

Three Mile Island Alert

The Newsletter of Three Mile Island Alert

July 1996

TMI Plaintiffs Challenge Dismissal

from Pennsylvania Law Weekly, July 8, 1996

Key plaintiffs' lawyers in the massive Three Mile Island litigation have filed a motion for reconsideration of Middle District Judge Sylvia Rambo's dismissal of all 2,000-plus cases alleging radiation damage from the 1979 nuclear accident.

Philadelphia lawyers Arnold Levin, Laurence S. Berman and Craig D. Ginsberg, with Harrisburg lawyer Lee C. Swartz, argued in the motion that dismissal was essentially a discovery sanction of the most severe kind. The motion also argued that Rambo erred by knocking all the plaintiffs out of court based on expert witness rulings that should have applied to only 10 "test" plaintiffs.

"The court has improperly sanctioned thousands of non-trial plaintiffs for what the court regards as late filings, even though these thousands of plaintiffs were not even scheduled for trial," the motion said. "Such a sanction is a gross abuse of discretion, a denial of fundamental fairness, and an incredible punishment of innocent litigants."

The motion, filed June 21, is the latest round between these plaintiffs' lawyers and Rambo, with an appeal to the 3rd Circuit as the next step.

Given Rambo's previous stance in the

case, the motion is likely more of an attempt to build a record for the appeal than an attempt to get a pro-plaintiff ruling from the judge. Rambo virtually ensured the cases would fail by throwing out all the plaintiffs' expert witness testimony in two rulings earlier this year.

She said at the time the testimony did not meet reliability standards for admitting expert testimony under *Daubert v. Merrell Dow Pharmaceuticals*. But critics said Rambo had ignored the trend in federal courts toward allowing federal juries to hear expert testimony and decide on their own how much weight to give the evidence.

Berman said after Rambo's first ruling excluding eight of the ten expert witnesses that the judge had merely "paid lip service" to *Daubert*, and imposed her own version of what constituted reliability.

On June 7 Rambo granted summary judgment to the TMI defendants as to "all plaintiffs," saying the evidence did not allow even an inference that any plaintiff had been exposed to at least 10 rems of radiation.

The June 21 motion for reconsideration said the court had

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NRC Finds Security Problems at TMI

from a March 1, 1996, NRC letter to GPUN

On February 6-23, 1996, a reactive inspection was conducted at the Three Mile Island Nuclear Station, Unit I. The purpose of the inspection was to review the circumstances related to a breach in the protected area barrier that was identified by a site protection officer on February 6, 1996.

Areas examined during the inspection are also identified in the report. Within these areas, the inspection consisted of selective examinations of procedures and representative records, interviews with personnel, and observations by the inspectors.

Based on the results of this inspection, one apparent violation was identified and is being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), (60 FR 34381; June 30, 1995). The apparent violation involved the failure to provide adequate compensatory measures during maintenance activities in the protected area, which enhanced the potential for an unauthorized individual to gain access from the owner controlled area into the protected area. Due to this event being similar to other security events that occurred in September 1995 and for which you were cited with a

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Three Mile Island Alert

Three Mile Island Alert (TMIA) is a non-profit citizens' organization dedicated to the promotion of safe-energy alternatives to nuclear power, especially the Three Mile Island nuclear plant.

Formed in 1977 after the construction and licensing of TMI Unit-1 and the construction of the infamous Unit-2, TMIA is the largest and oldest safe-energy group in central Pennsylvania.

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violation, the NRC is concerned about the implementation and effectiveness of the corrective actions to prevent recurrence of that type of violation that were provided in your "Response to Notice of Violation," dated December 20, 1995. Additionally, NRC staff interviews during the inspection period revealed that there is a lack of alertness to security requirements by workers in the Operations, Maintenance, Planning, and Security departments. Your root cause analysis for the recent event also identified this as a factor that contributed to the apparent violation. This raises further questions about the effectiveness of your corrective actions for the previous events.

It may not be necessary to conduct a predecisional enforcement conference in order to enable the NRC to make an enforcement decision. However, a Notice of Violation is not presently being issued for these inspection findings. Before the NRC makes its enforcement decision, we are providing you an opportunity to either (1) respond to the apparent violation addressed in this inspection report within 30 days of the date of this letter, or (2) request a predecisional enforcement conference.

