

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Charles Bechhoefer, Chairman
Dr. Frederick P. Cowan
Dr. Jerry Harbour

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In the Matter of CONSUMERS POWER COMPANY (Midland Plant, Units 1 and 2)	}	Docket Nos. 50-329 OM 50-330 OM
	}	Docket Nos. 50-329 OL 50-330 OL
	}	November 5, 1982

MEMORANDUM AND ORDER
(Motion for Partial Initial Decision
Prior to Commencement of Certain Remedial
Soils Activities)

On September 4, 1982, Ms. Barbara Stamiris, an intervenor in this consolidated proceeding, filed a motion for us to complete hearings and issue a partial initial decision on the adequacy of the Applicant's quality assurance (QA) program for soils activities, and the likely implementation of that program, prior to the commencement of remedial underpinning excavations. By filings dated September 22 and 24, 1982, the Applicant and NRC Staff each opposed the motion. For reasons set forth below, we decline to grant the relief requested.

Ms. Stamiris is essentially seeking a temporary work hold on underpinning excavation work pending the completion of hearings and our issuance of a partial initial decision on QA adequacy with respect to soils

remedial work. She also urges us to take steps to expedite the hearings on those QA questions.

In support thereof, Ms. Stamiris states that she is seeking the identical result which we sanctioned in our Memorandum (Concerning Telephone Conference Call of September 25, 1981 and Applicant's Motion for Partial Decision), dated October 2, 1981, which granted the Applicant's motion seeking a partial initial decision on certain QA and managerial attitude issues. She also points out that major remedial soils activities have not heretofore been approved prior to the resolution of the related safety questions in this proceeding, and that a hearing to determine whether the soils remedial work is likely to be properly implemented can only be meaningful if conducted before the work takes place. She adds that to permit soils remedial work to be performed prior to determining whether it is likely to be performed safely places the Applicant's scheduling needs ahead of public health and safety needs. Finally, Ms. Stamiris cites statements of NRC Staff officials concerning the adequacy of the Applicant's QA effort, as well as certain allegations of violations of QA/QC procedures, failures to institute proper QA/QC procedures, and violations of agreements between NRC and the Applicant and of the conditions imposed by our Memorandum and Order of April 30, 1982, LBP-82-35, 15 NRC 1060.

In order to understand the bases for the opposition of the Applicant and Staff to Ms. Stamiris' motion, it is necessary to understand the controls which we placed on further construction by our April 30, 1982 Order, LBP-82-35, supra. There, we directed that essentially no further soils-related construction activities (of the type specified therein) be

undertaken absent explicit prior approval of the NRC Staff. We also required that certain activities be controlled by a Staff-approved Quality Assurance Plan. What Ms. Stamiris is now seeking is additional prior approval by this Board of the QA aspects of the soils-related construction activities.

Both the Applicant and the Staff claim that the additional controls sought by Ms. Stamiris are neither necessary nor appropriate. The Applicant additionally asserts that we do not have authority to impose controls beyond those authorized by LBP-82-35. We have considerable doubt about this latter claim by the Applicant; but since we believe that additional controls are not now warranted, we need not treat at this time the precise scope of our authority.^{1/}

We would be reluctant to impose the additional controls on soils related construction activities sought by Ms. Stamiris (particularly the work stoppage) unless we were convinced that, absent such controls, further construction activities would pose a danger to the public health and safety. For, as the Commission has pointed out, suspension of rights under a construction permit is drastic action that should be taken only in

^{1/} We note that in LBP-82-35 we pointed out that the controls we were requiring would achieve the substantive results we believed necessary without adding certain procedural requirements attendant upon an application for a construction permit amendment, which would become applicable were we to place the Modification Order fully into effect. Without delineating what those procedural requirements would be, we note that at the present time they might include an additional prior hearing on the QA aspects of remedial measures, as presently sought by Ms. Stamiris. 10 C.F.R. § 2.105(a)(3); Sholly v. NRC, 651 F.2d 780 (D.C.Cir.1980), reh. den., 651 F.2d 792 (1981), cert. granted, 451 U.S. 1016 (1981).

exceptional circumstances. Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-73-38, 6 AEC 1082, 1083 (1973). We do not regard the particular matters relied on by Ms. Stamiris as constituting such exceptional circumstances. To the contrary, most of the QA deficiencies to which Ms. Stamiris refers appear to have been identified by the Applicant through its QA program or by the Staff pursuant to its review activities (in part as exercised under the controls we imposed through LBP-82-35). Though there may have been some disagreement between the Applicant and Staff regarding the scope of the Staff approval required by LBP-82-35, the work authorization procedure recently put into effect appears to resolve any such disagreement.^{2/}

We have been provided no basis upon which we might conclude that the procedures put into place to implement LBP-82-35 are either ineffective or insufficient to secure the results contemplated by that order.^{3/} To the contrary, we are quite impressed thus far with the Staff's performance of the oversight functions we granted to it in LBP-82-35. We note in particular the Staff's recent efforts to assure that QC inspectors are adequately qualified, and the additional manpower assigned by NRC to oversee

^{2/} The Staff advises that this procedure, although it refers to work covered by LBP-82-35, is also being utilized for work approved prior to April 30, 1982. See 9/24/82 Staff response, p. 4, fn. 3.

^{3/} At this point, we express no opinion as to the adequacy of these procedures.

the Midland project. Efforts of this sort are properly within the province of the Staff.

We recognize, of course, that review by us of work activities prior to their performance might conceivably have some beneficial effect. But the extent of any benefit is too imprecise at this point in time to warrant the imposition of the rather severe time and financial penalties which could result from a work stoppage. Moreover, there is no reason for us to take the steps requested by Ms. Stamiris to expedite hearings on the QA programs. Those hearings are currently scheduled to begin later this month--the Staff's prepared testimony was filed on October 29, 1982; and, under the schedule we previously established, the Applicant's response will be filed in the near future. As the Applicant points out, the QA matters relied on by Ms. Stamiris will all be reviewed by us prior to any grant of an operating license, and the risk that remedial action might be carried out improperly or otherwise prove unsuccessful is one which is borne by the Applicant.

Finally, we agree with the Applicant that Ms. Stamiris' instant motion is not comparable to their September 2, 1981 motion which we granted. We agreed to issue an early partial initial decision on QA and management attitude issues, as requested by the Applicant, only when we believed that the record on those matters was complete and that waiting to issue such a decision until the record on other soils matters could be closed would serve no useful purpose. We also found that an early decision would not prejudice any of the parties. Since that time, the record on QA matters has been reopened twice. Hearings on all soils matters will likely be completed

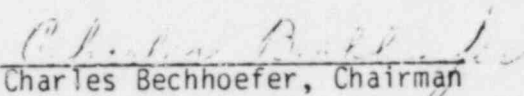
during the same time frame, and it is now our intent to issue only one decision on those questions. Requiring that work be stopped pending our completion of the QA portion of the hearings would likely substantially prejudice the Applicant. Given the existence of the procedures of implement LBP-82-35, which appear to be functioning satisfactorily, we find no countervailing benefit at this time which would warrant our subjecting the Applicant to the financial penalties which an enforced work stoppage could entail.

For those reasons, it is, this 5th day of November, 1982

ORDERED

That Ms. Stamiris' Motion for Partial Initial Decision Prior to Commencement of Certain Remedial Soils Activities is denied.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE