

NUCLEAR REGULATORY COMMISSION

In the Matter of:

CONSUMERS POWER COMPANY)

DOCKET NOS 50-239-OM

)

50-330-OM

(Midland, Units 1 & 2)

DEPOSITION OF DONALD ELDON HORN

DATE: October 22, 1980

PAGES: 115 thru 215

AT: Midland, Michigan

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400 Virginia Ave., S.W. Washington, D. C. 20024

Telephone: (202) 554-2345

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On behalf of Consumers Power Company:

BONNIE G. SAKABLY, Esq.
ALAN HANDELL, Esq.
Urban, Lincoln & Siegel
One Trust National Plaza
Chicago, Illinois 60603

JAMES BRUNNER, Esq.
Consumers Power Company
212 West Michigan
Jackson, Michigan 49201

ALSO PRESENT:

GENE GALLAGHER,
NRC Inspection and Enforcement, Region III

RAYMOND SUTHEIN,
NRC Inspection and Enforcement, Region III

JOHN GILRAY,
NRC Quality Assurance Branch,
Bethesda, Maryland

BILL KRINGS,
NRC

DAMI HOOD,
NRC, Division of Licensing,
Bethesda, Maryland

SANDRA VISSER,
Paralegal,
Consumer Power Company

SHERON WARREN, Intervenor

BRENDA STANLEY, Intervenor

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CONFERENCE

EXHIBIT LIST BY

COUNSEL FOR REGULATORY COMMISSION	COUNSEL FOR CONSUMERS POWER COMPANY
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Deposition of:

Donald Horn

(Further)

- - -

EXHIBIT LIST

Exhibit Number

DESCRIPTION

Deposition Exhibit 3
 Consumers Exhibit 1
 Consumers Exhibit 2

P R O C E E D I N G S

1
2 MR. PATON: Mr. Horn, you understand that you are
3 still under oath.

4 MR. HORN: Yes.

5 Whereupon,

6 DONALD HORN,
7 called for examination by counsel for the Nuclear Regulatory
8 Commission, having been previously sworn by the Notary
9 public, was further examined and testified as follows:

EXAMINATION BY COUNSEL

FOR THE NUCLEAR REGULATORY COMMISSION

11 BY MR. PATON:

12 Q Do you recall Mr. Gallagher asking you to obtain
13 for him -- oh, you want to do a clarification first?

14 MR. LAMARIN: Yes. Then there will be
15 continuity.

16 MR. PATON: Go ahead.

17 MR. LAMARIN: Do you want me to ask him some
18 questions to get it in?

19 MR. PATON: No, let me ask him.

20 BY MR. PATON: (Resuming)

21 Q Mr. Horn, was there some clarification or
22 statement that you wanted to make with respect to some of
23 the testimony you gave yesterday?

24 A Yes.

1 Q Please do so.

2 A Last night I contacted my supervisor on the
3 implementation of the last paragraph of page 24 that you
4 presented to me at the end of the questioning yesterday.
5 Based on my discussion with him, the last paragraph is being
6 met, based on the on-site geotechnical soils engineer's
7 responsibilities as he is directing the actual testing. He
8 is determining the frequencies being taken. He is reviewing
9 and approving all soil test reports.

10 My answer yesterday was based on the separation of
11 the two statements, one being the on-site geotechnical soils
12 engineer, the other being the performance of testing, based
13 on the total reading of that section, based on specification
14 C-311 and field procedure FIC 1.100. The on-site
15 geotechnical soils engineer is complying with that paragraph
16 on that document page 24, last paragraph.

17 Q Okay.

18 Mr. Horn, you referenced Bechtel Specification
19 C-311. Is it correct that the last paragraph on page 24
20 that you referred to references Bechtel specification C-501?

21 A Yes.

22 MR. ZAYARIN: What are you saying, it is based on
23 this and C-211 and FIC -- what was it, 1.100?

24 BY MR. PATON: (Assuming)

25 Q Is it your statement that the requirement that is

1 referenced on page 24 that you have just referred to is
2 contained in Section Specification 211?

3 A No, that requirement is not in 211.

4 Q I'm sorry, I missed your reference to
5 specification 211. Would you tell me what that was again?

6 A I said based on the requirements that are in C-211
7 and based on the requirements and activities, duties of the
8 on-site geotechnical soils engineer, that that paragraph is
9 being complied with.

10 Q The on-site qualified soils engineer, that is Mr.
11 Kleinhart?

12 A Yes.

13 Q Does he now supervise filling operations?

14 A Yes.

15 Q Based on your current understanding, how long have
16 you been in compliance with this requirement?

17 A A little time after the settlement of the diesel
18 generator building.

19 Q You mean since that time.

20 A Yes.

21 Q Before that time, were you ever in compliance with
22 this requirement?

23 A In '73 and '74 we had an on-site geotechnical
24 soils engineer at the site. I am not sure of the technical
25 direction that he was giving U.S. Testing.

1 Q So you say during that period of time you might
2 have been in compliance with the requirement. Is that your
3 statement?

4 A Yes.

5 Q Have you been contacted by Mr. Gene Gallagher of
6 the Region III ICB office? Have you ever been contacted by
7 him?

8 A Yes.

9 Q How many times?

10 A I would say approximately 40 or 50 times.

11 Q Was that in the course of him conducting
12 inspections?

13 A Yes.

14 Q And were there ever other communications you had
15 with him when he was not conducting inspections?

16 A Yes.

17 Q Did you always provide him the information he
18 requested?

19 A No.

20 Q Can you tell me why on some occasions you -- were
21 there occasions when you did not provide him the information
22 requested?

23 A Yes.

24 Q Can you tell us why you did not?

25 A Because I had to check with my supervision to see

1 in the request, they felt, could be implemented.

2 Q You mean -- you say the request could be
3 implemented.

4 A Yes.

5 Q You mean by that you had to check with them to see
6 if you could give him the answer to the question that he
7 asked?

8 A Not the answer, but possibly the documents, yes.

9 Q He asked you for documents, and sometimes you had
10 to talk to your supervisor to know whether or not to provide
11 him with those documents?

12 A Yes.

13 Q Were there occasions when you did not, based on
14 what your supervisor told you, you did not provide him with
15 those documents?

16 A Yes.

17 Q Do you remember any specific instance of that: for
18 example, why in a specific case you did not give him a
19 particular document?

20 A Yes.

21 Q Would you please relate that?

22 A The documentation of the verification for the
23 50.54(f) question 23 was the disposition that was to leave
24 them in Ann Arbor and have Gene Gallagher go to Ann Arbor to
25 review those.

1 Q And did he ask you to review -- describe for me a
2 little more completely what those documents were. I think
3 you indicated they were follow-up to your answers to
4 question 21. Is that accurate?

5 A Yes. They are verification packages on closing
6 out of those action items to question 22 of the SC.34(5)
7 response.

8 Q Putting all that in layman's terms, would you say
9 that that meant this is what you planned to do about the
10 problems that were evidenced by your responses to question
11 23?

