

AUG 20 1982

MEMORANDUM FOR: James A. Fitzgerald, Acting Director, Office of  
Investigations

FROM: James G. Keppler, Regional Administrator, Region III

SUBJECT: MIDLAND-REQUEST FOR INVESTIGATION

During an inspection of remedial soils activities at the Midland site, Dr. Ross Landsman of the Region III Midland Section identified two instances of apparent violation of the April 30, 1982 ASLB Order. Dr. Landsman contends that the licensee, in direct violation of the Board Order, excavated below the deep "Q" duct bank and initiated fireline relocation activities in "Q" soils without prior NRC authorization. A copy of the memo addressing his findings is attached.

A management meeting was held on August 11, 1982 at the Midland Site. The licensee's position, as stated during this meeting, was that the ASLB Order was not violated. The licensee contends that their actions, in both instances, were based on prior understandings of the NRC requirements pertaining to the ASLB Order and prior approvals granted by the BER staff.

Because of our concern with communications misunderstandings at the Midland project and the seriousness of this matter, Region III requests OI investigate this matter as expeditiously as possible. NRC personnel familiar with this matter include Dr. Ross Landsman, Ron Gardner of Region III and D. Hood, J. Kane of NRR. Region III will, of course, provide technical assistance as required.

We appreciate your cooperation in this matter and will be glad to discuss any questions you may have.

James G. Keppler  
Regional Administrator

Attachment: As Stated

AUG 20 1982

cc w/encl:

DME/Document Control Desk (RIDS)

Resident Inspector, RIII

The Honorable Charles Bechhoefer, ASLB

The Honorable Jerry Harbour, ASLB

The Honorable Frederick P. Cowan, ASLB

The Honorable Ralph S. Decker, ASLB

Michael Miller

Ronald Callen, Michigan

Public Service Commission

Myron M. Cherry

Barbara Stamiris

Mary Sinclair

Wendell Marshall

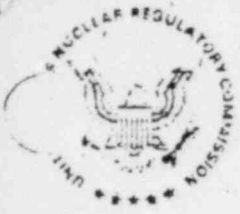
Colonel Steve J. Gadler (P.E.)

R. F. Warnick

W. D. Shafer

R. N. Gardner

R. B. Landsman



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION III  
795 ROOSEVELT ROAD  
GLEN ELLYN, ILLINOIS 60137

AUG 24 1982

MEMORANDUM FOR: W. D. Shafer, Chief, Midland Section  
FROM: R. B. Landsman, Soil Specialist  
SUBJECT: VIOLATION OF ASLB ORDER OF APRIL 30, 1982

When Darl Hood and Joe Kane were in Midland for an ACRS hearing, I asked for a meeting to be held on site between NRR, Bechtel, the licensee and myself. The meeting took place on a Thursday afternoon in the Remedial Soils Trailer (May 20, 1982). The purpose of the meeting was to discuss numerous concerns that I had about ongoing work and future work.

One of the concerns discussed was a monitoring pit for what has come to be known as the deep "Q" duct bank. During that meeting both NRR and I expressed our concerns that what the licensee was planning was not approved, that is: to excavate below the duct bank. NRR only approved an excavation down to a duct bank approximately 22 feet deep. This is documented in an NRC Tedesco to Cook letter dated February 12, 1982, which references a CPCo Mooney to Denton letter dated January 6, 1982.

Since the licensee usually does not know what is in the ground or where it is, as usual the 22 foot duct bank was found at approximately 35 feet. It also was not in the right location as evidenced by the monitoring pit sheet piling hitting one side of the duct. In addition, while drilling a nearby dewatering well, they inadvertently drilled into the duct bank, emptying the well drilling fluid into the turbine building through the duct.

I had no problem with the licensee taking the excavation pit down to 35 feet instead of the approved 22 feet, since the methodology of the approved excavation remained the same. NRR and I did have a problem with the licensee wanting to excavate below the duct bank to impervious clay in order to seal off the water flow, without first informing NRR of their plans and obtaining their prior approval.

All of the above was discussed during the meeting. The licensee was informed that they could not excavate below the deep "Q" duct bank. The licensee indicated that they would submit something formal to NRR for approval.

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AUG 24 1982

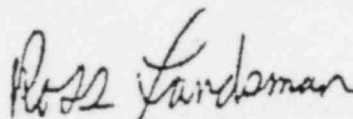
The following day, I warned them during the normal exit meeting and again during the summary at the end of that meeting that they did not have prior NRR approval. I asked if everyone understood what I was saying and they acknowledged.

