this contention. The Staff does not oppose the part of the contention dealing with waste water, which apparently means that the staff does object to the portion dealing with waste materials. No grounds are asserted for this opposition, however, and therefore the contention should be admitted in its entirety.

SAPL Contention 5

The SPMC fails to meet the requirements of 10 CFR §50.47(a)(1), §50.47(b)(12) and NUREG-0654, Rev. 1, Supp. 1, II L.1, 3 and 4 because the hospitals identified in the SPMC are not sufficient to evaluate radiation exposure and uptake, are not adequately prepared to handle contaminated individuals and are not adequately prepared to handle contaminated injured persons. Further, there are not adequate arrangements in the SPMC for transporting victims of radiological accidents to medical support facilities.

SAPL's Position

The Applicants have no objection to the admission of this contention into litigation. The Staff says that the contention lacks basis and specificity because it does not set out why the planning for contaminated injured individuals does not meet the criteria at 51 Fed. Reg. 32904 (September 17, 1986). While not specifically referencing the Commission's "Statement of Policy on Emergency Planning Standard 10 CFR §50.47(b)(12)", SAPL did point out why the hospital letters listed in the SPMC do not rise to the level of even an adequate list of local treatment

facilities. At 51 Fed. Reg. 32905, the Commission has stated that satisfactory medical arrangements should include:

(1) a list of local or regional medical treatment facilities and transportation providers appropriately annotated to show their capacities, special capabilities or other unique characteristics, (2) a good faith reasonable effort by licensees or local or state governments to facilitate or obtain written agreements with the listed medical facilities and transportation providers, (3) provision for making available necessary training for emergency response personnel to identify, transport, and provide emergency first aid to severely exposed individuals, and (4) a good faith reasonable effort by licensees or state or local governments to see that appropriate drills and exercises are conducted which include simulated severely-exposed individuals.

These requirements have not been met, as the basis of SAPL's contention clearly sets forth.

SAPL's Contention_6

The SPMC fails to meet the requirements of 10 CFR §50.47(a)(1), §50.47(b)(3), §50.47(b)(10) and NUREG-0654 Rev. 1 Supp. 1. II.J.10.C and J.10 g. because the method of picking up evacuees along predesignated bus routes, transporting them to transfer points and then busing them to reception centers as described in the SPMC is not a practicable means of providing adequate public protection.

SAPL's Position

The Applicants do not object to the litigation of this contention as long as no evidence is allowed on the issue of transfer points being in violation of local zoning ordinances. The Staff agrees with Applicants on this issue and further states

that the contention does not specifically indicate why the bus routes are insufficient or why there should be route maps.

On the latter points, SAPL would state that the length of the bus routes are matters related to the ETE's and the burden of proof is upon Applicants to show that the routes are a practical solution to provide adequately for the needs of transport dependent individuals. FEMA has required that adequate maps be provided for the New Hampshire EPZ bus routes and it is indeed absurd to expect that the vast majority of emergency workers would know, without maps, what routes they are supposed to traverse to pick up evacuees.

The issue of the transfer points being in violation of local ordinances is a significant issue as regards plan adequacy. Without drills and an exercise using the designated areas, any emergency response would be an ad hoc effort and the specific transfer points could prove inadequate to the uses for which they are intended.

SAPL Contention 7

The SPMC fails to provide reasonable assurance of adequate public protection because there are no plans and no specific designations of host facilities to which each special facility is to evacuate and no personnel specified to effect the appropriate protective actions for those facilities. Further, the lack of plans for the Amesbury schools affects students from So. Hampton, N.H. who attend Amesbury High School. Therefore, the requirements of 10 CFR §50.47(a)(1), §50.47(b)(10) and NUREG - 0654 II J.10.d and Article XIV of the U.S. Constitution are not met.

