

SEP 27 1979

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MEMORANDUM FOR: George C. Gower, Acting Executive Officer for Operations Support, IE

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

SUBJECT: COMMENTS ON NEEDED ACTION ON MIDLAND ENFORCEMENT PACKAGE

RRII transmitted an enforcement package to me dated April 3, 1979 and that package was sent to X00S as directed by J. Davis's memorandum of March 21, 1979.

RRII provided comments on the enforcement package in a memorandum dated June 13, 1979 (see Enclosure 1) to X00S for coordination. We have not seen any positions in writing from NRR on the package. Since that date there have been several meetings (8/1, 8/3 and 8/16) which addressed, at least in part, the questions centering around further action on the enforcement package. The meetings were attended by personnel from NRR, ELD and IE. The various elements necessary to make a finding on a material false statement were examined.

- a. Is the statement false?
- b. Is the statement material?
- c. Under what circumstances or in what frame of mind was the statement made (willful, deceitful, careless disregard)?

As a result of these meetings and the subsequent discussions by telephone with NRR representatives, we are of the opinion that the enforcement action should be taken on Item 1 of the package as a material false statement in that the fill used at the site was not the type stated in the FSAR as having been used (random vs engineered structural fill). The NRR conclusions on the other four items were that the statements were not material and indicated "poor QA performance" on the part of the licensee.

CONTACT: R. E. Shewmaker, IE
49-27551

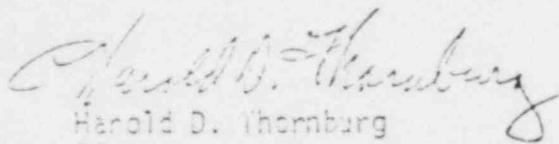
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Further, it is our opinion that the fact that there are four clear instances of conflicting statements in the FSAR vs what was actually done, is evidence of improper internal coordination and failure on the part of the licensee to assure that accurate information was being provided in the FSAR. These constitute sufficient facts to make a finding that the material false statement was made in careless disregard of the facts. This would make the material false statement subject to a civil penalty vs actions allowed under the Administrative Procedures Act for the "second chance."

We strongly recommend that XCOB advise RIII to prepare the enforcement package in this manner and that we proceed quickly on this matter. We understand that there is a reluctance by some in the NRC against finalizing an action on material false statements while the bigger questions of the QA program and work being done at the site as corrective actions which are not yet approved by the NRC are being considered for action. In our opinion, the two matters are distinct and IE should proceed with the initiation of enforcement action on the false statement.

If you have any questions, please contact us.


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

cc: G. W. Reinuth, IE
J. G. Kessler, RIII
T. W. Brockett, IE
D. Hood, NRC
C. E. Norelius, RIII