12 A No.

13 Q No? Can you explain it any other way than the way
14 you just did?

15 A They are documents to verify the corrective action
16 has been completed on the action items that are stated in
17 the response.

18 Q Action items means that these are items that
19 require you to do something.

20 A Yes.

21 Q Are all the items in question 22 closed out?

22 A No.

23 Q He asked you to bring those documents to Midland.

24 A Yes.

25 Q Did he tell you as to the reason he wanted you to

1 do that?

2 A So that he could review them there.

3 Q Did he say why he wanted to review them at Midland?

4 A I believe he said that if he went in to Ann Arbor
5 it was like going in to a vendor and there would be too much
6 paperwork involved in getting in to that location.

7 Q When did he ask you to bring those documents to
8 the site?

9 A He requested it on October 2, 1960.

10 Q What was your response to him?

11 A My response to him was that I would see what I
12 could do.

13 Q What did you do?

14 A I called up Walt Bird and I told him what Mr.
15 Gallagher had requested. He said he would check to see if we
16 would implement that request.

17 Q You mean Mr. Bird said he would have to check to
18 see if we could implement that request.

19 A Yes.

20 Q Do you know whether he ever did?

21 A Yes. He called me back approximately a week later
22 and said the reports, the verification packages would remain
23 in Ann Arbor.

24 Q Did he say anything else to you in that
25 conversation about why they would remain in Ann Arbor or why

1 you would not comply with Mr. Gallagher's request?

2 A He said that Gil Keeley had stated that they would
3 remain in Ann Arbor.

4 Q Did he tell you anything else about what Mr.
5 Keeley said?

6 A No, not that I recall.

7 Q Did you go along with that or did you disagree
8 with it?

9 A I asked him -- I said do you mean to tell me we
10 can't even make copies of the documents and have them sent
11 up to the site?

12 Q And what did he say?

13 A He said that is right.

14 Q I want to ask you about your opinion or attitude
15 about giving the NRC information. In your dealings with Mr.
16 Gallagher, do you think you have always been cooperative
17 with him in responding to requests for information?

18 A Yes.

19 Q Okay. Now, please tell me why you have always
20 been cooperative with him in giving him information.

21 MR. ZAKARIN: Excuse me. Do you mean in what way
22 he was or what his motive is?

23 MR. PATON: I asked him why.

24 MR. ZAKARIN: You want to know why?

25 MR. PATON: I will tell you why even though he

1 didn't ask me. If he says he did it because it is
2 appropriate within the scope of his responsibility, that may
3 be relevant to the Board. If he says he did it because he
4 felt like it, that may be relevant information. I think the
5 Board is going to be interested in Consumers' attitude about
6 providing information to the NRC, so I am asking him --

7 MR. TAMMAY: So his motive. I wasn't sure what
8 you meant when you said "why."

9 BY MR. PATON: (Resuming)

10 Q Yes; why? In other words, what motivated you to
11 always cooperate with Mr. Callaghan?

12 A It was Consumers' policy to help NRC as much as we
13 could to provide them information.

14 Q Help NRC as much as we could; is that correct?

15 A Yes.

16 Q Do you have any difficulty reconciling that policy
17 with the decision that was made providing Mr. Callaghan with
18 copies of this follow-up information to question 13?

19 MR. TAMMAY: I would have to object to that
20 because he stated he didn't know the reason for Gil Keeley's
21 direction that they should remain in Ann Arbor.

22 MR. PATON: Okay.

23 I think you can answer the question.

24 THE WITNESS: Could you repeat the question,
25 please?

1 (The pending question was read by the reporter.)

2 THE WITNESS: I didn't think too much of the
3 policy at the time. I was told not to have the document or
4 have the copies sent up to the site.

5 BY MR. PATON: (Resuming)

6 Q I didn't ask you what you felt about it at the
7 time. What I mean is how do you feel about it now?

8 MR. ZAKARIN: It would be the same objection,
9 since he doesn't know the basis for Gil Keeley's decision.
10 But you can answer if you can.

11 THE WITNESS: I didn't have any problem with it.

12 BY MR. PATON: (Resuming)

13 Q Okay.

14 Do you know the reason for your statement of
15 Consumers' policy being to help NRC as much as we can?

16 A Could I have the question back again?

17 (The pending question was read by the reporter.)

18 THE WITNESS: We have been told so to that. In
19 addition, I feel that they should be provided the same
20 information that I am provided so that they can determine
21 compliance to quality assurance requirements.

22 BY MR. PATON: (Resuming)

23 Q Okay. You do think that they are entitled to as
24 much information as you are entitled to.

25 A Yes.

1 Q When Mr. Gallagher asked you questions, were you
2 careful in your responses to answer very precisely the
3 question that he asked you, or did you attempt to assist him
4 with what your understanding was of what information he
5 wanted?

6 A I would try to answer his question based on what I
7 felt he was asking, not specifically the question, but to
8 try to give him an answer that I felt he was asking and was
9 going to receive.

10 Q From time to time did you volunteer information to
11 him?

12 A Possibly.

13 Q The problem with "possibly" is do you know that
14 from time to time you did? "Possibly" doesn't help the
15 record, I don't think.

16 A I gave him more information than he specifically
17 asked for.

18 Q Did you from time to time give him documents that
19 he did not specifically ask for?

20 A Not that I can recall.

21 Q This was pursuant to your understanding of the
22 company's policy to help the NRC as much as we could?

23 A Yes.

24 Q Have you followed that policy through today?

25 A Yes.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

So that your statement is in response to my questions yesterday you felt that you were following a company policy in responding to NRC's request for information to help the NRC as much as you can.

MR. JAMARIN: Don't answer that. I will object to that question. It is improper. You are asking him about his relationship with the NRC in their ongoing review. Yesterday and today we are here in a deposition, in a legal proceeding that is governed by rules of practice, of which all lawyers here are presumably aware, which directs him to answer your questions and only your questions, and to be careful in understanding your questions because perhaps your language is not as precise as the language that the NRC people or the consumers people who are knowledgeable in the area use.

He does answer all questions fully and has responded to all of your appropriate questions. This brings us back to one of the problems of using the NRC ongoing review as a discovery device in this proceeding, which is not only improper but, to the extent that it goes on with the knowledge of the lawyer, is unethical as well.

MR. PATON: Are you instructing your witness not to answer the question?

MR. JAMARIN: Yes, I am. The record speaks for itself. He has answered all questions completely and has

1 answered all appropriate questions.

2 BY MR. PATON: (Resuming)

3 Q Ms. Horn, in your opinion, what are the
4 qualification requirements for your present position?

5 A It would be to have obtained a bachelor of science
6 degree in civil engineering, preferably certified civil
7 engineer; approximately 5 to 8 years nuclear experience in
8 QA/QC. That is all.

9 Q Do you have those qualifications?

10 A Yes, with the exception of certified civil
11 engineer.

12 Q Are you a registered professional engineer?

13 A No.

14 Q You used a different expression.

15 A Certified civil engineer.

16 Q Certified civil engineer?

17 A Yes. That is what I used.

18 Q Do you equate those two?

19 A Yes.

20 Q This is a follow-up question to something I asked
21 you yesterday. I asked you about your education, and I
22 don't think I asked you at that time whether you had
23 attended any seminars or other training in QA or QC that you
24 didn't relate to us yesterday.

