

JUL 08 1990

Radioactive Waste Management Associates  
ATTN: Marvin Resnikoff, Ph.D,  
Senior Associate  
306 West 38th Street, Room 1508  
New York, New York 10018

Dear Dr. Resnikoff:

I am responding to your letter of May 17, 1990, concerning the Nine Mile Point Unit 1 reactor. In your letter you presented several concerns regarding the enforcement action NRC has taken against Niagara Mohawk Power Corporation associated with the licensee using the Radwaste Building sub-basement as a long-term liquid waste retention facility. The majority of your concerns have already been dealt with in our March 30, 1990 letter to you. Further, the remaining concerns have been addressed in the Augmented Inspection Team (AIT) report and/or in the follow-up enforcement action report.

You commented that Niagara Mohawk is soon to release radioactive water from the cleanup of the sub-basement and that this was not considered in the Commission's determination whether the company should be fined. This has no bearing on the enforcement action associated with the sub-basement flooding event, since Niagara Mohawk is allowed to make controlled releases of radioactive material into Lake Ontario as long as the releases conform to regulatory limits. This has already been explained to you in our March 30, 1990 letter to you. Conformance to established regulatory limits ensures protection of public health and safety and protection of the environment.

You also stated that the Commission did not take into consideration prior notice in determining whether the company should be fined. This is not correct. Contrary to your assertion, as stated in the letter from William T. Russell to Niagara Mohawk Power Corporation dated February 23, 1990, and to which you have been referred to in our previous correspondence to you of March 30, 1990, enforcement discretion was based on the criteria outlined in Section V.G. of 10 CFR Part 2, Appendix C. One of the criteria considered by the NRC was prior notice. You are correct that both IE Circular No. 80-18 and NRC Generic Letter 81-38 deal with changes to radwaste systems. These documents were carefully

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considered in the evaluation of prior notice. Because both of these documents focus on equipment modifications rather than on changes in the use of existing equipment, or as in this case, abandonment of existing equipment, we found that these documents were not specific enough to establish clear prior notice.

With regard to the specific items of NRC Generic Letter 81-38 that you discussed in your letter, below I will attempt to address them, however, it should be pointed out that the provisions of the generic letter were intended to apply to licensees who are planning on increasing their permanent storage capacity for low-level waste generated. The sub-basement, as described in NRC Inspection Report No. 89-80, was intended for use as a radwaste drumming and storage facility. There was no intended permanent increase in storage capacity of radioactive materials associated with the flooding or the decisions made by the licensee afterward, hence, the licensee's use of the sub-basement as a liquid radwaste storage facility did not fall within the scope of Generic Letter 81-38, and its conditions are not applicable. Your concerns are addressed below:

\* NRC staff encourage "the shipping of waste at the earliest practicable time," and the storage of "radioactive material in solid form." As you know radioactive waste was stored in liquid form.

The key word here regarding shipment is "practical". The material in the sub-basement was highly radioactive. The staff agrees with the licensee's position that the radioactive material should be allowed to decay as long as possible for worker exposure considerations before attempting to ship it offsite. Regarding storage in liquid form, this was a consequence of that conclusion to avoid unnecessary worker exposure.

\* Temporary waste storage is for up to five years. For more than five years, an application under 10 CFR Part 30 is required, for a five year renewable term. As you know, radioactive waste has been stored in the sub-basement for 12 years.

You are correct in that the licensee did not conform to the five year storage limit criterion of Generic Letter 81-38. As noted above, allowing the radioactive material to decay before shipping was consistent with good health physics practice. The five year requirement that is cited is a requirement of the generic letter, and as already discussed is not applicable to the conditions or use of the sub-basement as a liquid radwaste storage facility.

\* Containers should resist corrosion and remain intact "for a period well in excess of the planned storage duration." In contrast to this integrity requirement, containers were stored without being closed.