SAPL's Position

Applicants and Staff have no objection to this contention except for the portion which discusses the Amesbury High School students from South Hampton, N. H. not receiving equal protection under the laws as required by Article XIV to the U. S. Constitution (the Fourteenth Amendment). The Staff states that there is no basis for the statement that the South Hampton, N. H. students would not receive the same protection offered to other students and transients in the Massachusetts portion of the F. That is not the point being made. The point being made is that those students will not receive equal protection to that afforded to other New Hampshire citizens. The Applicants simply state that the New Hampshire students could choose to go to school in New Hampshire without any showing that that is a viable option. They further state that the equal protection clause applies to state action. SAPL does not dispute that. It is citizens of the State of New Hampshire who are not receiving equal protection. However, SAPL finds it interesting that Applicants advance the argument that because the Commonwealth "is not authoring" the SPMC, there is not a requirement for equal protection for the Commonwealth's citizens. As long as the presumption that state governments will participate in an emergency response is the legal interpretation applied, any laws applying to said states must be construed as being in force.

SAPL Contention 8

The area of planning of the plume exposure Emergency Planning Zone (EPZ) under the SPMC is not of sufficient extent to provide reasonable assurance of adequate public protection because it excludes the City of Haverhill, Massachusetts which is a significant population center through which a major evacuation route, I 495, traverses. Therefore, the requirements of 10 CFR §50.47(a)(1) and §50.47(c)(2) have not been met.

SAPL's Position

The Applicants and Staff claim that this contention constitutes an impermissible attack on the Commission's regulations when it is, instead, simply pointing out that in accord with the Commission's regulations at 10 CFR §50.47(c)(2) the EPZ should be expanded to encompass the City of Haverhill in a fashion directly analogous to the inclusion of the City of Portsmouth in the New Hampshire portion of the EPZ.

SAPL's Contention 9

The SPMC fails to provide reasonable assurance of adequate public alerting and notification because there are no longer fixed sirens in the Massachusetts portion of the EPZ, the Vehicular Alert and Notification System (VANS) for the Massachusetts portion of the EPZ is impractical in certain weather and accident scenarios, and it will not provide the required public alerting within a 15 minute time span. Further, the means by which transients in the Parker River National Wildlife Refuge on Plum Island are to be notified by the U.S. Dept. of Interior are not specified. Therefore, the requirements of 10 CFR §50.47(a)(1), §50.47(b)(5) and 10 CFR Part 50 Appendix E, Section IV D.3 and NUREG - 0654 Rev. 1, Supp. 1, II, E.6 have not been met.

SAPL's Position

The Staff and Applicants oppose the admission of this contention because the onsite Board has it under jurisdiction. SAPL will conditionally waive this contention unless the proposed

NRC rule change on low power requirements somehow removes this issue from the jurisdiction of the onsite Board. SAPL reserves the right, in that eventuality to litigate this contention before this Board.

SAPL Contention 10

The SPMC fails to provide reasonable assurance of adequate public protection because the SPMC does not address the situation where evacuees in the beach areas will be trapped in traffic for hours without an option to take shelter or implement any other realistic measures to protect themselves. The SPMC therefore does not meet the requirements of 10 CFR §50.47(a)(1), §50.47(b)(10) and NUREG-0654 Rev. 1 Supp. 1 at J.9 and II J. 10 d., g, k and m.

SAPL's Position

This contention is opposed by both the Staff and Applicants. The contention states in essence that there is no viable protective option for the evacuees in the beach area because they can neither evacuate nor take shelter. There is therefore no reasonable assurance of adequate public protection. SAPL is not claiming that there is some minimum dose standard that will not be met as Applicants allege. SAPL is merely stating that the conditions in the beach area preclude any reasonable person from arriving at a conclusion that there is reasonable assurance of adequate public protection in the event of a radiological emergency as NRC regulations clearly require. The Staff seems to reluctantly concede that having differing Emergency Classification Levels (ECL's) for precautionary actions in the two states could lead to confusion along the border, but the Staff too refuses to recognize the clear import of this contention as described above.

SAPL believes the contention is clear, but to spell it out once again--there is no viable protective action strategy in the beach area.

SAPL Contention 11

The SPMC Amendment 4 fails to provide reasonable assurance that there will be adequate means of relocation for special facility populations in the 6 Massachusetts communities because numbers of buses for those special facilities have been drastically reduced. There are no compensating measures to make up for the reduction in bus numbers to assure reasonably the safety of the residents of the facilities.