25 Can you recall whether you attended any seminars

1 on other training that you did not relate to us yesterday in
2 QA or QC?

3 A Yes.

4 Q Can you tell us about those?

5 A Approximately 1974, I received a course. It was
6 the J. Marvin Johnson, and I don't recall the title of the
7 course. It was, I believe, four or five days long. I have
8 had training in nondestructive examination. This was
9 approximately three to four days. Examination was given at
10 the end of that time.

11 I have received training in Reg guides. I don't
12 recall the actual numbers. I have received training and
13 training sessions on our own procedures at various times
14 throughout the time that I have been at the Midland site. I
15 attended a concrete seminar, I believe in '75 in Chicago,
16 which was talking about AWSI/ACSI concrete requirements.

17 That is all I can recall in a QA/QC seminar orientation.

18 Q You said training in Reg guides. How long did you
19 spend doing that?

20 A Approximately two days.

21 Q You said at various times you had training in your
22 own procedures. How much total time do you think you spent
23 on that?

24 A Approximately 100 hours.

25 Q Do you have an opinion as to whether the top

1 management at Consumers Power has an attitude that is
2 supportive of an effective implementation of the QA program?

3 MR. ZAKHRYN: Objection. He answered that
4 yesterday.

5 You can answer it.

6 THE WITNESS: Yes.

7 BY MR. PATON: (Resuming)

8 Q Do you have an opinion? What is that opinion?

9 A That we do have management support of our QA
10 program and that they would implement the effectiveness of
11 that program.

12 Q I'm sorry. That they would implement that?

13 A Yes.

14 Q Do they?

15 A Yes.

16 Q What is your basis for that opinion?

17 MR. ZAKHRYN: Again, objection. Asked and
18 answered yesterday.

19 Again, go ahead and answer.

20 THE WITNESS: Based on manpower, based on the
21 procedures that have been established, based on the
22 organization, I feel that the management is responsive to
23 the QA program at Midland.

24 BY MR. PATON: (Resuming)

25 Q You said based on the manpower. What does that

1 mean?

2 A Based on the number of people that are in the
3 field in the Q's organization.

4 Q You say based on the numbers of people. I still
5 don't know whether there are 1 billion or 2 billion people.
6 How many people are there? What do you mean, based on the
7 number of people? How many people?

8 MR. ZAMARIN: Objection to the form. You have
9 asked him two questions. What does he mean, based on the
10 number of people --

11 MR. PATON: He said manpower. I said what do you
12 mean by that, and he said people.

13 MR. ZAMARIN: You have asked two questions. My
14 only problem is the compound. If you separate them out, that
15 is fine.

16 BY MR. PATON: (Resuming)

17 Q Are you having difficulties with my questions?

18 A No.

19 MR. ZAMARIN: But it is two questions.

20 MR. PATON: He is not having any difficulty. He
21 just said so.

22 MR. ZAMARIN: It is improper form. You have asked
23 him two questions: one, the number of people, and what does
24 he mean, based on the number of people. If you ask him two
25 separate questions, that is fine.

1 BY MR. PATON: (Resuming)

2 Q Can you handle both of those questions?

3 A MR. ZAKARIN: You asked him two questions.

4 MR. PATON: I am going to ask the questions my
5 way. I am not going to ask the questions your way. If you
6 instruct him not to answer, fine.

7 MR. ZAKARIN: If they are patently improper, he
8 cannot answer them.

9 MR. PATON: Let's don't sit here all day and
10 argue. If you don't want him to answer, tell him not to
11 answer.

12 MR. ZAKARIN: He can answer if you ask him two
13 questions.

14 MR. PATON: Please answer my question. You
15 haven't been instructed not to answer it.

16 MR. ZAKARIN: Don't answer it unless he asks a
17 proper question.

18 BY MR. PATON: (Resuming)

19 Q Would you answer my question, please? ,

20 A No.

21 Q You refuse to answer the question?

22 MR. ZAKARIN: Yes. It is a compound question. If
23 you ask them separately, he will answer them.

24 MR. PATON: We don't have to do this. Just say
25 don't answer the question and go right on.

1 BY MR. SATON: (Resuming)

2 Q You said however.

3 A Yes.

4 Q What do you mean by that?

5 A The numbers of people in the field to implement

6 the QA program, and in the office.

7 Q Do you mean there are a lot of people?

8 A Yes.

9 Q Do you mean there are sufficient people?

10 A Yes.

11 Q How many people are there?

12 A Approximately 40.

13 Q And this is in your new -- strike that.

14 You have a new organization in your QA structure,

15 is that right?

16 A Yes.

17 Q And there are 40 people in that structure, in that

18 organization?

19 A Approximately 40 people in the structure, yes.

20 Q And those people are now employed, they are now on

21 board. They are not prospective employees?

22 A Yes.

23 Q Yes they are now employed?

24 A Yes, approximately 40 people.

25 Q All right, approximately 40. And that is an

1 indication to you, that is at least some indication to you
2 that top management has an attitude that is supportive of an
3 effective implementation of the QA program, is that correct?

4 A Yes.

5 Q Is this QA organization -- would you describe it
6 as a QA organization or a QA/QC organization?

7 A A QA organization.

8 Q Does this have employees in it of both Consumers
9 and Bechtel?

10 A Yes.

11 Q And any other company?

12 A Yes.

13 Q Who? What company?

14 A There are contract personnel that are employed.
15 They are employed by Consumers but they are through a
16 contract agency.

17 Q Approximately how many people are there?

18 A Approximately 40.

19 Q Of the 40, approximately how many of those are
20 Consumers people?

21 A Approximately eight.

22 Q Eight Consumers. Approximately how many from
23 Bechtel?

24 A It would be the remainder.

25 MR. ZAMBINI: The remainder less the 15 contract

1 people.

2 BY MR. BATHON: (Resuming)

3 Q Let me suggest something to you and see if it is
4 correct. Approximately -- now, would this be approximately
5 correct -- eight Consumers people, 17 Bechtel people, and 15
6 from the other organization or organizations?

7 A Yes.

8 Q Before this reorganization, how many people did
9 Consumers have in their QA organization, approximately?

10 A There are two reorganizations fairly recent. The
11 one change was approximately made as of this year. That
12 removed the auditing section from our group. The second
13 reorganization was approximately in August, and that was the
14 combination of the Bechtel organization with the Consumers
15 organization. Which one would you --

16 Q Before the organization that combined the Bechtel
17 and the Consumers organization, how many people were there
18 in Consumers' QA organization?

19 A Approximately 20.

20 Q At that same time how many people were there in
21 the Bechtel QA organization assigned to the Midland case?

22 A Approximately the same.

23 Q Do you mean approximately 20?

24 A Yes.

25 Q At that time did you have any of these contract

1 employees?