Your response should include for each apparent violation: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent

violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response should be submitted under oath or affirmation and may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a predecisional enforcement conference.

If you choose not to provide a response and would prefer participating in a predecisional enforcement conference, please contact this office within 7 days of the date of this letter.

In addition, please be advised that the number and characterization of apparent violations for the event described in the enclosed inspection report may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

Sincerely,
James T. Wiggins, Director Division of Reactor Safety



Please renew your TMIA membership

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- Membership: \$20 Regular Member \$50 Sustaining Member
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Intervention Fund Contribution: \$10 \$20 \$50 \$100

Checks of \$50 or more can be made payable to the TMI Legal Fund for tax deduction purposes.

RETURN TO: TMIA, 315 Peffer Street, Harrisburg, PA 17102

The official registration and financial information for Three Mile Island Alert may be obtained from the PA Department of State by calling toll free, within PA, 1-800-732-0999. Registration does not imply endorsement.

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refused to admit a key scientific study -- called the FISH method study -- into evidence as a discovery sanction, because it wasn't produced before March 1, 1995.

FISH stands for "fluorescence in situ hybridization," a method for calculating radiation exposure. A scientist who did research at Chernobyl after the nuclear accident there, Prof. Vladimir Shevchenko, was slated to testify on the TMI plaintiffs' exposure using the FISH method.

The motion said Rambo had ruled that supplemental expert submissions provided before Jan. 5, 1996, would be permitted but then precluded the plaintiffs from using the FISH study. "The exclusion of plaintiffs' FISH study evidence on discovery grounds, when coupled with the court's admissibility ruling regarding plaintiffs' other expert evidence on *Daubert* grounds," the motion said, "left plaintiffs with virtually no evidence with which to oppose defendants' motion for summary judgment, even though the court recognized that plaintiffs' FISH study was admissible under *Daubert*."

So the discovery sanction ultimately became dismissal, the motion said. "The court's refusal to allow the trial plaintiffs to rely on the FISH method data as a discovery sanction was tantamount to the imposition of dismissal as a discovery sanction, because it deprived the trial plaintiffs of scientific evidence that would have prevented summary judgment."

Moreover, the motion said, the court imposed the sanction on all 2,000 plaintiffs, not just the 10 "trial plaintiffs," even though "these thousands of plaintiffs were not even scheduled for trial."

Although the cases have been consolidated, the motion said, this was not a class action, and Rambo should not have treated it as such. The motion said Rambo had adopted the plaintiffs' case management plan, "which said nothing about consolidation of all pending personal injury claims for discovery and trial purposes, but rather, focused on the utilization of a group of trial plaintiffs

whose cases could serve as bellwether cases for the remainder of the pending actions."

According to the motion, plaintiffs other than the 10 test plaintiffs would be able to use the FISH study. "The court has erroneously leaped to the conclusion that the non-trial plaintiffs will not be able to develop expert causation testimony based on the state of the record," the motion said, "but since this issue has not yet been framed or developed on the record, the court's summary judgment against all the plaintiffs has deprived the non-trial plaintiffs of an opportunity to be heard and to present their individual cases." "The court's ruling is in direct contradiction to recent appellate court decisions reversing class certification in the mass tort context," the motion said.

But Rambo said in her summary judgment ruling in June that "it would be an exercise in futility" to allow any of the cases to go forward. "To the extent that the expert testimony of record fails to meet the test plaintiffs' evidentiary burden at this litigation, it will fail to meet the same burden as to every plaintiff," Rambo said.

The motion also said Rambo erred in deciding the plaintiffs had to prove at least 10 rems of exposure. "Reliable scientific authority recognizes that there is no safe threshold for exposure to radiation," the motion said, "and that the 10 rem level is more of a level of practicality for epidemiological purposes in order to conduct studies with manageably sized study populations. "The law does not require plaintiffs to show 10 rems of radiation exposure in order to prove causation," the motion said, arguing Rambo misinterpreted case law on the subject.

