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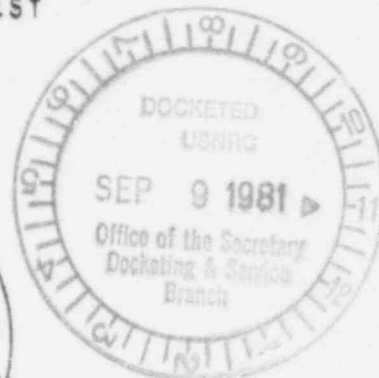
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C R STEPHENS, CHIEF DOCKETING & SVC SECTION
OFFICE OF SECRETARY U.S. NUCLEAR REGULATORY
COMMISSION
WASHINGTON DC 20055



MAPLETON'S PETITION TO DENY APPLICANTS MOTION FOR PARTIAL DECISION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD, IN THE MATTER OF
CONSUMER'S POWER COMPANY MIDLAND PLANTS 1 AND 2 DUCKETS 50-329 OM-OL
50-330 OM-CL

THE MAPLETON INTERVENERS PETITIONS THE LICENSING BOARD TO DENY
QUOTATION "PARTIAL DECISION HEARING HELD JULY AND AUGUST 1981" AND
SUBMITS, THE REASON BEFORE THE BOARD AT THIS TIME AS CONTAINED IN THE
TRANSCRIPT AS RELATES TO JURISDICTION FOLLOWS GENERAL COUNCIL
OPINIONS DATE JANUARY 3, 1979 JURISDICTION OF 402 AND 404 OF THE CLEAN
WATER ACT OVER DISCHARGE OF SOLID WASTE IN WETLANDS ADMINISTRATOR OF
THE EPA NOT SECRETARY OF THE ARMY HAVE AUTHORITY TO DETERMINE WHETHER
DISCHARGE OF SOLID WASTE REQUIRES N.P.C.E.S PERMIT, OR SECTION 404
PERMIT, "FILL MATERIAL AND DISCHARGE" SECRETARY OF THE ARMY. ACTING
THROUGH THE CORPS OF ENGINEERS, TO ISSUE PERMITS FOR THE DISCHARGE OF
"DREDGED OR FILL MATERIALS" THROUGH APPLICATIONS OF THE 404 (B) (1)
GUIDELINES, WHICH ARE PREPARED BY THE E.P.A. IN CONSULTATION WITH THE
CORPS, BY FOLLOWING THE REQUIREMENTS OF SECTION 404 (C) E.P.A. MAY
PREVENT THE DISCHARGE OF DREDGED OR FILL MATERIAL INTO CERTAIN SITES
C42 FED. REG 37145 JULY 19, 1977, THAT SECTION STATES "THE TERM FILL
MATERIAL MEANS ANY MATERIAL FOR THE PRIMARY PURPOSE OF REPLACING AN
AQUATIC AREA WITH DRY LAND OR OF CHANGING THE BOTTOM ELEVATION OF A
WATER BODY THE REGULATIONS ARE SILENT AS TO WHETHER E.P.A. OR THE
CORPS SHOULD DECIDE THE PRIMARY PURPOSE OF A DISCHARGE OF WASTE WHICH
REPLACES AN AQUATIC AREA WITH DRY LAND OR CHANGES THE BOTTOM
ELEVATION OF A WATER BODY SEE 33 CFI 209 120(D) (6) JULY 25TH 1975 40
FED REG 31325 THIS DEFINITION WAS INCORPORATED BY REFERENCE IN
E.P.A.'S 404 (B) (1) GUIDELINES-40CFR 230.2 (B) SEPTEMBER 5TH 1975
ATTORNEY GENERAL CIVILETTI TO CLIFFORD ALEXANDER SEPTEMBER 5TH 1979
THE ATTORNEY GENERAL CONCLUDED THAT E.P.A. NOT THE CORPS HAVE THE
AUTHORITY TO DETERMINE THE JURISDICTIONAL REACH OF THE "WATERS OF THE
UNITED STATES" WHILE THE OPINION INVOLVED A TERM "WATERS OF THE
UNITED STATES" WHICH APPEARS IN A GENERAL PROVISION OF THE ACT
SECTION 502 (7) AND THE TERM (FILL) APPEARS ONLY IN SECTION 404 AND
RELATED PARTS OF SECTION 208 "SENATOR MUSKIE STATED THE CONFEREES
WERE UNIQUELY AWARE OF THE PROCESS PERMITS BY WHICH THE DREDGE AND
FILL PERMITS ARE PRESENTLY HANDLED AND DID NOT WISH TO CREATE A
BURDENSOME BUREAUCRACY IN LIGHT OF THE FACT THAT SYSTEM TO ISSUE
PERMITS ALREADY EXISTED, AT THE SAME TIME, THE COMMITTEE DID NOT
BELIEVE THERE COULD BE ANY JUSTIFICATION IN PERMITTING THE SECRETARY
OF THE ARMY TO MAKE THE DETERMINATION AS TO ENVIRONMENTAL