2 A Yes.

3 Q How many of those did you have?

4 A Approximately ten.

5 Q If I add those numbers up, the numbers involving
6 the 22 organization prior to the combination of Consumers
7 and Bechtel, I get 24 Consumers, 24 Bechtel and 10 from
8 other organizations, for a total of 50.

9 A No. You asked me -- I thought what you asked me
10 was how many of the 20 are --

11 Q Oh, the 10 from other organizations are within
12 Consumers.

13 A Right.

14 Q So Consumers had 20, 10 of their own people and 10
15 from other organizations.

16 A Right.

17 Q Bechtel had 20.

18 A Right.

19 Q I get a total of 40.

20 A Yes.

21 Q Under the new organization I get a total of 40.

22 A Yes.

23 Q So now does manpower tell me that is a better
24 program.

25 A The better program is that in many cases the

1 Bechtel organization was working on the same problems as the
2 Consumers organization. Consumers would identify a problem.
3 They would give it to Bechtel to work it out. So we had
4 duplication of effort.

5 Q Fine. I understand duplication of effort. But I
6 thought your first point on why the program was better is
7 that you had more people. Did I misunderstand you?

8 A No. You were correct.

9 Q It is better because you have more people?

10 A Yes.

11 Q But as I added the numbers, you have 40 now and
12 you had 40 before. Is that more people?

13 A No, it is not more people. The more manpower is
14 based on previous years of work.

15 Q Mr. Horn, you indicated that there were more
16 people -- when you said manpower, you mean there are more
17 people now assigned to SA at the Midland site, is that
18 correct?

19 MR. CARMAN: More now than when?

20 MR. PATON: Please do not constantly interrupt the
21 interrogation. Will you just let me ask the witness?

22 MR. CARMAN: That is not an intelligible
23 question. You said there are more. More than when? You
24 are asking him to compare apples against nothing.

25 MR. PATON: The witness is not having anywhere

1 near the difficulty that you apparently are having. I wish
2 you would just let him -- if he does not understand the
3 question, he can say so and I will change the question.

4 MR. TAMARIN: I will object to its form. You ask
5 him to compare something and you haven't told him what to
6 compare it against. That is all I want.

7 MR. PATON: Are you telling him not to answer?

8 MR. TAMARIN: Yes, because it can't be answered.

9 MR. PATON: Okay. All you have to do is say
10 "Don't answer the question," and I will go right on to the
11 next question. You don't have to have all these long-winded
12 explanations. Just say "Don't answer the question."

13 MR. TAMARIN: I wanted to tell you my problem so
14 you can ask the question and get the answer you want.

15 MR. PATON: It is taking up a lot of time, but I
16 will ask another question. You have told him not to answer
17 the question. I will ask him another question.

18 BY MR. PATON: (Resuming)

19 Q Did you state that one of the reasons that you
20 thought top management at Consumers Power had an attitude
21 that was supportive of effective implementation of a CA
22 program was increased manpower?

23 A Yes. I don't recall saying increased manpower. I
24 said manpower.

25 Q Fine. By manpower, did you mean increased

1 manpower?

2 A Yes.

3 Q Can you tell me approximately what the increase in
4 manpower was?

5 A Increase in manpower was begun in '73.

6 Q My question was what was the increase in
7 manpower. By that I meant by what number of men did you
8 increase?

9 A We increased from one man in QA in '73 to the
10 present organization of approximately 40 people.

11 Q Under the combined QA organization, you indicated
12 Consumers Power has eight people plus fifteen people who are
13 contracted for, is that right?

14 A Yes, approximately.

15 Q Do you know whether Consumers is spending the cost
16 of these eight people plus the fifteen people any more or
17 less on personnel for QA than they were before this latest
18 reorganization?

19 A They would probably be spending more.

20 Q I assume you cannot approximate how much more.

21 A I do not know what we were paying for Bechtel
22 people at the time prior to the reorganization. I don't know
23 specifically what we are paying for them now.

24 Q You also mentioned procedures.

25 A Yes.

1 Q Can you explain to me how any changes in
2 procedures may have evidenced to you that top management in
3 Consumers Power has an attitude that is supportive of an
4 effective implementation of the QA program?

5 A The procedures we had in '73 have been increased.
6 There is more specificity in these procedures for the work
7 going on, and we have the over inspection that we did not
8 have in 1973.

9 Q Do you equate over inspection with hands-on work?

10 A Yes.

11 Q I take it your opinion is that Consumers should
12 have conducted more over inspection in the past, is that
13 correct?

14 A In the soils area, yes.

15 Q In the soils area, does your opinion continue
16 today?

17 A No.

18 Q Am I correct that it is your opinion today that
19 Consumers is conducting sufficient hands-on inspection or
20 over inspection in the soils area?

21 A Yes.

22 Q What kind of work is going on in the soils area
23 now?

24 A I am not in the IE & TV group section. They are
25 the group that goes out and observes the work and performs

- 1 the over inspections. I believe that there is backfill.
2 There is backfill mainly around piping excavation and
3 backfill around piping.
- 4 Q The IE & TV is a group, is that what you call it?
5 A Yes.
6 Q Are those Bechtel people?
7 A Those are the MPQA group. They happen to be
8 Bechtel people, yes.
- 9 Q What does that mean, MPQA?
10 A The combined group is the Midland Project Quality
11 Assurance group, which includes Bechtel, Consumers and
12 contract personnel.
- 13 Q How many people are in that group?
14 A The MPQA?
15 Q The IE & TV group.
16 A Depending on which discipline.
17 Q Soils.
18 A Soils, there are three.
19 Q Do you know what percent of their time they spend
20 on soils work?
21 A I don't know.
22 Q Do you know their names?
23 A Yes.
24 Q Would you state their names?
25 A John Gray, Bob Sevo and Bob Davis.

1 Q Those three people you just named do have other
2 responsibilities other than soils work.

3 A Yes.

4 Q Getting back to the numbers, in other words, the
5 new QA organization you indicated had eight Consumers
6 people, approximately 17 people, and approximately 15 from
7 other organizations.

8 A Yes.

9 Q Could you name that other organization or other
10 organizations?

11 A Not all of them. I don't recall all of them. We
12 have approximately -- we have some that have come in to do
13 over inspections in the area of Zack, and I am not sure what
14 company they are from. We have SAI. I am not sure what
15 that stands for.

16 Q Okay, that is fine. As far as you know, that is
17 the name of a company, SAI?

18 A Yes.

19 Q Okay, fine.

20 A It is not the name of a company but abbreviations
21 for a company.

22 Q Okay.

23 A A new person was added Monday. I am not sure what
24 company they are from. There are some from U.S. Testing.

25 Q Okay. I am satisfied with your answer. Is you

1 want to complete it, that is okay.

2 A I think that is all I can remember.

3 Q Why do you go outside the Consumers and Bechtel
4 organization to hire? Are these people QA/QC?

5 A They have QA/QC background, yes.

6 Q The work they do, is that QA work or QC work?

7 A QA work.

8 Q QA work. Why do you go outside your organization
9 to hire 15 people to do QA work?

10 A For their knowledge, for their experience. The
11 job is short-term to bring people in.

12 Q Is that characteristic of the work these people
13 would do that the jobs they are assigned to are not
14 long-lasting? As you say, they are short-term.