Republican Poll Finds Support For Environment

from Northwest Energy News, Winter 1996

In a nationwide survey commissioned by the pro-business Superfund Reform Coalition, pollster Linda Divall found that voters want strong backing for federal environmental laws, including the Endangered Species Act and Clean Water Act. Even among Republican voters, only 30 percent thought current environmental laws were too stringent.

Mobile Chernobyl Act May Reach Senate Floor Soon

from NIRS

New Senate Majority Leader Trent Lott (R-Miss.)--a co-sponsor of S. 1271, and Senate Energy Committee Chairman Frank Murkowski (R-Alaska), also a co-sponsor, last week called in Nevada Senators Richard Bryan and Harry Reid. Their message: they intend to bring S. 1271 for a vote on the Senate floor around July 12.

As you probably know, S. 1271 is best known as the "Mobile Chernobyl Act." It would set up an "interim" storage dump for high-level radioactive waste near Yucca Mountain, Nevada, without concern whether Yucca Mountain will be suitable for more permanent waste storage. It would also begin the unprecedented transportation of some 15,000 or more large canisters of high-level radioactive waste on our nation's highways and railways.

The nuclear industry has been waging its own "grassroots" campaign in favor of S. 1271. It is time for opponents to step up our activities. Lott and Murkowski wanted Bryan and Reid to limit their filibuster efforts. Fortunately, the two said no, so a filibuster fight will be on. The key vote will be a "cloture" vote, which is used to cut off a filibuster. To win (to keep the filibuster going), Bryan and Reid need 40 votes.

Please call your Senators, and ask them to 1) oppose S. 1271; 2) support the Bryan/Reid filibuster and oppose the "cloture" vote; 3) actively support the filibuster by speaking on the Senate floor. If your Senator is already opposed to the bill, emphasize support for the filibuster. Even if your Senator is completely committed to S 1271 (or is a co-sponsor), it is important for Senate offices to know that the opposition is out there and nationwide. Remember, this is an election year.

Call: Capitol switchboard: 202-224-3121 Write: U.S. Senate, Washington, DC 20510. If your Senator is a co-sponsor of S. 1271, now is a great time for a letter to the editor blasting him/her for supporting the bill and all its problems.

NRC Expands Internet Web Site With Additional Features and Information

from a NRC Press Release

The Nuclear Regulatory Commission has changed and expanded its internet web page with additional documents and features. Several types of NRC documents are also available by internet e-mail subscription.

The internet address of the NRC Home Page is: <http://www.nrc.gov>. New features of the NRC internet web site include:

- Search capability for the information on the NRC web pages
- NRC news releases
- Periodic reports on the performance of nuclear power plants, known as SALP reports
- NRC staff telephone listings
- Schedule of NRC meetings open to the public
- Semiannual "Watch List" of nuclear power plants
- Weekly summary report of agency activities
- Description and status of selected technical issues

The NRC Web Site also has information on members of the Commission, various NRC offices, rulemaking procedures, and a variety of regulatory topics.

Several types of NRC documents are also available by internet e-mail on a free subscription basis. Persons with access to the internet can obtain NRC news releases and speeches, NRC generic communications, SALP reports, and a daily plant report "bundle."

To receive news releases and speeches by e-mail, send an e-mail message as follows:

To: listproc@nrc.gov
 Subject: [leave blank]
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Generic communications -- Bulletins, Information Notices, Generic Letters, and Administrative Letters -- are issued by the NRC staff to reactor licensees and other NRC licensees on various technical and regulatory issues.

To subscribe, send the following message:

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Systematic Assessment of Licensee Performance (SALP) reports are issued every 18 to 24 months for each nuclear power plant. These reports cover plant operations, maintenance, engineering, and plant support, which includes radiation protection, security, and emergency planning.

To subscribe, send the following message:

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The daily report bundle is issued each business day, and includes three reports: 1) Nuclear Plant Status Report with the status of each nuclear plant as provided to NRC by utilities; 2) Event Reports, including all events required to be reported to NRC in previous 24 hours by NRC-licensed facilities; and 3) Daily Report, items of interest prepared by NRC regional offices and other offices.

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These documents are also available through the Fedworld online service via a tollfree number: 1-800/303-9672.

