

August 18, 2000

EA #00-189

Mr. Ronald DeGregorio
Vice President - Oyster Creek
AmerGen Energy Company, LLC
P.O. Box 388
Forked River, NJ 08731

SUBJECT: RESPONSE TO NRC INTEGRATED INSPECTION REPORT
05000219/1999-008

Dear Mr. DeGregorio:

This letter refers to the correspondence from GPU Nuclear (Sander Levin), dated February 7, 2000, in reply to our December 7, 1999, letter. In that reply, the licensee (then GPU) contested the non-cited violation (NCV) previously described in NRC Integrated Inspection Report No. 50-219/99-08, regarding the disposition of dredging spoils from a coastal waterway that were deposited on Fininger Farm (a controlled property of GPU Nuclear, Inc.). The NCV was identified because the licensee disposed of the dredged materials, which contained trace concentrations of licensed materials, in a manner other than specified in 10 CFR 20, Subpart K, 20.2001, "General Requirements," without obtaining approval for the disposal procedure in accordance with 10 CFR 20.2002, "Methods for obtaining approval of proposed disposal procedures." The failure to obtain the required approval to accommodate the disposition of this material on the owner-controlled property (Fininger Farm) constituted a violation of NRC requirements. The licensee subsequently entered this finding in their Corrective Action Program. Consequently, in accordance with NRC Enforcement Policy, we identified this matter as a non-cited violation (NCV).

We understand that the licensee contested the NCV based on the following:

1. Radioactivity in the dredged material was properly released from the plant in effluents meeting the requirements of Appendix B to 10 CFR Part 20. Consequently, it was reasoned that the radioactive material was properly disposed of in accordance with all Technical Specifications, State permits, and federal requirements, and, accordingly, the material should be considered as part of the environment and not "licensed material" subject to further regulatory control, including 10 CFR 20.2001 or 20.2002.
2. There was no requirement to sample the dredged materials prior or subsequent to removal from the coastal waterway; the dredged material was not required to be moved by a licensee (i.e., it could have been moved by any authorized entity to any appropriate location); and, the dredging activity is outside the scope of Title 10 Code of Federal Regulations.

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The essential question posed by this contention is whether the release or disposal of licensed materials in accordance with the provisions of 10 CFR 20 relieves the licensee from regulatory control upon repossessing the material.

We have reviewed this contention with our Office of General Counsel and the Office of Nuclear Reactor Regulation, and determined the following:

As authorized by 10 CFR 2001(a)(3), the licensee (then GPU) originally released licensed material in effluents that conformed with the specifications of 10 CFR 20.1301 and license conditions, at which time the material was considered properly disposed. It was no longer under GPU's control. Absent further actions by the licensee or other extenuating circumstances, the licensee would not, under the Commission's regulations, be responsible for the material. However, by dredging the material and placing it on its property (i.e., repossessing the previously disposed of licensed materials), the licensee effectively took control of the licensed materials.

The fact that material was previously released in accordance with Commission's requirements does not mean it can no longer be subject to regulatory control. When the licensee repossessed and regained control of material that contained trace concentrations of plant-related radioactivity, the material became part of the facility's inventory of licensed material, and was required to be controlled in accordance with all applicable regulatory requirements, including 10 CFR 20. In this particular case, the licensee may also be subject to the requirements of 10 CFR Part 20, Subpart E, in the event of license termination or disposition of the affected property.

Accordingly, upon review of this matter, we determined that the non-cited violation described in the inspection report is valid and requires resolution. While no specific response to this letter is required, it is expected that you will take the necessary corrective measures to resolve this violation in accordance with the applicable regulatory requirements.

Sincerely,

/RA by John R. White for/

Wayne D. Lanning, Director
Division of Reactor Safety

Docket No. 05000219
License No. DPR-16

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