

IN THE UNITED STATES DISTRICT COURT

Western District of Michigan

Southern Division

Alice Hirt, Anabel Dwyer,
Kathryn Cumbow, Robert
Anderson, Terry Miller,
Doris Schaller Vernon,
Citizens Against Chemical
Contamination

and

Mohawk Council of Akwesasne

Box 579

Cornwall, Ontario K6H 5T3

and

The Association of Iroquois

and Allied Indians

387 Princess Avenue

London, Ontario N6B 2A7

and

Concerned Citizens of
Renfrew

County

P.O. Box 981

Pembroke, Ontario K8A7M5

And

Northwatch

Box 282

North Bay, Ontario P1B 8H2

and

Canadian Coalition for
Nuclear

Responsibility

c.p. 236, Station Snowdon

Montreal, Quebec H3X3T4,

Plaintiffs,

-vs-

Bill Richardson, et al.,

Defendants.

) Case No. 1:99-CV-933

) Judge Richard A. Enslen

) FIRST AMENDED VERIFIED

COMPLAINT WITH EXPEDITED

) CONSIDERATION REQUEST FOR

TEMPORARY RESTRAINING

) ORDER AND REQUEST FOR

PRELIMINARY INJUNCTION

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Kary Love, Esq. (P42623)

) 977 Butternut Drive

PMB 128

) Holland, MI 49424

(616) 396-6100

) Fax: (616) 399-0868

)

Terry J. Lodge

) 316 N. Michigan St.,

Ste. 520

) Toledo, Ohio 43624-1627

(419) 255-7552

) Fax: (419) 255-8582

) Co-Counsel for Plaintiffs

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Now come Plaintiffs Alice Hirt, Anabel Dwyer, Kathryn Cumbow, Robert Anderson, Terry Miller, Doris Schaller Vernon, Citizens Against Chemical Contamination, Mohawk Council of Akwesasne, The Association of Iroquois and Allied Indians, Concerned Citizens of Renfew County, Northwatch, and the Canadian Coalition for Nuclear Responsibility, by and through counsel, and set forth the following as and for their AFirst Amended Verified Complaint@ in this matter, as of right:

62. Plaintiffs incorporate by reference and re-allege fully herein the contents of the AVerified Complaint@ filed in this matter on December 6, 1999.

Additional Parties-Plaintiff

63. The Mohawk Council of Akwesasne (AMohawk Council@) is the formal governing council of the Akwesasne Mohawk First Nations community, which is situated on the St. Lawrence River astride the U.S./Canadian international border. The Akwesasne community occupies about 25,000 acres of mainland and islands in the St. Lawrence River near Cornwall, Ontario. About 14,000 acres are located in nothern New York State, immediately adjacent to the approximately 11,000 acres in Quebec and Ontario. The community consists of about 9,300 persons, living throughout the tribal lands. The proposed Russian shipment of MOX would pass by water vessel up the St. Lawrence River through the heart of the tribal lands. Plaintiff Mohawk Council, by formal resolution, has overwhelmingly expressed opposition on behalf of the First Nation to the contemplated shipment of Russian MOX fuel and the burning of MOX in Canadian nuclear power reactors. The Mohawk Council has petitioned Canadian and provincial government leaders to halt the use of MOX in Canada and its shipment

through tribal lands.

64. The Association of Iroquois and Allied Indians (AAIAI@) is a 31-year-old organization which represents Canada's Batchewana, Caldwell, Delaware, Hiawatha, New Credit, Oneida, Tyendinaga, and Gibson First Nations in all negotiations or consultations with any level of Canadian government in matters affecting the well-being of the member Nations. The 8 tribal communities total about 13,000 people, and the various First Nations are situated across northern and northeastern Ontario. Several of the AIAI's First Nations members lie along the 300 mile+ highway route from Sault St. Marie, Ontario to Chalk River, Ontario, across which the U.S. shipment of MOX fuel was planned to pass. Several of AIAI's First Nations' tribal lands lay under the apparent route used for delivery of the MOX by helicopter on January 14, 2000. AIAI and several of its member First Nations have passed formal resolutions against the use of MOX fuel in Canadian nuclear power reactors, and against the transport of MOX across tribal lands.

