

PCS



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

NOV 25 1983

Georgia Power Company
ATTN: Mr. R.J. Kelly
Executive Vice President
P.O.Box 4545
Atlanta, Georgia 30302

Gentlemen:

In your response of August 12, 1983 to our Notice of Violation issued on July 13, 1983, you set out your concern regarding the legal validity of the violation for which you were cited. Basically, you questioned NRC's jurisdiction to issue the Notice of Violation and argued that authority over the activities which were the subject of the violation had been delegated to an Agreement state, South Carolina. You requested that the question be referred to the General Counsel for resolution. The Office of the Executive Legal Director, counsel to the NRC staff, has reviewed this question and has concluded that the citation is valid under the provisions of 10 CFR § 20.301.

My understanding of the facts is as follows. On March 14, 1983, while filling a metal box with waste, Georgia Power inadvertently poured approximately one gallon of water into the box. Some effort was made to ensure that no free-standing liquid was in the box prior to shipment. On March 22, 1983, Georgia Power, at its E.I. Hatch reactor site, a utilization facility licensed by the Commission under 10 CFR Part 50, transferred the metal box to a carrier. The transfer was to a carrier which took actual possession of the material in the regular course of carriage for Chem-Nuclear Systems, Inc. Upon arrival at the Chem-Nuclear disposal site in Barnwell, South Carolina, a state inspector punctured the box and drained five to six quarts of byproduct-contaminated liquid from the box. Chem-Nuclear disposed of the material which was in the metal box.

Chem-Nuclear is licensed to operate the Barnwell disposal site under a South Carolina license. The South Carolina license authorizes the receipt and disposal of dry-packaged radioactive waste, including byproduct material. The state license prohibits receipt of liquid radioactive waste and of solidified waste containing more than 0.5% by volume of non-corrosive liquid.

As a result of an inspection, NRC Region II issued to Georgia Power a Notice of Violation for a violation of 10 CFR § 20.301. The Notice stated in relevant part:

10 CFR 20.301 specifies authorized methods for disposal of licensed material and prohibits disposal by other means. One authorized method is by transfer to an authorized recipient pursuant to the specific license requirements of the recipient.

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Contrary to the above, on March 22, 1983, the licensee disposed of nine, ninety-six cubic foot metal boxes of compacted radioactive waste, by transfer for land burial to Chem-Nuclear Systems, Inc., whose South Carolina License (No. 097) does not authorize receipt of liquid waste for land burial. One box (HNP-83-321) contained approximately five quarts of free-standing liquid.

Section 150.15(a) of the Commission's regulations provides that persons, such as Georgia Power, in Agreement states, such as Georgia where Hatch is located, are not exempt from NRC's licensing and regulatory requirements with respect to the operation of any utilization facility. Operation of a facility includes the handling of radioactive wastes at the facility site by the person licensed to operate the facility. Radioactive waste handling at the Hatch reactor site is regulated by NRC licenses and regulations. The NRC licenses for both E.I. Hatch units provide that the operation of the facility shall be subject to the regulations of 10 CFR Part 20. These requirements include those of § 20.301, which was cited as the basis for Region II's Notice of Violation. Section 20.301 provides, in relevant part, that:

No licensee shall dispose of licensed material except...by transfer to an authorized recipient as provided in the regulations in Part[s] 30,...(among others)..., of this chapter, whichever may be applicable.

Under §20.301(a), Georgia Power may dispose of material at its reactor site by transfer to an authorized recipient. In this instance, Georgia Power transferred byproduct material at its Hatch site to a carrier acting for Chem-Nuclear, the operator of the Barnwell disposal site. As the carrier was acting for Chem-Nuclear, transfer to the carrier constituted transfer to Chem-Nuclear. The issue then is whether Chem-Nuclear was authorized to receive the waste. Chem-Nuclear was not. Its license prohibits receipt and burial of liquid waste. Consequently, it was appropriate for the NRC to issue the Notice of Violation to you for improper disposal of licensed material by transfer to a recipient not authorized to receive it. It should be noted that this action was consistent with the Memorandum of Understanding entered into between the NRC and the State of South Carolina and set out at 47 Fed. Reg. 23836 (June 1, 1982).

If you have any further questions on this matter, please address them to Mr. James Lieberman, Chief Counsel for Regional Operations and Enforcement Office of the Executive Legal Director, (301) 492-7496.

Sincerely,

*Original Signed By
R. C. DeYoung*

Richard C. DeYoung, Director
Office of Inspection and Enforcement

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