The following week, during my inspection to allow the licensee to activate the freeze-wall, I warned them again that they could not dig below the deep "Q" duct bank because they did not have prior NRR approval.

Subsequently, after the activation of the freeze-wall, the licensee apparently decided that they had to seal off the water flow beneath the duct bank and proceeded to dig below the duct bank without NRR approval. I'm not sure when excavation began, but I was on site July 28 when I discovered the excavation in progress. The licensee, when informed of my concern, issued a Stop Work Order on July 29, 1982. I wondered why they were so agreeable until I found out that they already had the excavation down to where they wanted it (the clay).

I informed the licensee during my exit on July 30, 1982 that they were in direct violation of the Board Order and their Construction Permit. To make matters worse, the licensee during the exit, said that they discussed this with Messrs. Hood and Kane in Ann Arbor earlier that morning and had received "Approval concerning the technical adequacy" for what they were doing. I informed the licensee that they missed the point (basis of concern). My concern dealt not with the technical adequacy of what they were doing, but rather with their ASLB order requirement to notify and receive prior staff approval before proceeding below the duct bank. Subsequently, Mr. Kane indicated to me that they never even talked to him about this. Mr. Hood indicated that they talked to him about something concerning the deep "Q" duct bank, but he in no way had given approval.

Subsequent to my leaving the site, the licensee began what I consider to be another unapproved excavation in "Q" soils. This excavation, which involves the relocation of a fire line was discovered on August 4, 1982, during my next inspection. This excavation is along side the service water pump structure. I have not had time to look into this matter to better define the details, but as pointed out to you and Darl Hood, they have undermined a duct bank, an unidentified pipe thrust block, and appear to be along side a safety-related duct bank.



Ross Landsman,  
Soils Specialist

cc: R. F. Warnick

AFTERNOON SESSION

(1:45 P.M.)

CHAIRMAN BECHHOEFER: Back on the record. Mr. Paton?

MR. PATON: Yes, Mr. Chairman, I have a -- two<sup>7</sup> very minor or brief matters.

The Applicant earlier this week raised a question about the office of investigation, the matters that are being looked at by the office of investigation. I have some information about that which is that -- well, I have a list of four issues and I would like to tell the Board those four issues and I would like to ask the Board and any parties that if anyone recalls that there are any other issues that they believe the office of investigation or Region III is supposed to be addressing, they would let me know.

This completes the list, to my knowledge, but I wouldn't want to -- if someone is aware of one, I'd appreciate them letting me know.

The four issues -- the first one is a matter involving a misrepresentation about the status of some instrumentation work that had to do with underpinning. That matter, to my knowledge, is complete, and a report was issued recently.

The second matter involves the alleged violation of a Board order. The third matter involves affidavits concerning the Zack Corporation. And the fourth matter concerns six anonymous affidavits provided to Region III by GAP.

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Mr. Keppler estimates -- let me make a different comment. It has been decided that with the exception of one of the six affidavits, that all of those matters will be investigated by Region III and not by the office of investigation. Mr. Keppler advised me that their present estimate for the completion of the investigation of the Zack matters is six months. And his present estimate of at least one of the six affidavits is three months.

I did not get dates on the remaining items, but I believe those dates are limiting. I don't think he expects any of the other matters to exceed six months.

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months

1 JUDGE COWAN: When you speak of the other matters,  
2 you mean items two and three that you have given no estimate  
3 of time on?

4 MR. PATON: Yes, the violation of the Board order,  
5 he did not say, Judge Cowan, but I assumed that he meant to  
6 imply that it's within six months.

7 I think when he put the six months on the Zack  
8 matter, I think he meant to tell me that the others will be  
9 something less than that.

10 JUDGE COWAN: But those other two are not being  
11 investigated by Division III, are they, rather, by the Office  
12 of Investigation?

13 MR. PATON: All of these matters will be investigated  
14 by Region III except for one of the anonymous affidavits.  
15 That one will be investigated by the Office of Investigation.

16 CHAIRMAN BECHHOEFER: Those are the GAP matters?

17 MR. PATON: That's correct. Again, Mr. Chairman,  
18 I would appreciate it if the Board is aware of any other  
19 matters that you believe -- I think this completes the list.

20 CHAIRMAN BECHHOEFER: When you say violations of  
21 Board order, does that include all of the matters raised in  
22 the memorandum from Dr. Landsman to Mr. Shafer, dated  
23 August 24th, about which we had some discussion yesterday?