65. Concerned Citizens of Renfrew County, Ontario (ACCRC@) is an association of citizens of Renfrew County, Ontario, Pontiac County, Quebec and the Ottawa Valley. Renfrew County is the location of the nuclear research laboratories at Chalk River, Ontario. CCRC has existed for over four (4) years and has approximately 100 members, several dozen of whom live in or near communities lying along the proposed overland route for shipment of Russian MOX, especially Pembroke, Ontario. The purposes of CCRC as a group are to oppose the importation into the County of any further nuclear material which will create radioactive waste; to advocate for the cleanup of existing leaking radiation and nuclear wastes at the Chalk River laboratory and reactor sites; to call for reduced emissions of radiation into the air and water from Chalk River; and to promote employment opportunities which stress nonpollution and renewable energy in the area.

66. Northwatch is a nonprofit, nongovernmental organization which is several years old and provides organizational leadership to a coalition of approximately twenty (20) citizen, grassroots groups in northeastern Ontario, stretching roughly from Sault St. Marie to Nippissing. Northwatch's affiliates have members totalling in the hundreds. Northwatch's purposes are to channel public opinion and information and to provide advocacy on regional concerns over energy use, generation and conservation; forest conservation; wild areas protection; waste management; air and water quality assurance; mining and militarization issues. Northwatch, along with other Canadian nongovernmental organizations, has repeatedly petitioned provincial and Canadian federal governments and AECL to halt the shipment of MOX under Paralex, and is formally opposed to the burning of MOX in CANDU reactors.

67. The Canadian Coalition for Nuclear Responsibility is a 20+-year-old nonprofit charitable organization based in Montreal, Quebec, dedicated to education and research on issues pertinent to civilian and military nuclear energy in Canada. CCNR has commented on DOE's Environmental Assessment which is the subject of this Amended Complaint. For two decades or more, CCNR and/or its officers, including its President, Gordon Edwards have participated as a formal party in utility facilities planning and ratemaking proceedings. CCNR has repeatedly petitioned provincial and Canadian federal government officials to halt the use of

MOX in CANDU reactors, and has expressed opposition to the Canadian federal agency Transport Canada, which issued the controversial permit for the January 14, 2000 helicopter flyover delivery of MOX to Chalk River.

Count 8

(Violation of NPT, Article I)

68. Plaintiffs incorporate by reference and re-allege fully herein the contents of the foregoing paragraphs 62 through 67.

69. By their acts or omissions, or by the acts or omissions of their employees, agents, representatives, co-venturers, or officers, Defendants Bill Richardson and the United States of America have violated the Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter ANPT@), signed at Washington, D.C., London, England and Moscow, (then-) Soviet Union on July 1, 1968.

70. Specifically, the Paralex Project as implemented is violative of Article I of the NPT, which says, pertinently:

Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

71. The United States and Russia are each a nuclear-weapon State Party@ to the NPT. Canada is a non-nuclear weapon State@ to the NPT.

72. The Joint US/Russian Plutonium Disposition Study signed by the Science Advisors to Presidents Clinton and Yelstin, September 1996 shows that the Paralex project is designed to lead to a cooperative plutonium fuel-based program involving Russia, Canada and the United States which has as a stated objective to keep plutonium available for future use. The implication is that the plutonium would be available as reactor fuel, but in fact it could be incorporated into either civilian (reactor) or military (weapons) uses.