15 A Some are, yes.

16 Q Is that true of the work that they will do in
17 connection with Zack?

18 A I am not sure what the length of time is on their
19 contracts.

20 Q Mr. Horn, I asked you about your use of the word
21 "procedures." You stated there were three bases for your
22 opinion that top management at Consumers has an attitude
23 supportive of an effective implementation of QA. We have
24 discussed manpower. My recollection is I asked you about
25 procedures and your response was that procedures had

1 increased or there were more procedures.

2 Is that accurate?

3 A Yes. That was part of the answer, I believe.

4 Q I may be forgetting the answer that you just gave,
5 but what is it about the procedures that you have just
6 indicated that indicates to you this attitude on the part of
7 management that is supportive of QA?

8 A The procedures were more specific and they
9 included the over inspection as opposed to no over
10 inspection in the past.

11 Q The third item you mentioned was organization. Can
12 you tell me how that reflects to you management attitude
13 with respect to QA?

14 A The breaking up of the organization into the
15 quality assurance engineering and the IQC or about same
16 responsibilities and put expertise in the areas of those
17 responsibilities.

18 Q In your opinion, there has been a substantial
19 improvement because of the new organization and the
20 effectiveness of your QA program.

21 A Yes.

22 Q Is there anything about the new QA program that
23 you think is less efficient than what you had before?

24 A No.

25 Q Mr. Horn, would you state your understanding of

1 quality control?

2 A Quality control is first line inspection to
3 planned procedures to control the implementation of
4 specifications and other requirements.

5 Q Mr. Horn, I want to read you a statement and ask
6 you if you agree with it. "The persons and organizations
7 performing quality assurance functions shall have sufficient
8 authority and organizational freedom to identify quality
9 problems, to initiate, recommend or provide solutions, and
10 to verify implementation of solutions."

11 Do you agree with that?

12 A Yes.

13 Q I want to read you another statement. "Such
14 persons and organizations performing quality assurance
15 functions shall report to management levels such as this
16 required authority, and organizational freedom, including
17 insufficient independence from cost and schedule, when
18 opposed to safety considerations are provided."

19 Do you agree with that?

20 A Yes.

21 Q Does that mean that in making decisions, that you
22 should not be impacted by cost?

23 MR. ZAKARIN: When you say that, are you referring
24 to the second sentence you read?

25 MR. HORN: Yes, with reference to the second

1 sentence that I read.

2 THE WITNESS: Yes.

3 BY MR. PATON: (Resuming)

4 Q Does it also mean that you should not be affected
5 by schedule?

6 A Yes.

7 Q Did anyone ever discuss with you, anyone at
8 Consumers ever discuss that subject with you, any supervisor?

9 A Not that I can recall.

10 Q Do you know when you learned that, the last
11 statement that I read to you?

12 A I believe in 1973.

13 Q In your consideration of the soils problem at
14 Midland, did you ever consider the cost of the remedy to the
15 problem?

16 MR. CAMARIN: Could I have that read back, please?

17 (The pending question was read by the reporter.)

18 MR. CAMARIN: Objection to the form of the
19 question.

20 You can answer if you understand.

21 THE WITNESS: No, I don't understand.

22 BY MR. PATON: (Resuming)

23 Q There was a time, I believe, in connection with
24 soils work you told me, you stated that you seriously
25 considered issuing a stop work order. Is that correct?

1 A Yes.

2 Q When you seriously considered that matter, did you
3 take into account the cost of the action that you were
4 proposing, that you were contemplating taking?

5 A Yes.

6 Q Can you tell us how that affected your thinking?

7 A By continuing work, I did not feel that there
8 would be an additional high cost impact on continued work.

9 Q Did you consider what it would cost to stop work?

10 A No.

11 Q Your statement is you didn't consider it would be
12 a high cost to continue work. Is that your statement?

13 A Yes.

14 MR. SAMBIN: I think he said high cost impact.

15 BY MR. PATON: (Resuming)

16 Q Mr. Horn, do you know what the schedule is to
17 complete construction at the Midland facility?

18 A Yes.

19 Q What is that?

20 A To have Unit 2 completed in 1984 and Unit 1 in
21 1985.

22 Q Those are your construction completion dates?

23 A Those are Consumers construction completion dates,
24 yes.

25 Q Do you know when that estimated construction

1 completion schedule was made or arrived at?

2 A No, I don't recall. It is a continual schedule.

3 Q It changes.

4 A Yes.

5 Q Do you know what the expected dates of commercial
6 operation are?

7 A Those are the dates --

8 Q Wouldn't construction completion be approximately
9 six months before that?

10 A Yes.

11 Q Do you know when the plants are required or either
12 plant is required to go into operation under the contract
13 that you have with Dow Chemical for steam?

14 A I believe it is December of 1985.

15 Q Is that Unit 1 or Unit 2? In other words, is Dow
16 going to take steam from Unit 1 or Unit 2?

17 A Unit 1.

18 Q Do you consider it important that Unit 1 go into
19 commercial operation prior to December '85?

20 A From a company standpoint, yes.

21 Q From your standpoint.

22 A Yes.

23 Q Was the knowledge that it is important to the
24 company and to you that Unit 1 go into operation by December
25 1985 ever affected your QA decision-making process?

1 A No.
2 Q Did U.S. Testing run compaction tests for Bechtel?
3 A Yes.
4 Q Did U.S. Testing fail to report deviations from
5 specified compaction requirements?

6 A Not that I recall.
7 Q Mr. Roth, I want to hand you a letter dated
8 February 1, 1978 from Bechtel to U.S. Testing Company.

9 MR. ZAKSISIN: Why don't we mark that Exhibit 3?
10 MR. PATON: I will mark it as Deposition Exhibit 3
11 as of today's date, October 22nd.

12 (The document referred to was
13 marked Deposition Exhibit 3
14 for identification.)

15 BY MR. PATON: (Resuming)

16 Q I will ask you a question about a specific portion
17 of the entire letter. If you want to read the entire
18 letter, you may.

19 Q Sir, would you read the first sentence of the
20 paragraph that begins "In conclusion" on the second page?

21 MR. ZAKSISIN: Why don't you read the whole thing?

22 THE WITNESS: I finished reading that.

23 BY MR. PATON: (Resuming)

24 Q The first sentence in the second to last paragraph
25 that begins with "In conclusion." I don't want to ask you

1 whether you agree with the entire sentence because the last
2 part of the sentence says that U.S. Testing is therefore
3 liable for costs, and I don't want to ask you about that.

4 Q Can you tell me whether you agree with the portion
5 of the sentence that precedes the period that I put after
6 the word "requirements"? I am just trying to eliminate the
7 part about the liability for costs.