24 MR. PATON: We're not totally sure that it includes  
25 all of -- maybe we can take a look at that and get back to

1 the Board.

2 MS. STAMIRIS: It includes all of the issues  
3 discussed in Mr. Landsman's April 24 memorandum which is  
4 the only things that were discussed here yesterday.

5 CHAIRMAN BECHHOEFER: August 24th.

6 MS. STAMIRIS: Sorry. Wouldn't you agree that  
7 includes everything from Mr. Landsman's August 24th  
8 memorandum?

9 CHAIRMAN BECHHOEFER: That was my questions.

10 MR. PATON: I think we better take a look at it.  
11 I'm just not certain.

12 MR. STEPTOE: Judge Bechhoefer, all I can say is  
13 that when Staff mentioned this to us, I believe it was  
14 yesterday, they said this might be the case, gave us a little  
15 advanced warning. Applicant was extremely discouraged.

16 As you know, with respect to these affidavits,  
17 the Zack matter, Applicant has voluntarily withheld any  
18 discovery of these matters for upwards of eight months now,  
19 under the understanding that we'd have a report this week.

20 Now it looks like it's going to be another six  
21 months.

22 We're just going to have to consider what our --  
23 or reconsider what our options are at this point. That's  
24 all I've got to say.

25 CHAIRMAN BECHHOEFER: Well, it might affect Mrs.



1 Sinclair's discovery, as well, so --

2 MR. STEPTOE: It might affect the whole progress  
3 of this case.

4 CHAIRMAN BECHHOEFER: It, too, was postponed  
5 pending completion of these investigations.

6 MS. SINCLAIR: Well, Judge Bechhoefer, I think  
7 that's why we really need instead of talking about delay on  
8 Region III's part or our part or anyone else's part, let's  
9 look at the real causes of delay and get a realistic  
10 construction schedule. Within that framework none of these  
11 dates will really be unusual or not within target.

12 I'm sure that Mr. Keppler has some idea that the  
13 fuel loading date is considerably in the distance of time  
14 frame, otherwise he would establish a different kind of priority.

15 But he is being realistic, I think, in terms of how  
16 he wants to deploy his resources, knowing that the real delay  
17 here is that the -- is the sweeping effect that the special  
18 investigation had that was conducted last fall for all the  
19 safety -- most of the safety work has been shut down, and all  
20 these safety systems have to be pulled out, reinspected and  
21 reinstalled. That is a huge time-consuming job.

22 There has certainly been -- the soil settlement  
23 work as extensive as it is, is certainly going to take a long  
24 time and I think the burden is on the Applicant to begin to  
25 give us a construction schedule so that we identify where the

1 real time frame for this construction is and work within that.

2 CHAIRMAN BECHHOEFER: We have been told that at  
3 least by the end of the first quarter, that general time<sup>y</sup> frame,  
4 at least, we would be given some sort of further idea, at  
5 least, that we can hope for.

6 MS. STAMIRIS: Judge Bechhoefer, I'd like to ask  
7 you or the NRC Staff or both of you whether you don't consider  
8 that the closeout of these issues is imperative before we  
9 have the QA session.

10 I mean, if we are to resolve some of the basic  
11 quality assurance issues in this proceeding, I just assumed  
12 that the NRC wouldn't consider coming to a hearing on quality  
13 assurance without having any kind of resolution on these  
14 matters. Is that correct, am I correct in that assumption?

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assumption?

MR. PATON: No, you are not.

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MR. STEPTOE: Judge Bechhoefer, these are operat-  
ing license contentions --

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MS. STAMIRIS: No, no.

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MR. STEPTOE: -- these things are relevant to.  
They are explicitly referenced in the operating license.

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JUDGE BECHHOEFER: There are specific conten-  
tions in the operating license. They may or may not have  
any bearing on issues in the --

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MS. STAMIRIS: Well, my memory is when Mr.  
Bishop was here that time and Mrs. Sinclair was, you  
know, working with him to get her operators license con-  
tentions in good order, and we presented our arguments  
and I believe that the ruling was that all of these Zack  
issues, I mean, we informally discussed the idea of the  
Zack issues and the allegations from GAP relating to  
Zack and all of these things could conceivably either  
be put in an OM box or OL box.

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And we -- our position was that they should be  
considered in the OM proceeding because it was just better  
to consider such important matters sooner rather than  
later.

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And my understanding was that the other parties  
either agreed or else the Board ruled that, indeed, they  
were OM matters. And that is why I was making the

1 assumption that they would be a part of the QA hearing  
2 in the spring.