73. Once excess stockpiles of separated plutonium are eliminated completely, the Joint US/Russian Study continues, "[F]inal decisions can be taken as to whether the intensely radioactive plutonium-bearing materials resulting from the reactor option should go directly to geologic disposal, as the US prefers; or should eventually be reprocessed to recover separated plutonium, the current preference for Russia." (Executive Summary p. 2).

74. The Study undermines the United States' non-proliferation and disarmament obligation: "Russia will ultimately recycle any plutonium

left in the [MOX spent] fuel ... The US objective of plutonium disposition [is satisfied if MOX spent fuel] is stored for several decades before reprocessing." (p. WR-35-37)

75. The Defendant U.S. Department of Energy, itself, has suggested that the Parallellex Project could cause nuclear weapons proliferation. In ANonproliferation and Arms Control Assessment of Weapons-Usable Fissile Material Storage and Excess Plutonium Disposition Alternatives,@ DOE/NN-0007, January 1997, DOE states (pp. 106-107):

Technically validating the use of plutonium fuel in CANDU reactors could undermine U.S. efforts to convince other countries operating CANDU reactors in regions of proliferation concern not to pursue a plutonium-based fuel cycle in their CANDU reactors.

76. The National Academy of Sciences, a congressionally-chartered scientific advisory organization, also has warned of the potential for nuclear weapons proliferation, in AManagement and Disposition of Excess Weapons Plutonium@ (NAS Committee on International Security and Arms Control 1994) at p. 149:

[P]olicymakers will have to take into account the fact that choosing to use weapons plutonium in reactors would be perceived by some as representing generalized U.S. approval of separated plutonium fuel cycles, thereby compromising the ability of the U.S. government to oppose such fuel cycles elsewhere.

77. The RAND Corporation, a nonprofit policy advisor to the federal government, asserted in a February 2000 internet article, AControlling the Flow of Weapon-Usable Fissile Materials,@ that:

To build a more proliferation-resistant future for civilian nuclear power worldwide would require that the use of plutonium as fuel be postponed indefinitely because it creates no economic benefits but much proliferation risk.

78. By the Parallellex Project, Defendants are causing, or tending to cause the proliferation of nuclear weapons. The Parallellex Project showcases the feasibility of using decommissioned nuclear weapons as fuel in the Canadian Deuterium Uranium (CANDU) reactor type, several of which are under construction or are presently being used for civilian electric power generation in Romania, South Korea, Argentina, China and in the near future, Turkey. Instead of immobilizing plutonium to make it less available to be reformulated into weapons, and treating it as having no economic value, weapons MOX as reactor fuel in the Parallellex Project suggests that it has economic usefulness which overrides the social and political value to the global community of nuclear disarmament. With the shipment in January 2000 of weapons MOX from the United States to Canada, the U.S. contradicted a 23-year-old Executive Branch policy forbidding reuse of nuclear weapons as MOX fuel. The burning of MOX in Parallellex sets a precedent that other countries will rely on and which will undermine future U.S. negotiations toward disarmament.

79. The use of weapons MOX in the Parallellex Project is causing and will in the future cause nuclear proliferation and thus the Defendants are in violation of the NPT.

80. International treaties are part of the law of the United States, and a violation of the NPT therefore violates U.S. law.

Count 9

(Violation of NPT, Article VI)

81. Plaintiffs incorporate by reference and reallege as though written herein the contents of the foregoing paragraphs 62 through 80.

82. By their acts or omissions in conjunction with Paralex, or by the acts or omissions of their employees, agents, representatives, co-venturers or officers, Defendants Bill Richardson and the United States of America have violated the NPT, Article VI.

83. Article VI of the NPT says, pertinently: AEach of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control.@

84. The use, production and spread of plutonium, which is a component of nuclear weapons, by the promotion, internationally shipping, marketing and showcasing of MOX plutonium fuel violates the primary objective of the NPT as stated in Article VI.