The news releases, SALP reports, and daily bundle reports are in the NRC-PDR file library and the general communications are in the NRC-GC file library.

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News Notes

◆ **The 3rd Annual Pennsylvania Environmental Congress**
 September 28-29, 1996, Dickinson College, Carlisle, Pennsylvania.
 Keynote Speakers: Mark Dowie, former editor of Mother Jones Magazine. Paul Connett, publisher of *Waste Not*, a grassroots environmental newsletter.

Skills and Issues Workshops include: Toxics, Wetlands, Logging, Legal Tools, Media Training, Environmental Justice, and more. For more information, or for a detailed brochure, call the Pennsylvania Wildlife Federation, 717-232-3480.

◆ **Seventh Annual Arts for Peace and Justice Exhibition** -- July 26-August 10, 1996, at Strawberry Square, Downtown Harrisburg, Pennsylvania.

The 1996 exhibition is dedicated to Milton Lowenthal, who encouraged and supported this exhibition since its beginnings in 1990. (After many years of work for peace and humanitarian causes, Milton died in October 1995.) For more information, contact Fleur Byers, (717) 774-5811. The event is sponsored by Strawberry Square and the Harrisburg-Hiroshima-Nagasaki Committee.

◆ **DEP To Update Radiological Health Regulations**

The Pennsylvania Department of Environmental Protection (DEP) is developing amendments to its radiological health regulations contained in Chapters 216, 221, 223, 225, 227 and 228, which were last revised in 1983. The amendments will address technological advances, mostly in the medical profession, that have occurred. Issues to be addressed include new diagnosis and treatment methods, new federal regulations relating to industrial radiography, and the change in particle accelerators' design and function. The amendments will offer increased protection to both employees and patients for medical diagnosis and treatment applications and address health and safety concerns, including the reduction in unnecessary exposure to patients and employees/operators.

The proposed rulemaking is scheduled for EQB consideration in March 1997. For more information, contact Stuart Levin, Chief, Division of Radiation Control, at (717) 787-3720 or e-mail at Levin.Stuart@del.dep.state.pa.us.

Fire In Point Beach Cask Ignites Concerns About Dry Storage

from NuclearFuel, June 3, 1996

A brief gas fire May 28 inside a Sierra Nuclear Corp. cask that was being welded shut at Wisconsin Electric Power Co.'s (Wepco) Point Beach plant took both the utility and its regulators by surprise and has raised new concerns about the safety of dry storage of spent fuel.

The fire occurred as an automatic arc welding machine started to weld on a shield lid on top of the VSC-24 storage cask, which was located in the plant's auxiliary building. Utility executives, including Wepco's Vice President-Nuclear Robert Link, said the gas that burned likely was hydrogen, based on elevated levels of hydrogen later found in the water inside the cask and in air around the cask. No one was injured, no radiation was released to the environment, and the 24 spent fuel assemblies inside the cask apparently were not damaged in the incident.

At press time, the source of the gas had not yet been determined. However, there has been speculation the cause might be linked to some sort of interaction between the zinc coating on the cask's fuel basket and the water in the spent fuel pool. The water inside the cask at the time of the fire seeped from the spent fuel pool when the cask was loaded. Utilities normally use that cask loading procedure.

NRC said that further loading of VSC-24 casks by Wepco and the two other utilities using the system would be suspended until an NRC augmented inspection team (AIT) probing the incident completes its investigation. The investigation is being done in cooperation with Wepco and Sierra Nuclear specialists.

Uncertainties about the incident and its implications for future storage cask loading operations focused on the source of the hydrogen gas that ignited and how the presence of the gas had not been anticipated or

analyzed in the licensing process for the cask.

Duke Power Co. loaded a Nuhoms 24-P cask produced by Vectra Technologies Inc. last week after the event at Point Beach and took extra precautions because of the incident in Wisconsin. "We have implemented a precautionary measure since this happened, whereby we are testing for the presence of combustible gases before welding," said Richard Zuercher, spokesman for Duke Power. "We didn't detect any (gases) when we did it this week. We've been doing this since 1990 and so far have loaded 34 casks safely. Given our track record, and historical data, we don't see any reason to interrupt our operations."