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IMPLICATIONS OF EITHER THE SITE TO BE SELECTED OR THE SPECIFIC SPOIL TO BE DISPOSED OF IN THE SITE, (1) 1972 LEGISLATIVE HISTORY 177, THUS CONGRESS RETAINED A SEPARATED PROGRAM FOR DREDGED AND FILL MATERIAL FOR ADMINISTRATIVE REASONS BUT MADE IT CLEAR THAT SUCH ADMINISTRATIVE INTEREST DID NOT OVERRIDE THE ADMINISTRATORS RESPONSIBILITIES FOR ENVIRONMENTAL CONCERNS, WHILE CONGRESS CLEARLY DID NOT ANTICIPATE THE SPECIFICATION QUESTION ADDRESSED TO THIS OPINION, THESE GENERAL VIEWS CONCERNING THE 404 PROGRAM ARE CONSISTENT WITH MY CONCLUSION THAT THE ADMINISTRATOR MAY PROPERLY DETERMINE THE PRIMARY PURPOSE TEST, WHEREAS THE INTERVENERS WERE NOT CONSULTED ARE PERMITTED TO ATTEND THE MEETINGS, WHEREBY THE ATTORNEYS AT LAW ENTERED INTO "STIPULATIONS" AND WHEREAS THE INTERVENERS REPRESENT THEMSELVES PRO-SE AND OPPOSED TO HIGH HANDED MANOR WHICH THEY WERE PRECLUDED FROM THESE MEETINGS THEY MUST NOW CHARGE THE ATTORNEY WITH A VIOLATION OF THE "OPEN MEETING ACT" AND STATES THEY HAVE NOT HERETOFORE NOR DO WE NOW WAIVE ANY RIGHTS OF ANY KIND OR NATURE WHATSOEVER, MOREOVER ON THE SOIL HEARINGS, DOCTOR RALPH PECK TESTIFIED WHAT AQUATIC SOIL WAS AND MR KANE A GEOTECHNICAL SOIL MECHANIC OF THE NUCLEAR REGULATORY COMMISSION TESTIFIED TO THE REMOVAL OF THE AQUATIC SOIL AND MOREOVER STATED THIS WAS DONE ON A PERMIT ISSUED BY THE ARMY CORP OF ENGINEERS WHOM HAD ALREADY MAPPED THE SITE 7TH OF JUNE 1974 AS A FLOOD PLAIN AS ATESTED TO BY THE 82ND CONGRESS OF THE U.S. CONCLUSION THE MAPLETON INTERVENERS THEREFORE REQUEST APPLICANTS MOTION FOR PARTIAL DECISION IN THE MATTER OF THE CONSUMERS POWER COMPANY PLANTS UNITS 1 AND 2 AT MIDLAND MICHIGAN DOCKET NUMBER 50-329 OM CL AND 50-330 OM OL IN ATTEMPTS TO SET ASIDE THE QUESTIONS AS TO THE CONSTRUCTION PERMITS QUALITY ASSURANCE AND SO FORTH, ASKED THE LICENSING BOARD TO SET ASIDE APPLICANTS MOTION FOR A PARTIAL DECISION AS BEING PEACE MEAL REPRESENTING PATCH WORK, THE MAPLETON INTERVENERS HAVING RAISED THE QUESTION OF JURISDICTION AT THE OUTSET OF THE SOIL HEARINGS WISH TO SEE A DETERMINATION ON THE QUESTION OF JURISDICTION STARTING WITH ISSUANCE OF THE PERMIT BY THE ARMY CORP OF ENGINEERS, WITHOUT THE PARAMOUNT AUTHORITY OF THE E.P.A. WHO CONGRESS DELEGATED SUCH AUTHORITY THEREFORE THE MAPLETON INTERVENERS SUBMIT THAT GREATER PUBLIC INTEREST COULD BEST BE SERVED BY DENYING THE APPLICANTS MOTION, IN THE INTEREST OF PUBLIC HEALTH AND SAFETY, AND MOREOVER AS BEING MOOT, AND PREMATURE AT THIS EARLY DATE AS REGARD MATTERS OF EXTREME INTEREST TO THE GENERAL PUBLIC WHICH NEEDING MORE COMPREHENSIVE STUDY, ONCE AGAIN THE MAPLETON INTERVENERS PETITION THE ASLE BOARD TO DENY THE APPLICANTS MOTION FOR A PARTIAL DECISION AND YOUR PARTITIONERS WILL EVER PRAY FOR SUCH RELIEF.

DATED AT MIDLAND MICHIGAN THIS 4TH DAY OF SEPTEMBER 1981

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02:01 EST

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