8 A When I read this paragraph, the portion that you
9 have indicated, I disagree that U.S. Testing did not
10 identify deviations from the specified compaction
11 requirements. I do agree that U.S. Testing had reported
12 erroneous selection of compaction standards, and therefore
13 it did not indicate in the reports that the compaction
14 requirements had been met or had not been met.

15 Q Mr. Horn, do you think that the reported erroneous
16 selection of compaction standards was significant to the
17 lack of compaction of the fill at the Midland site?

18 A MR. SAMARIN: I object to the form. You can
19 answer it if you can.

20 THE WITNESS: Yes.

21 BY MR. BAXON: (Resuming)

22 Q Mr. Horn, was the correct selection of compaction
23 standards by U.S. Testing within your quality assurance
24 responsibility?

25 A Yes.

1 MR. LAMASIN: I don't know if this was completely
 2 identified for the record. You have been referring to WAC
 3 Deposition Exhibit Number 3 as of today's date, which is
 4 correspondence from Bechtel Tower Corporation to U.S.
 5 Testing Company, Inc. Reference is failure of fill
 6 supporting the administration building grade beam at column
 7 line 0.4 C-208-B-286.

8 BY MR. PATON: (Resuming)

9 Q Mr. Horn, have you ever heard anyone in Consumers
 10 mention a prospective or actual law suit between Consumers
 11 and Bechtel arising out of the soils problem?

12 A Could I have the question read back again?

13 (The pending question was read by the reporter.)

14 THE WITNESS: No.

15 BY MR. PATON: (Resuming)

16 Q Did there come a time during the construction of
 17 the administration building that it was noticed that there
 18 was settlement in excess of what was expected?

19 A Yes.

20 Q Do you know what the cause of that settlement was?

21 A Not all the causes, no. I do not recall all the
 22 causes.

23 Q What was the date or approximately when did you
 24 first know that there was a problem with the settlement of
 25 the administration building?

1 A I don't recall.

2 Q Was it substantially before you knew about the
3 settlement troubles at the diesel generator building?

4 MR. ZAMBRINI: Objection to form.

5 THE WITNESS: The question is too general.

6 BY MR. WATON: (Resuming)

7 Q Can you answer the question?

8 A I don't know what you mean by substantial.

9 MR. ZAMBRINI: That was my objection.

10 BY MR. WATON: (Resuming)

11 Q I am trying to get a time frame for the
12 relationship between the troubles with the diesel generator
13 building and the troubles with the administration building.
14 Your answer was you didn't know when the administration
15 building happened.

16 Let me ask you this. Was it before or after you
17 were worried about the troubles with the diesel generator
18 building?

19 A It was before.

20 Q Do you have any idea how much before?

21 A Approximately a year.

22 Q I think you indicated that you knew one of the
23 possible causes. I asked you about the causes of the problem
24 at the administration building.

25 A I knew after the diesel generator problem what the

1 causes were then looking at records. I was not aware of the
2 causes prior to the diesel generator building problems, to
3 the rest of my recollection.

4 Q When you first learned of the problem at the
5 administration building, did you attempt to determine what
6 the cause was?

7 A No.

8 Q Am I correct that you did not consider that within
9 the scope of your job at that time?

10 A Yes, that is correct.

11 Q It is correct you did not consider it within the
12 scope of your job at that time?

13 A That is correct.

14 Q Do you know if anybody attempted to determine what
15 the cause of that problem was?

16 A Yes.

17 Q Who did that?

18 A It would have been Bechtel and Consumers' protect
19 management organization.

20 Q Do you know of anybody in Consumers Power who has
21 been -- strike that.

22 Do you know whether Consumers Power has taken any
23 adverse personnel action against anyone that works
24 for Consumers Power because of the soils problem?

25 MR. TAMM: Objection as to form.

1 Q You say answer.

2 THE WITNESS: Not that I know of.

3 BY MR. PATON: (Resuming)

4 Q Do you know whether Bechtel Corporation has taken
5 any adverse personnel action against any employee of Bechtel
6 because of the soils problem?

7 MR. JACOBSON: Objection as to form.

8 THE WITNESS: Not that I am aware of.

9 BY MR. PATON: (Resuming)

10 Q What action was taken by Bechtel and/or Consumers
11 as a result of the perceived problem with the administration
12 building?

13 A Can I have the question back again?

14 (The pending question was read by the reporter.)

15 MR. JACOBSON: Objection as to form.

16 THE WITNESS: The question is too general

17 BY MR. PATON: (Resuming)

18 Q Did Consumers do anything about the perceived
19 problem?

20 MR. JACOBSON: Objection as to form.

21 THE WITNESS: It is too general. I don't
22 understand.

23 BY MR. PATON: (Resuming)

24 Q You say there was a problem?

25 A Yes.

1 Q Did Consumers do anything about the problem?

2 MR. DAMBACH: Objection as to form.

3 THE WITNESS: The question is too general.

4 BY MR. BAXON: (Reassuming)

5 Q Do you know whether Consumers did anything about
6 this perceived problem?

7 MR. DAMBACH: Objection as the form.

8 THE WITNESS: Yes.

9 BY MR. BAXON: (Reassuming)

10 Q Your answer is yes?

11 A Yes.

12 Q What did they do?

13 A The material was moved, as stated in that letter
14 that you had there. Material was removed. And as the
15 material was being removed, it was compared to protocols that
16 had been taken previously and tests that had been taken
17 previously. They removed the concrete that we had problems
18 with and began to write them anew. They took borings in
19 certain locations per that document that you showed me.
20 They had meetings with the test lab. That is all that I can
21 recall.

22 Q After all that, did Consumers determine what the
23 cause of the settlement problem was?

24 A Not that I recall. Bechtel did, but I don't
25 recall if Consumers did or not.

1 ? You heard Hechtel did determine the cause of the
2 problem?

3 A Yes.

4 Q Did they ever tell Consumers?

5 A I don't recall.

6 ? You know that Hechtel determined the cause?

7 A Yes.

8 Q But you don't know whether they ever told
9 Consumers?

10 A That is right.

11 Q You don't think it was within the scope of your
12 responsibilities to attempt to determine what the cause was?

13 A No, that is correct.

14 Q Did anyone every contemplate the stories that
15 existed in the administration building right in 1966
16 widespread that just at the administration building?

17 Mr. CAMERON: Objection as to form. Do you hear
18 as to his knowledge?

19 Mr. PATON: All I want him to say is what he
20 knows. To your knowledge.

21 THE WITNESS: Yes.

22 BY Mr. PATON: (Resuming)

23 Q Who?

24 A At least Hechtel. I'm not sure whether Consumers
25 gave that question to Hechtel or not.

1 Q Did anybody within Commins think that perhaps
2 the problem was not an isolated problem?

3 MR. DAMARIN: To his knowledge.

4 THE WITNESS: I just gave that. I am not sure.

5 MR. PATON: You want me to amend my question, and
6 say to his knowledge?

7 MR. DAMARIN: That is right.

8 MR. PATON: I don't think I want to do that in
9 every case, so I guess if you want to instruct him not to
10 answer the question, please do ahead.