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The generic letter is intended to apply to the storage of solid waste in a new facility. Construction of a new facility would have to be designed under the guidance contained in the generic letter with containers that resist corrosion. The sub-basement was neither a new facility nor was it being used solely for solid waste storage. After the flooding event, liquid radwaste was stored there as well, thus, the issue of corrosion resistance of containers is irrelevant. As stated in the Notice of Violation dated February 23, 1990, the licensee did not develop a written safety evaluation to provide the basis for a determination that the storage of liquid radwaste did not involve unreviewed safety questions. This fact was central to the enforcement action that was taken. Had the safety evaluation been done, it should have taken into consideration several factors, including the integrity of the sub-basement as a liquid radwaste storage area. Notwithstanding the non-applicability of the requirements of the generic letter, the issue of container integrity is not pertinent because the safety evaluation could not have taken credit for container integrity as the containers were open and tipped.

\* Containers should be inspected quarterly. Are you aware of regular inspections by Niagara Mohawk?

For a new radwaste storage facility, it would be expected that a licensee would design the facility in accordance with the surveillance guidance of Generic Letter 81-38. However, because of the high dose rates that existed in the room and because of the general condition of the room, periodic inspection of the tipped drums would have served no useful safety purpose and would be contrary to sound health physics practices. Nonetheless, the licensee took periodic environmental samples, air samples in the plant, and water level samples in the sub-basement to ensure that no leakage was occurring.

In your May 17, 1990 letter you again raised the point about the amount of water involved in the flooding event. You asserted that the NRC has not investigated this. This is not correct. In my letter to you dated March 30, 1990, I stated that during the Augmented Inspection Team (AIT) inspection conducted in August, 1989, the NRC staff reviewed all water introduced to the sub-basement. As you are aware, after the flooding event there was an excess of water onsite and a controlled discharge was made to Lake Ontario. The water that was released into Lake Ontario came from the Waste Surge Tank and was sampled as required prior to release. The relevance of the amounts of water associated with the flooding event were taken into consideration in the enforcement action associated with it. Your assertion that NRC has not investigated this aspect is without basis.

You stated in your letter that the licensee is planning on releasing 75,000 gallons of radioactively contaminated water. This release has, in fact, already taken place. You requested an answer as to why a 10 CFR 50.59 review is not required for this liquid effluent release. As I indicated above, the licensee may make releases of radiologically contaminated

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water without a special 10 CFR 50.59 review provided they conform to regulatory limits and operational design basis objectives. The regulatory limits are described in 10 CFR 20, and the effluent processing system operational design basis objectives are described in 10 CFR 50, Appendix I. In making the releases, the licensee conformed to these regulatory limits and objectives which ensure that the public health and safety and the environment has been protected.

In your letter you assert that additional radiation exposures to the general public and to plant workers occurred as a result of the flooding event. You also stated that the additional exposures and the cleanup costs should have been investigated in a 50.59 filing. You are incorrect in your assertion that the radiation exposures associated with the flooding event and the subsequent cleanup efforts, both offsite and onsite, were not investigated. The AIT team thoroughly assessed the onsite and offsite exposures that could result from the event. As indicated in the AIT report, releases that occurred in July, 1981 as a result of the flooding were determined to be negligible. Also, as indicated in the report, occupational exposures are being minimized by means of the use of a robot. Further, the licensee's activities in this area are being continually monitored through the routine inspection process. Regarding your comment pertaining to cleanup costs and 10 CFR 50.59 filing, if you review that section of the regulations you will find that financial considerations are not included there. Hence, your comment is inappropriate.