85. In 1996, the International Court of Justice (AICJ@), the rulings of which legally bind the United States, ruled unanimously that Article VI means that "There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control." ALegality of the Threat or Use of Nuclear Weapons,@ ICJ, General List 95, 8 July 1996, & 105(2)(F). This obligation "[G]oes beyond that of a mere obligation of conduct; the obligation involved here is an obligation to achieve a precise result - nuclear disarmament in all its aspects - by ... the pursuit of negotiations on the matter in good faith." Id. & 99. "The obligation expressed in Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons includes its fulfilment in accordance with the basic principle of good faith." Id. & 102.

86. The irradiation of plutonium MOX fuel in a nuclear power reactor diminishes the amount of plutonium only somewhat, and keeps the plutonium available for possible later separation for civilian or weapons applications. By accomplishing such an act in one or more Canadian nuclear reactors, and further by paying and otherwise encouraging the Russian Federation to do the same, Defendants Bill Richardson and the United States of America have omitted and failed to comply, and will not prospectively comply, with the U.S.' treaty obligations under NPT Article VI.

87. International treaties are part of the law of the United States, and a violation of the NPT therefore violates U.S. law.

Count 7

(Request For TRO and Preliminary Injunction)

88. Plaintiffs incorporate by reference and reallege as though written herein the contents of the foregoing paragraphs 62 through 87.

89. Plaintiffs allege that from the facts of this Amended Complaint, they will suffer immediate and irreparable harm, injury, loss or damage if the proposed shipment(s) of MOX fuel are allowed to be transported up the St. Lawrence Seaway and across Province of Ontario.

90. Further, Plaintiffs will be irreparably harmed and damaged if DOE is allowed to proceed with the Parallelex Project without completing a full EIS.

WHEREFORE, Plaintiffs respectfully request this Court grant them the following as and for their relief in this matter:

- (1) A temporary order enjoining and restraining one, some or all Defendants, as appropriate, and persons acting in concert with them, from shipping any proposed Atest@ shipment of MOX fuel from the Russian Federation or the United States through and across the St. Lawrence Seaway and Province of Ontario, pending further hearing on the matters raised in this Amended Complaint; and
- (2) An order finding and declaring that the Environmental Assessment (EA) and the Finding of No Significant Impact (FONSI) for the Parallelex Project are contrary to law and are, therefore, disapproved and held for naught; and
- (3) Preliminary and permanent injunction orders enjoining and restraining one, some or all Defendants, as appropriate, and persons acting in concert with them, from shipping any proposed Atest@ shipment of MOX fuel from the Russian Federation or the United States through and across the St. Lawrence Seaway and Province of Ontario in the absence of the drafting and issuance of an Environmental Impact Statement which accounts for all the matters of which complaint is made herein; and
- (4) A finding and declaration that one or both Defendants have violated the Nuclear Non-Proliferation Treaty, and preliminarily and permanently for the Court to enjoin and restrain one or both Defendants and especially the U.S. Department of Energy and persons acting in concert therewith from allowing the delivery of any further quantities of MOX plutonium fuel from either the Russian Federation or the United States to Chalk River, Ontario; and
- (5) An order awarding Plaintiffs such other and further relief, at law and in equity, to which they may be entitled and as the Court deems necessary and proper in the premises; and
- (5) An award to Plaintiffs of their costs and attorney fees as provided by law.

Terry J. Lodge

VERIFICATION

I, Alice Hirt, a Plaintiff in this lawsuit, pursuant to 28 U.S.C. ' 1746, declare under penalty of perjury that I have read the foregoing complaint and that the allegations in it are true and

CERTIFICATION

I hereby certify that a copy of the foregoing AFirst Amended Verified Complaint@ was sent by me via regular U.S. Mail, postage prepaid, this 1st day of March, 2000 to Robert I. Dodge, Esq. and Charles Gross, Esq., U.S. Department of Justice, U.S. Attorney=s Office, P.O. Box 208, Grand Rapids, MI 49501-0208.

Terry J. Lodge