11 MR. DAMARIN: That is proper form.

12 MR. PATON: It is proper form in every question to
13 say to his knowledge? Is that what you are saying?

14 MR. DAMARIN: When you are asking what is in
15 someone else's mind, it is. Did anyone think it? You have
16 to ask if he knows if anyone thinks it. He doesn't know
17 what people are thinking.

18 MR. PATON: If that comes up again, we will face
19 it whenever I ask him what is in someone else's mind.

20 BY MR. PATON: (Resuming)

21 Q Now getting back to what we were talking about,
22 did you say that Bechtel determined the cause of the failure?

23 A Yes.

24 Q Do you know what that cause was?

25 A Yes.

1 Q What was it?

2 A Based on that document, it was the selection of

3 proctors.

4 MR. JAMASIN: That document is referring to

5 Exhibit 3.

6 BY MR. PATON: (Resuming)

7 Q The selection of erroneous proctors.

8 A Yes.

9 Q By U.S. Testing?

10 A Yes.

11 Q And someone at Bechtel thought that this problem

12 was more widespread than just at the administration building?

13 A Yes.

14 Q Who was that?

15 A I don't recall. I know Bechtel took action on

16 that. I don't know who within Bechtel took the action.

17 Q What action did Bechtel take?

18 A They took borings in other locations.

19 Q What was the purpose of that?

20 A To determine if there was a problem with

21 insufficient compaction of material.

22 Q Did they get a result?

23 A Yes.

24 Q What was that result?

25 A Adequate results.

1 Q Adequate results. What does that mean?

2 A That there wasn't a problem with insufficient
3 compaction of backfill in those areas where they took
4 borings.

5 Q Where did they take borings?

6 A They took some around the administration
7 building. They took one south of the diesel generator
8 building, and I believe they took one by the chlorination
9 building.

10 Q So, other than around the administration building,
11 they took two borings.

12 A To the best of my recollection, that is correct.

13 Q You say one is south of the diesel generator
14 building.

15 A Yes.

16 Q How far south?

17 A Approximately 20 feet.

18 Q The other one, where was the other boring taken?

19 A The chlorination building.

20 Q Do you in your professional judgment believe the
21 taking of those two borings there, would that have satisfied
22 you as to whether this problem was an isolated problem?

23 MR. JAKARIN: You mean his QA as opposed to a
24 geotechnical engineer, which he is not?

25 MR. PATON: In his expertise. Do you want to go

1 back? We have spent a lot of time on what his expertise is.

2 MR. DAMARIN: You are asking him what appears to
3 call for the expertise of an geotechnical engineer, which he
4 is not.

5 MR. BAXON: We spent a lot of time on his
6 expertise. We will do it again. Do you want to do it again?

7 MR. DAMARIN: I don't know whether you are asking
8 him for a lay opinion or --

9 MR. BAXON: I am asking him for an opinion by his
10 expertise.

11 MR. DAMARIN: I object to the form of the question.

12 MR. BAXON: Do you want me to go back and ask him
13 what his expertise is again?

14 MR. DAMARIN: No. I know what it is.

15 MR. BAXON: What is the objection, then?

16 MR. DAMARIN: The question that you asked would
17 appear to go toward geotechnical engineering expertise.

18 MR. BAXON: I didn't ask him that. I said within
19 your expertise. He is either an expert in some area or he
20 is not. I asked him within your expertise. I assume he
21 knows his own expertise.

22 MR. DAMARIN: He can answer it. I have an
23 objection to the form of the question.

24 MR. BAXON: I have no idea what the question is at
25 this point.

1 Would you please repeat the question?

2 (The pending question was read by the reporter.)

3 MR. ZAKARIN: You can answer subject to the
4 objection, if you can.

5 THE WITNESS: I am not a geotechnical soils
6 engineer. I rely on their expertise and project engineers'
7 expertise in that area. I can't answer that question.

8 BY MR. PATON: (Resuming)

9 Q Did you ever hear anyone at Consumers discuss, to
10 your knowledge, the adequacy of those two tests to determine
11 whether the problem at the administration building was an
12 isolated problem?

13 A Could I have that read back, please?

14 (The pending question was read by the reporter.)

15 MR. ZAKARIN: I object to the first. I think he
16 talked about more than two tests. You were talking about
17 the one by the chlorination and one by the diesel generator
18 building?

19 MR. PATON: I was specifically referring to
20 whether all the tests were taken. If you want me to repeat
21 the question, I will. I will state for the record that my
22 question is couched in terms of whether all the tests that
23 you mentioned or all the borings that you mentioned were
24 adequate.

25 THE WITNESS: Yes.

1 BY MR. PATON: (Resuming)

2 Q Who did you hear discuss this subject?

3 A I don't recall specific people.

4 Q Was there discussion by more than one person?

5 A I believe there were various discussions.

6 Q Can you tell us what those discussions were?

7 A These would have been after the diesel generator
8 building problem, when we go back and look at the validity
9 of the two tests that were taken. Evidently they were not
10 enough.

11 Q So you were indicating that now we are in
12 hindsight. Is that what you are saying?

13 A Yes.

14 Q Tell us what those statements were, unless you
15 have completed your answer.

16 A It is completed.

17 Q The statements were that the tests were not enough.

18 A It appears evident from the results of the diesel
19 generator building settlement that they were not enough.

20 Q You don't have any argument with that conclusion,
21 do you?

22 A No.

23 Q Do you have an opinion as to whether there is any
24 connection between the settlement problem at the
25 administration -- do you have an opinion now, based on

1 everything you know up until this time, whether there is any
2 connection between the settlement problem at the
3 administration building and the settlement problem at the
4 diesel generator building?

5 A Yes.

6 Q What is that opinion?

7 A They are similar.

8 Q Do they have the same cause?

9 A They possibly have the same cause, yes.

10 Q You can't go any more than possibly. You couldn't
11 say probably?

12 A Possibly. I believe we have presented possible
13 causes. We do not specifically know what the problems were
14 in the diesel generator building area, what the specific
15 causes were to pinpoint one. We can't do that. We would
16 give possible causes.

17 Q Okay. Is this the type of problem that
18 implementation of a correct and effective PM program might
19 have detected?

20 A The question seems too general.

21 Q With the knowledge that you gained from the
22 settlement problem at the administration building, do you
23 have any opinion as to whether or not an effective PM
24 program might have prevented the problem at the diesel
25 generator building?

1 MR. ZAMARIN: Excuse me. Could I have that one
2 read back, please?

3 (The pending question was read by the reporter.)

4 MR. ZAMARIN: I object to the form of the question.

5 THE WITNESS: I have a hard time trying to
6 understand the question based on the administration building
7 non-Q and the diesel generator building Q.

8 BY MR. PATON: (Resuming)

9 Q There was no QA applied to the administration
10 building, is that correct?

11 A That is correct.

12 Q Did you learn anything from the experience at the
13 administration building?

14 A After the diesel generator building settlement,
15 yes.

16 Q You didn't learn anything until after the diesel
17 generator building settled?

18 MR. ZAMARIN: I object to the form of the question.

19 THE WITNESS: That is correct.

20 BY MR. PATON: (Resuming)

21 Q Do you know of anybody who made a statement that
22 raised the possibility that maybe because the administration
23 building was sinking, that maybe this problem was more
24 widespread than just at the administration building?

