

District Judge Bars Delay In Aleutian Nuclear Blast

By E. W. KENWORTHY

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WASHINGTON, Nov. 1—A Federal District Court judge refused today to halt the underground nuclear explosion scheduled for this week on the island of Amchitka in the Aleutian chain.

David L. Sive, attorney for the Committee for Nuclear Responsibility and six other environmental organizations, said he would appeal to the United States Court of Appeals for the District of Columbia Circuit as soon as District Judge George L. Hart filed his order denying a preliminary injunction.

The Court of Appeals is expected to act tomorrow, because the State Department indicated today that the test would take place by Thursday. It gave notice that under the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, "innocent passage within three miles of Amchitka" would be suspended from Nov. 2 to Nov. 4, "due to U.S. Atomic Energy Commission experiment."

A spokesman for the Atomic Energy Commission said tonight, "We'll be ready for the blast by Friday." But he added that it would not necessarily occur that day.

The basis of Mr. Sive's motion for the injunction was the allegation that the Atomic Energy Commission had not fulfilled the requirements of the National Environmental Policy Act when it filed an environmental impact statement with the Council on Environmental Quality, a White House office, last June.

Mr. Sive contended that the law required that an environmental impact statement by any Federal agency on a proposed action should include all competent scientific opinion, including the views of scientists opposing the action.

The Amchitka explosion is to be a test of a five megaton nuclear warhead for the Spartan antimissile missile.

Judge Finds No Proof

Mr. Sive alleged that the A.E.C. had not incorporated in its statement competent opinion on the environmental hazards of exploding a device with the force of five million tons of TNT, but only the view of those who regarded the damages as minimal.

With some heat, Judge Hart said today that he was denying the motion because the environmental organizations had not shown that the A.E.C. had withheld information as possibly adverse environmental effects.

Last week the Court of Appeals refused to halt the test through a temporary restraining order requested by Mr. Sive. It said that President Nixon had

approved the test, as required by Congress, and it was in "no position to consider or appraise the national security aspects of the test underlying the President's determination."

But the Court of Appeals also said that "approval by the President and compliance with the National Environmental Policy Act are two separate statutory requirements which must be satisfied if the test is to be lawfully carried out."

Thus the possibility remained that the Court of Appeals might grant a preliminary injunction on the ground that the requirements of the act had not been satisfied by the A.E.C.

Dispute Over Documents

At the hearing this morning, Judge Hart ordered the A.E.C. to deliver to Mr. Sive some of the official documents that he had requested, but some other documents were withheld. Mr. Sive had alleged that the documents contained information on the potentially dangerous effects of the blast, including the creation of a seismic sea wave and destruction of wildlife.

Mr. Sive said he would also appeal to the Court of Appeals the order denying his inspection of some of the withheld documents.

Late in August, Judge Hart dismissed two suits — one seeking the release of the documents, the other seeking a preliminary injunction against the test.

The Court of Appeals reversed him on Oct. 5, and remanded the suit involving disclosure of documents. Last week, Judge Hart ordered that the documents be delivered to him for private examination so that he could determine whether they should be given to the lawyers of the environmental organizations. But he stayed his order pending review of the Court of Appeals.

On Thursday, the Court of Appeals upheld Judge Hart's order but gave the Government a day to appeal to the Supreme Court. The Government decided not to do so and delivered the documents last Saturday.

With an expert from the A.E.C. on call, Judge Hart read the documents over the weekend. Today he ordered the disclosure of three documents in full to Mr. Sive, and parts of four other documents. He refused to deliver seven documents on the ground that they expressed opinions within the executive branch necessary for opinion-making, and thus were privilege under exceptions in the Freedom of Information Act.

Judge Hart also acceded to a Government request that three documents that were to be shown to Mr. Sive be withheld from public view.