3 MR. PATON: Judge Bechhoefer, I was going to  
4 raise that question myself. I was going to ask the Board,  
5 I've heard various parties discussing this issue, and  
6 some of these matters arose during the order of modifi-  
7 cation proceeding. But I think now, without much research,  
8 my immediate view is that I don't see the need to hold  
9 up the order of modification proceeding and the decision  
10 in that case on these -- because of these issues. But  
11 I really wasn't sure whether the Board ever ruled on  
12 that.

13 CHAIRMAN BECHHOEFER: Well, I may be wrong, but  
14 I don't recall we ever specifically ruled. Certainly  
15 these issues have some bearing on QA matters, but whether  
16 that would preclude our issuing on a partial initial  
17 decision or not, finding that any conclusions could be  
18 made subject to further findings and needed to be changed--

19 MS. STAMIRIS: I'm quite sure there was a  
20 ruling.

21 (Discussion had off the  
22 record.)

23 CHAIRMAN BECHHOEFER: Certainly any findings  
24 concerning the QA program and its implementation could  
25 be made subject to modification as a result of a further

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1 hearing. Where the OM decision certainly doesn't authorize  
 2 any sort of operation at all, it would determine whether  
 3 perhaps additional controls of -- be placed upon the  
 4 Applicant for further modification of the structure permit  
 5 or that sort.

6 MS. STAMIRIS: May I ask about the other issue --  
 7 one of the other issues he spoke about which is the  
 8 alleged violation of the Board's order in relation with  
 9 Mr. Landsman's August 24, '82, memo?

10 I hope I am safe in assuming that the Board  
 11 or the NRC would not consider completing the QA portions  
 12 of this proceeding without that issue. I mean, after all,  
 13 that dealt with a violation of the Board's order in this  
 14 proceeding and if anything has anything to do with what  
 15 the Board is here to decide in this proceeding, that far  
 16 and above -- don't you agree, Mr. Paton, that that is an  
 17 essential part of the quality assurance for this OM  
 18 proceeding?

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1 MR. PATON: I agree that it obviously has a direct  
2 relationship to the OM proceeding. I am not at all convinced,  
3 however, that the Board could not write its decision in this  
4 case indicating that, obviously, if further evidence -- if  
5 this matter were not completed that some response could be  
6 made to it when it was decided.

7 What I'm saying is that it obviously has a direct  
8 relation to the OM proceeding, but I don't see that as  
9 preventing this Board from writing a decision in the order  
10 of modification proceeding.

11 MS. STAMIRIS: Well, you wouldn't see it if it was  
12 in the course of being completed or something.

13 I mean, the statements that were made yesterday  
14 is that all these issues would be taken up, you know, later  
15 in this proceeding. Weren't they? When we put off going  
16 into great detail about Mr. Landsman's April 24th memorandum.  
17 Wasn't that with the understanding that they would be taken  
18 up later in this proceeding?

19 CHAIRMAN BECHHOEFER: Well, it's clear that they  
20 will be taken up.

21 (Discussion had off the record.)

22 CHAIRMAN BECHHOEFER: The Board believes that we  
23 certainly can go ahead in April with the matters that we have  
24 now scheduled -- well, that are scheduled for some time in  
25 April.

1           The Board would certainly urge the Staff to try to  
2 complete at least that aspect of the investigation. And this  
3 is even if you couldn't put it into your direct testimony,  
4 even if you had to come up with the oral testimony, maybe  
5 supplementing an inspection report.

6           To the extent you could do that, I think that would  
7 be useful, either April or the -- we're likely not to finish  
8 this issue in April, in any event, but in forthcoming hearings  
9 on QA matters, with the portion dealing with the alleged  
10 violation of our order and the matters in the Landsman memo.

11           MR. PATON: I agree, Mr. Chairman. I think that's,  
12 obviously, entirely appropriate if we can get it done, if  
13 there's any way we can get it done.

14           I will urge Region III to do that, and we will tell  
15 them what you said.

16           CHAIRMAN BECHHOEFER: And I'm saying we would not  
17 even necessarily insist on direct testimony. The Applicants  
18 will, obviously, have to have time to respond.

19           But it would be desirable if we can put that aspect  
20 in at least.

21           MR. PATON: We will advise Region III.

22           MS. STAMIRIS: Mr. Paton, I have another question  
23 on that before we move on to other subjects.

24           Am I correct in understanding that the investigation  
25 of the alleged violation of the Board's order has been changed

1 from OI to Region III?