Therefore, the requirements of 10 CFR §50.47(a)(1), §50.47(b)(10), and NUREG-0654, FEMA-REP-1, Rev. 1, Supp. 1, J.10d and J.10g have not been met.

SAPL's Position

The NRC Staff does not oppose the admission of this contention and holds that the balancing of the five factors of 10CFR §2.714(a)(i) weighs in favor of admission of this contention. The Applicants have no opposition to the contention per se, but state that they do not agree with the position that there has customarily been a 30-day time frame for filing contentions on plan amendments in this case. SAPL believes that the record of the case supports SAPL's Statement that there has


customarily been a 30-day time frame for late-filing contentions on late-submitted material from Applicants.

Dated: June 20, 1988

Respectfully submitted,


Seacoast Anti-Pollution
League

By its Attorneys,
Backus, Meyer & Solomon

By: 

Robert A. Backus, Esquire
116 Lowell Street
P.O. Box 516
Manchester, NH 03105
(603) 668-7272

I hereby certify that copies of the within Seacoast Anti-Pollution League's Reply to Applicants' and Staff's Responses to SAPL's SPMC Contentions 1-10 and SAPL's Late-Filed Contention 11 have been furnished to all parties as per the attached service list.



Robert A. Backus, Esquire

Ivan W. Smith, Chairman
Atomic Safety and Licensing
Board
U.S. NRC
Washington, DC 20555

Roberta Pevear
State Rep, Town of Hampton
Falls
Drinkwater Road
Hampton Falls, NH 03844

Edward Thomas
FEMA
442 J. W. McCormack (POCH)
Boston, MA 02109

Dr. Jerry Harbour
Atomic Safety and Licensing
Board
U.S. NRC
Washington, DC 20555

Docketing & Serv. Sec.
Office of the Secretary
U. S. NRC
Washington, DC 20555

Thomas Dignan, Esquire
Ropes & Gray
225 Franklin Street
Boston, MA 02110

Office of Selectmen
Town of Hampton Falls
Hampton Falls, NH 03844

Gustave A. Linenberger
Atomic Safety and Licensing
Board
U. S. NRC
Washington, DC 20555

Jane Doughty
SAPL
5 Market Street
Portsmouth, NH 03801

Ashod N. Amirian, Esquire
376 Main Street
Naverhill, MA 01830

Joseph Flynn, Asst. Gen. Cnsl.
Fed. Emerg. Mgmt. Agcy.
500 C Street SW
Washington, DC 20472

George Dana Bisbee, Esquire
Attorney General's Office
State of New Hampshire
Concord, NH 03301

Carol Sneider, Esquire
Assistant Attorney General
One Ashburton Place
19th Floor
Boston, MA 02108

Sherwin E. Turk, Esquire
Office of Exec. Legl. Dr.
U. S. NRC
Washington, DC 20555

Sandra Gavutis
Town of Kensington
Box 1154
East Kensington, NH 03827

Mr. Angie Machiros, Chairman
Town of Newbury
Town Hall
25 High Road
Newbury, MA 01951

Judith H. Mizner, Esquire
Silvergate, Gerner, Baker,
Fine, Good & Mizner
88 Broad Street
Boston, MA 02110

Charles P. Graham, Esquire
McKay, Murphy and Graham
100 Main Street
Amesbury, MA 01913

Ellyn Weiss, Esquire
Harmon & Weiss
20001 S Street NW
Suite 430
Washington, DC 20009

Paul McEachern, Esquire
Matthew Brock, Esquire
25 Maplewood Avenue
P.O. Box 360
Portsmouth, NH 03801

William S. Lord, Selectman
Town Hall
Friend Street
Amesbury, MA 01913

Senator Gordon J. Humphrey
U. S. Senate
Washington, DC 20510
Attn: Janet Coit

Atomic Safety and Licensing
Board
U. S. NRC
Fourth Floor Reception Area
East West Towers, West Bldg.
4350 East West Highway
Bethesda, MD 20814

J. P. Nadeau
Town of Rye
155 Washington Road
Rye, NH 03870

Adjudicatory File
Atomic Safety and Licensing
Board Panel
U. S. NRC
Washington, DC 20555