

JUN 13 1979

Docket No. 50-329/330

MEMORANDUM FOR: Dudley Thompson, Executive Officer for Operations Support, IE

FROM: Harold D. Thornburg, Director  
Division of Reactor Construction Inspection, IE

SUBJECT: COMMENTS ON RIII ENFORCEMENT PACKAGE ON MIDLAND SETTLEMENT PROBLEMS DATED APRIL 3, 1979

We have reviewed the above referenced package which under J. Davis's memorandum of March 21, 1979 was forwarded to X00S as the responsible coordinating group within IE. These comments are provided to be consistent with this memorandum and the follow-up memorandum you provided to your enforcement personnel also on March 21, 1979.

In summary, it is our opinion that four of the five false statements identified by the Region will probably be substantiated to be material false statements and that they were made in careless disregard of the facts. Therefore, it would follow that there would probably be four instances of a material false statement each of which would have a civil penalty of \$5,000 imposed for it. The fifth item is not, in our opinion, a material false statement.

The enclosure presents our detailed recommendations on this matter. If you have questions please contact us.

*Harold D. Thornburg*  
Harold D. Thornburg, Director  
Division of Reactor Construction  
Inspection, IE

Enclosure:  
Comments on Midland  
Enforcement Package

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**XA Copy Has Been Sent to PDR**

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1. The material false statement items (probably 4) should be put into an Appendix A entitled, "Notice of Violation," and will be those items with a civil penalty. An Appendix B entitled, "Notice of Proposed Imposition of Civil Penalties" should be prepared. The other items of noncompliance should be addressed in an Appendix C, "Notice of Violation."
2. All statements quoted from the SAR in the citations should be clearly identified by amendment number and/or revision number and date.
3. A check of Statement 1 regarding fill and backfill placement shows it is apparently from the original version of the FSAR. Revision 1, 11/22/77 has a different statement and is the current version. Some of the other statements referenced have been revised now after the investigation. This must be reexamined. If the statements quoted in the RIII draft can be utilized in an enforcement action then we judge the statement to be a material false statement. In reaching this conclusion we note that there is a need to quote or provide a copy of the text from construction drawings C-45 stating that Zone 2 material is to be used as Class I fill if the citation is to be properly supported.
4. Statement #2 can probably be classed as a material false statement if the results of the interview with the cognizant engineer and/or the calculation sheet prove that 3.0 ksf was used in the settlement calculations.
5. Statement #3 is viewed to be a material false statement, but there is a need to fully document what was actually done in the execution of the calculations. Again a copy of the calculation sheet and/or a statement of the cognizant engineer is needed to properly support the finding.
6. Statement #4 can probably be classed as a material false statement if the results of the interview and/or the calculations are provided to support the finding.
7. Statement #5 is judged to not be a material false statement. This is due to the fact that the statement quoted is written as a predicted future value for settlement.
8. For those statements which will become material false statements with a civil penalty, remove them from the draft Appendix A and move the remainder to the new Appendix C.
9. All statements judged to be material false statements must be examined to see in what "state of mind" or in what circumstances the licensee made the statement. This is relevant to the question of "civil penalty" vs. "second chance." In our judgment these instances appear to be situations of "careless disregard" of the facts which would warrant civil penalty.