



Division of Environmental Health

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State of North Carolina
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September 4, 2007

Dennis K. Rathbun, Director
Division of Intergovernmental Liaison and Rulemaking
Office of Federal and State Materials
and Environmental Management Programs
Two White Flint North
11545 Rockville Pike
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SUBJECT: Revisit Jurisdiction Relative to Dredging of Progress Energy/Brunswick Nuclear Plant Discharge Canal

Dear Mr. Rathbun:

On June 1, 2007 Progress Energy requested of NC Radiation Protection Section (NCRPS) approval for the transfer of dredged sands and sediments containing small amounts of radioactive material from the discharge canal of Brunswick Nuclear Plant to an on-site spoil pond.

Along with the letter of request, Progress Energy attached an evaluation of the dredging process which included a reference to the "Final Environmental Statement Related to the Continued Construction and Proposed Issuance of an Operating License for the Brunswick Steam Electric Plant Units 1 and 2" which was published and approved by the US Atomic Energy Commission in January 1974.

This Final Environmental Statement (FES) states "the applicant plans to account for shoaling in both canals by maintenance dredging. Dredging spoil will be placed in existing spoil ponds that have sufficient capacity. No marsh area will be used for spoil areas, nor will any spoil be deposited in the Cape Fear Estuary."

On June 7, 2007, my staff and I participated in a conference call with Progress Energy and Stewart Bailey, Steve Soloman and Richard Turtill from the NRC to discuss jurisdiction over such activities. It was stated in that meeting by the NRC, that such activity was under NC jurisdiction. A letter dated January 30, 1992, signed by Ngoc B. Lee, NRC Project Manager, was referenced as an earlier determination of the jurisdictional issue. This letter states that "pursuant to 10 CFR Part 150, the NRC has relinquished to the State the authority to regulate by-product material in the State of North Carolina. Thus, permission for burial of by-product material in the State of North Carolina must be issued by the State licensing agency." Is this activity of dredging the canal and movement of material to an owner controlled spoil pond burial?

It must certainly be frustrating for the utility, which has released atoms within federal effluent limits under a federal license, approved by the federal government, to now be dealing with those same atoms in a potential licensing action with the State of NC. It is certainly frustrating for NCRPS.

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My question is, why is a practice which was solely evaluated, analyzed and approved by the federal government now determined to be under state jurisdiction? I am also requesting formal documentation of the NRC decision. I will point out that NC had Agreement State status as early as August 1, 1964, yet to my knowledge, NC had no input or evaluation of this FES. To further complicate matters, a negative licensing decision from NC could negatively impact the operation of the federally licensed plant.

Your formal documented determination will satisfy the Agency requirements under 15A NCAC 11.0349 which states: "the U.S. Nuclear Regulatory Commission determines that such on-site disposal is subject to regulation by the agency."

Thank you for your time.

Respectfully,

W. Lee Cox, III, Manager
NC Radioactive Materials Branch

WLC