2 MR. PATON: Correct.

3 MS. STAMIRIS: On what basis?

4 MR. PATON: Judge Bechhoefer, I think that's -- all  
5 I know is that they sat down and discussed it the night before  
6 last, and out of that meeting came the decision that it was  
7 a matter for Region III instead of a matter for the Office of  
8 Investigation.

9 Now, that's the extent of my knowledge. But, really,  
10 I'm not sure that I want to respond to -- that's an internal  
11 matter. That's how we do business.

12 CHAIRMAN BECHHOEFER: Right. I think the the  
13 particular division in NRC that does a particular job is  
14 not too relevant to -- there may be lots of things that  
15 dictate that, including things like vacation schedules and --  
16 I'm not sure that that's it.

17 MR. PATON: I don't think so, Judge Bechhoefer.

18 There were questions as to what precise matters--  
19 would be investigated generally when the Office of  
20 Investigation was created, what questions they would investigate,  
21 as opposed to what particular kinds of questions the region  
22 would investigate, and it's a result of that type of thing.

23 After a hard look at it, it has been determined  
24 that it's Region III's matter and not the Office of  
25 Investigations.



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ations. CHAIRMAN BECHHOEFER: The only thing I am concerned about is it took OI from sometime in August of '82 to sometime in February of '83 to determine if they were or were not going to investigate something.

But, be that as it may --

JUDGE COWAN: Mr. Paton, in your several conversations with Mr. Keppler, have you gathered whether this business of having the six months to complete things has at present any impact on their expectation of addressing the QA matter in April, as planned, or at least by the revised schedule which you suggested yesterday?

MR. PATON: Judge Cowan, to my knowledge, there's no connection.

In other words, I think Mr. Keppler said it's going to take him six months to investigate the Zack matter, and his -- and I assume that he did not expect that would have any impact on our preparation for testimony for the April hearing. I don't think he sees that there's any connection between the two.

JUDGE COWAN: And I suppose everybody recognizes after he has investigated for six months determining what the situation is he has the right to change his mind again.

MR. PATON: I think that's right, Judge Cowan. This investigation of the Zack matter --

1 (Discussion had off the  
2 record.)

3 MS. STAMIRIS: I was going to ask that -<sup>2</sup> I  
4 didn't understand by the way the discussions were going  
5 that you were on the verge of making a ruling about this,  
6 but I think that it would be important for Mrs. Sinclair  
7 and I to talk to some of the people at GAP who we were  
8 hoping were going to come in and help on these matters,  
9 because it was our understanding-- and I think they  
10 probably got that understanding from me, because I thought  
11 that these things were all going to be covered as part of  
12 the April QA hearings in this proceeding.

13 And I think if we look back at the discussions  
14 on where the Zack matters were going to be held, I think  
15 there was a ruling that it was going to be a part of the  
16 OM proceeding. And so, when we look back in the record,  
17 I think we'll see that's why everything has been proceed-  
18 ing on our part with that understanding, and I think  
19 it's very important that we have an opportunity to speak  
20 to them and, like Mr. Steptoe said, consider our options  
21 at this point.

22 CHAIRMAN BECHHOEFER: Yes, it's clear the issues  
23 are going to be considered, but the Staff is not ready  
24 to address them. I'm not sure what anybody can do about  
25 that.

1 MR. MARSHALL: Can we hold our options open?

2 CHAIRMAN BECHHOEFER: Well, I don't know if  
3 it's possible, but I do think the completion of the Staff  
4 investigation is essential before we deal with that  
5 particular issue anyway, those particular issues. There  
6 are more than one.

7 MR. PATON: Mr. Chairman, I have another issue  
8 when we get finished with that one.

9 CHAIRMAN BECHHOEFER: Okay, proceed.

10 Oh, wait a minute.

11 (Discussion had off the  
12 record.)

13 CHAIRMAN BECHHOEFER: Mr. Steptoe, do you have  
14 anything further?

15 MR. STEPTOE: Not at this time, Judge Bech-  
16 hoefer.

17 CHAIRMAN BECHHOEFER: Okay, Mr. Paton.

18 MR. PATON: I just wanted the record to show,  
19 Judge Bechhoefer, that the Staff has offered, in an  
20 attempt to possibly move the hearing along -- we have  
21 offered to meet with Mrs. Stamiris and Mrs. Sinclair on  
22 the lunch hour, and we have offered to meet with them  
23 this evening, and we intend to continue making those  
24 offers.

25 We do have, as I said before, a witness here