Mike Wadley, plant manager at Northern States Power Co.'s Prairie Island where Transnuclear Inc. TN-40 casks are used, said, "We differ significantly in the manner we seal our casks. We use a bolted closing so there are no open flames. But we want to understand their evaluation of what the source of the gas was. We've loaded four casks to date....I feel comfortable with our design, and we're going to continue forward."

Gary Krieser, manager of industry and regulatory services for Wepco, told NuclearFuel that during the brief fire, "the lid was raised from its original position, maybe as much as three to four inches. After the burn, it did not settle all the way down (to its previous position)."

Krieser added that there were no visible flames during the brief fire. Various possible sources for the hydrogen gas are being investigated, Krieser said. "The one we think may be most likely at this point is some interaction between the zinc coating (on the inner basket of the cask) and the fuel pool water."

Krieser said that while the brief fire "was unexpected, I don't believe it

invalidates the technology or process by which the casks are certified." He emphasized that the casks are designed with extra layers of safety.

Krieser said that the multiassembly sealed basket (MSB) later was replaced after the cask was moved back to Point Beach's spent fuel pool and all 24 fuel assemblies removed, with no signs of damage.

Antinuclear activists in Wisconsin and Washington seized on the incident at Point Beach as further justification for their opposition to dry storage.

The Citizens Utility Board (CUB) group based in Madison, Wis., termed the mishap an "explosion." The group called for the Wisconsin Public Service Commission to investigate the incident.

CUB argued that the brief fire was "one more reason to keep our Lake Michigan shoreline from becoming a de facto permanent nuclear waste dump."

Paul Gunter, an activist with the Nuclear Information & Resource Service in Washington, D.C., said the incident exposed gaps in NRC's certification process for casks.

"Essentially, a lot of the focus on fire or explosion (risk analysis) had been on external events," he said. "The explosion and fire here was generated by an internal event. They had apparently never looked at the issue of the hydrogen being a combustible prior to the loading and inerting of the dry cask." Casks are filled with inert gas after the fuel is loaded.

"It underscores our basic premise that you should quit generating more of this hazardous and unmanageable material in the absence of any technology to deal with it in the long term," Gunter said.

Milton Lowenthal Peace & Justice Days
Remembrance Weeks
July 26 to August 11, 1996

51st Anniversary Observance

That the atomic bombings of Hiroshima and Nagasaki shall not be repeated.

Dedicated to the Memory of Milton Lowenthal and his Life-long Quest for Peace.



☞ July 26 - August 10, 1996 *Arts For Peace and Justice*

Seventh Annual Exhibition by Artists and Writers
Strawberry Square, Harrisburg, PA

Social Commentary through original Visual Art, Prose & Poetry

- ☞ Friday, July 26 Opening Reception 3:00 to 6:00 pm
Gallery Hours: Mondays to Fridays 11 am - 6 pm; Saturdays 11 am - 5 pm
- ☞ Saturday, August 10 Gala Arts Event 1:00 to 5:00 pm

❖ *Poetry & Prose Readings* ❖ *Live Music* ❖ *Refreshments*

❖ *Featuring: Louise Franklin Ramirez and John Steinbach*

Co-Authors of *Deadly Nuclear Radiation Hazards USA Database, 4th Edition, 12/95.*

Project made possible by a grant from the Mahler Institute of the Grey Panthers.

The Public is cordially invited to both receptions & to view the Gallery exhibit.

☎ For more information, call Fleur Byers 717/774-5811

☞ August 11, 1996 *Candles On The Water*

Co-sponsored by the Interreligious Forum
Riverwalk at the Walnut Street Bridge

7:00 pm Gather at Market Square Presbyterian Church, Fellowship Hall, Lower Level
7:20 pm Procession to the River *Everyone is Welcome!*

☞ Interfaith Reflection by representatives of area faith communities.

☞ Candle-lit Lanterns of Remembrance floated on the Susquehanna River.
Peace Boats Made by Local Children

☞ Music by Barbara Barton and Steve Jewett

Presented by the Harrisburg-Hiroshima-Nagasaki Committee.

☎ For more information, call Deborah Davenport 763-9552



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