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February 7, 2000
1940-00-20001

U. S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington DC 20555

Dear Sir:

Subject: Oyster Creek Nuclear Generating Station
Docket No. 50-219
NRC Inspection Report 50-219/99-08
Contest of NCV 50-219/99-08-01

The referenced inspection report, on pages nine and ten, contains the details of the referenced Non-Cited Violation. GPU Nuclear, Inc. disagrees that a violation of NRC regulations occurred. Attachment I to this letter explains why we believe that no violation has occurred.

If any additional information or assistance is required, please contact Mr. John Rogers of my staff at 609.971.4893.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sander Levin".

Sander Levin
Acting Site Director
Oyster Creek Nuclear Generating Station

SL/JJR
Attachment

cc: Administrator, Region I
NRC Project Manager
Senior Resident Inspector

IEO1

NRC Non-Cited Violation 50-219/99-08-01:

In Inspection Report 50-219/99-08, Section R8 Miscellaneous RP&C Issues, the following is presented:

"R8.1 Disposal of Dredge Spoils at Finninger Farm (83750)

"Finninger Farm is a 600 acre-plus property located immediately to the east of the Oyster Creek Nuclear Generating Station (OCNGS). It is separated from OCNGS by State Route 9, and was part of the property originally purchased by Jersey Central Power and Light, which included what is now known as OCNGS, Finninger Farm and the Forked River site. Finninger Farm is bounded on the west by Route 9, on the east by the development known as Forked River Beach, on the south by Oyster Creek and on the north by the south branch of the Forked River. On the eastern and western (land-side) boundaries, the farm is bordered with a post and rail fence, which is posted "No Trespassing." Access into the property is along a dirt road which has a locked gate. Within the farm is a 17.5 acre area that was set aside in 1978 as a dewatering basin for dredging spoils.

"The dewatering basin is bounded on all sides by a snowdrift type fence. At least one air sampler is located along each side of the basin, and two sides of the basin have air samplers under the control of the New Jersey Bureau of Nuclear Engineering. A remote direct radiation monitor, also under state control, is located along the western border of the basin.

"In 1978, in accordance with the final environmental statement for the OCNGS and the New Jersey Board of Public Utilities, portions of Oyster Creek were dredged to remove sediment from the creek bottom which was causing shoaling. This material, about 100,000 cubic yards, was pumped to the dewatering basin, and allowed to dry. The basin was then covered over with top soil.

"In 1984, a second dredging project, this time in the Forked River was commenced. The dewatering basin was reopened, with the top soil used to create a 4-6 foot high berm around the basin. Approximately 30,000 cubic yards of additional materials were deposited into the basin at this time. The basin was left uncovered, pending additional planned dredging. This additional dredging did not take place until 1997. At that time, an additional 50,000 cubic yards of sediment from the Forked River were deposited in the basin.

“Sampling and analyses of these dredging spoils has indicated the presence of trace (detectable) concentrations of cobalt-60 and cesium-137. The licensing basis and safety evaluation for Oyster Creek considered exposure due to radiological effluents that were released within technical specification limits. Accordingly, the detection of trace concentrations in dredging spoils is not unexpected. These trace concentrations are deposited on GPU controlled property, are effectively monitored, secured against unauthorized removal and access, and are not expected to pose any health and safety consequence. Notwithstanding, the disposition of reacquired licensed materials (that were previously released in accordance with technical specifications), in a manner different than specified in 10 CFR 20, Subpart K, 20.2001, “General Requirements,” requires the licensee to obtain approval for the disposal procedure in accordance with 10 CFR 20.2002, “Method for obtaining approval of proposed disposal procedures.” Failure to obtain the required approval to accommodate the disposition of this material constitutes a violation of NRC requirements. Notwithstanding, this Severity Level IV violation is being treated as a Non-cited Violation, consistent with Section VII.B.1.a of the NRC Enforcement Policy. This matter is in the licensee’s corrective action program as CAP No. 01999-1405. (NCV 50-219/99-08-01)”

GPU Nuclear Inc.’s Response to NCV 99-08-01:

GPU Nuclear Inc. (GPUN) does not concur in the violation for the following reasons:

Summary of the Bases for Denial:

There are two considerations upon which this denial is based:

1. Any radioactivity in the dredged material was properly released from the site in effluents meeting 10 CFR Part 20, Appendix B limits and therefore has already been properly “disposed of.” Any material released to the environment from a licensee in full compliance with all Technical Specifications, State permits, and federal regulations becomes part of the environment and is not “licensed material” subject to any further provisions in 10 CFR 20.2001 or 20.2002. Any other position would deny the validity of 10 CFR 20.
2. There was no requirement in 10 CFR to sample the dredgings prior or subsequent to removal from their location in coastal waterways, nor were the dredgings required to be moved by a licensee. Any organization allowed to dredge by the applicable regulating authorities (Army Corps of Engineers, New Jersey Department of Environmental Protection, Ocean County, etc.) could have appropriately, in full compliance with all applicable regulations and permit conditions, moved the dredgings from where they were located in the environment to any other authorized location in the environment. The activities to dredge the coastal waterways and place the spoils in an authorized basin are outside the scope of Title 10 of the code of Federal Regulations.

Based on the facts that: 1) the trace amounts of Co-60 and Cs-137 found in the dredgings were not located on the Oyster Creek Nuclear Generating Station site, and had been released in full compliance with all Technical specifications, regulations and permit conditions; and 2) any authorized, non-licensed organization could have performed the dredging and relocation without any need for any testing, GPU Nuclear requests that NCV 99-08-01 be withdrawn.

Detailed Discussion:

Basis 1: Any material released to the environment from a licensee in full compliance with all Technical Specifications, State permits, and federal regulations becomes part of the environment and is no longer subject to licensing or further disposal requirements. 10 CFR 20.2001(a)(1)(3) indicates that radioactive material may be 'disposed of' by release in effluents within the limits of 20.1301. Any trace radioactivity in the dredged material on the Finninger Farm as a result of the previous, permissible discharge of liquid effluent from Oyster Creek is therefore radioactive material that has already been properly "disposed of." Once such material has been legally released to the environment, it is no longer "licensed material" to which section 20.2001 or 20.2002 has any further applicability. Once an effluent has been appropriately discharged (and hence properly disposed of), no specific section of the regulations indicates that the licensee remains responsible if trace levels of radioactivity are detected offsite. Indeed, the NRC has previously taken the position, in a similar case involving releases in effluents to the sewer, that discharged material is no longer licensed once it enters the environment. Memorandum from H. Thompson to W. Russell, "Regulation of Radioactive Material Subsequent to Discharge from a Licensed Facility" (Jan. 27, 1989).

The proposed violation would effectively nullify regulations and Technical specifications that allow for disposal of radioactive material via effluents. The apparent interpretation underlying the proposed violation would deny the validity of the effluent control and public dose content in 10 CFR 20 and render meaningless the provision for disposal of effluents in 20.1302(b)(2) and 10 CFR 50 Appendix I Section II A. The fact that the dredged material was placed on property that happens to be owned by the licensee (but is not part of the Oyster Creek site) does not make any difference under the NRC regulations. Indeed, any other view would simply encourage licensees to have other persons perform offsite dredging activities or to place dredged material on other property. In the absence of any safety significance, the NRC's rules and authorizations allowing the release of materials must be accorded finality.

Basis 2: There is no requirement that any work performed off site near a licensed facility be performed by entities licensed by the NRC. Road crews routinely dig and move large amounts of soil adjacent to the Oyster Creek site. Gas utilities are allowed to trench and lay pipelines along a road adjacent to the plant and then cover the lines without ever needing to sample the soil or obtain permission from the NRC to conduct business as usual. The Army Corps of Engineers, the New Jersey Department of Environmental Protection, and private marina owners routinely dredge Forked River and Barnegat Bay with no radiological analyses being performed. The dredgings in question must be considered in the same light. In this case, a contractor to GPUN performed the dredging. However, the dredging could just as easily have been performed by a party not associated with GPUN or Oyster Creek as there are no restrictions contained within Title 10 of the Code of Federal Regulations, Oyster Creek's License, or its Technical Specifications that limit such activities.