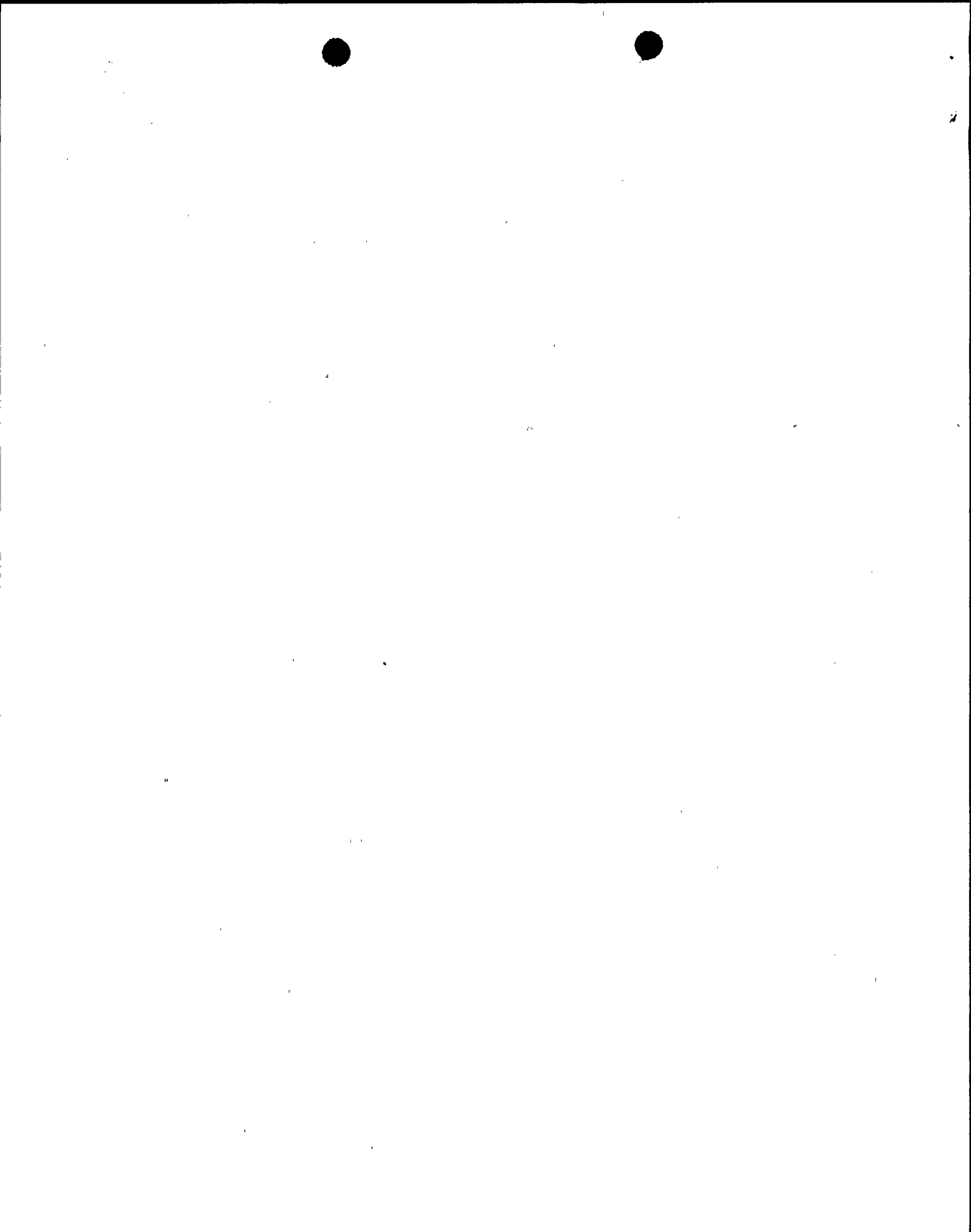
Most troubling to me was your allegation that the NRC treats Niagara Mohawk Power Corporation with a "favored company" status. This is absolutely not the case. The enforcement action that we took for this case involved much deliberation. We attempted to take into consideration all the unique factors associated with the case, the most important of which were the issues related to public health and safety and protection of the environment. We consider we have treated this licensee in the same way that we would treat any other licensee.

Sincerely,

Original Signed By:

Ronald R. Bellamy, Chief  
Facilities Radiological Safety and  
Safeguards Branch  
Division of Radiation Safety and  
Safeguards

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Dr. Marvin Resnikoff

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cc:

R. Pollard

Representative Louise M. Slaughter

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