25 A I don't recall anyone making that specific

1 statement.

2 Q You stated that Bechtel performed some borings for
3 the purpose of determining whether the problem at the
4 administration building was isolated, is that correct?

5 A Yes.

6 Q Did Bechtel do that work themselves or did they
7 hire somebody else to do it?

8 A They hired someone.

9 Q Do you have any idea who that was?

10 A I don't recall right now what the name of the
11 company was.

12 Q Do you know of anyone in Consumers Power who had
13 responsibility to communicate with Bechtel on this subject,
14 on the subject of taking the borings for the purpose of
15 determining whether or not the problem was an isolated
16 problem?

17 A Would you repeat the question again?

18 MR. ZAMARIN: Could you read it back, please?

19 (The pending question was read by the reporter.)

20 THE WITNESS: No.

21 BY MR. PATON: (Resuming)

22 Q Let me try this another way. When Bechtel
23 performs a function like this where they have some borings
24 done for the purpose of determining whether this problem is
25 an isolated problem, isn't there someone within Consumers

1 Dover that has some responsibility for that area? In other
2 words, Consumers doesn't just turn this over to Bechtel and
3 say they don't want to hear any more. There must be some
4 contact man or liaison man or somebody that Bechtel reports
5 to for this information.

6 A Yes.

7 Q Who is that?

8 A They would report it to Tom Cooke, or they might
9 have reported it to Don Sibbald.

10 Q Okay. Did you ever hear -- what is the other
11 gentleman's name?

12 A Don Sibbald.

13 Q Did you ever hear Tom Cooke or Don Sibbald make
14 any comment about the results that Bechtel obtained from
15 making the borings?

16 A Yes.

17 Q What comment was that?

18 A That they were adequate. Don Sibbald told me that
19 they were adequate, the results were adequate.

20 Q Did he express to you any misgivings or difficulty
21 about Bechtel's conclusion?

22 A No, not that I can recall.

23 Q Mr. Horn, I want to ask a question about Criterion
24 16 of 10 CFR, Part 50, Appendix B, and I want to -- can I
25 have the book, please? I want to ask you this question

1 without your reading it, and then, depending on whether you
2 can or cannot answer the question, I will hand it to you;
3 but I want to test your knowledge.

4 Is one of the purposes of Criteria 16 the
5 prevention of repetition of nonconformances?

6 MR. DAMBEN: I will object. Insufficient
7 foundation.

8 THE WITNESS: I don't know what 16 is.

9 BY MR. PATON: (Resuming)

10 Q I am going to suggest to you what it is and you an
11 make an answer.

12 A Are you going to give me the title?

13 Q Yes, I am.

14 A Okay.

15 Q Corrective Action. Now I will repeat the question.

16 Is one of the purposes -- when I finish with this,
17 I will let you read it if you want to. Is one of the
18 purposes of Criterion 16 the prevention of repetition of
19 nonconformances?

20 A Yes.

21 Q Mr. Horn, I want to hand you NRC Deposition
22 Exhibit Number 1 and direct your attention to the bottom of
23 page 2. It goes continuous to page 3 where there is a list
24 of five items. These are listed under paragraph captioned
25 "Summary of Facts." I want to ask you to read those, and

1 When you get through I want to ask you whether you agree
2 with those five statements.

3 A Could you repeat the question?

4 (The pending question was read by the reporter.)

5 BY MR. BAXON: (Resuming)

6 Q Mr. Horn, do you recall my question?

7 A Yes. I do not agree with the specific wording of
8 these.

9 Q Would you take them one by one and tell us, if you
10 don't agree, how you don't agree?

11 A All right. Number one --

12 Q If you don't mind, would you read number one?

13 A "A lack of control and supervision of plant mill
14 activities contributed to inadequate compaction of
15 foundation material."

16 The only disagreement I have with that is that it
17 is a possible contributor to that problem.

18 Q All right, sir. Could I see that document, please?

19 Let ask me about your answer. You are indicating
20 -- does your answer indicate that it is possible that a lack
21 of control or supervision of plant mill activities did not
22 contribute to inadequate compaction of foundation material?

23 MR. BAXON: Could you read that back, please?

24 (The pending question was read by the reporter.)

25 THE WITNESS: Was that adequate or inadequate?

1 BY MR. PATON: (Resuming)

2 Q MR. PATON: The only word that I intend to change
3 is "not." Let me try to explain my question.

4 This statement indicates that a lack of control
5 and supervision of plant fill activities contributed to the
6 inadequate compaction of foundation material, and I think
7 you indicated you would agree that it was only possible that
8 it contributed.

9 A Yes.

10 Q Starting with your statement that you can only go
11 to the point of saying it was possible that it contributed
12 to inadequate compaction of foundation material, my question
13 to you is is it possible in your mind that a lack of control
14 and supervision of plant fill activities did not contribute
15 to inadequate compaction of foundation material?

16 A Yes, it is possible.

17 Q Okay, thank you.

18 A Number two. "Corrective action regarding
19 nonconformances related to plant fill was insufficient or
20 inadequate, as evidenced by the repeated deviations from the
21 specification requirements."

22 I agree with that statement.

23 Q Okay, sir.

24 A Number three. "Certain design basis and
25 construction specifications related to foundation type,

1 "additional investigations and construction requirements were not
2 followed."

3 Q I agree to that.

4 A Number four. "There was a lack of clear direction
5 and support between the contractors, engineering office and
6 construction site as well as within the contractor's
7 engineering office."

8 Q I agree to that.

9 A Number five. "The ROM contains inconsistent,
10 incorrect and unsupported statements with respect to
11 foundation type, soil properties and settlement values."

12 Q I agree to that.

13 Q All right, sir. Thank you.

14 Q During the period of time when plant still
15 operations were being conducted in the non-dike area, was it
16 within the scope of your responsibility -- and I am limiting
17 the question to soils -- was it within the scope of your
18 responsibility to assess the qualifications of Federal
19 quality control personnel?

20 A Yes.

21 Q Did you consider any of them unqualified?

22 A Yes.

23 Q Who did you consider to be unqualified?

24 A I don't recall the name of the gentleman.

25 Q Was it just one gentleman?

1 A Yes. It was one occurrence of soils. One night
 2 when I was inspecting, and the placement of the soil, I
 3 believe they were placing clay on top of structural backfill
 4 area. That requires the sand. And I began questioning him
 5 on the requirements, and it appeared to me that he was not
 6 familiar with that, with the soils. I followed up on it the
 7 next morning.

8 Q When you say you followed up on it, what did you
 9 do?

10 A I contacted his supervisor and I told him that we
 11 agreed that the man would be taken off soils until he had
 12 received adequate training in the soils area.

13 Q Did that happen?

14 A He was removed from the soils, and as far as I
 15 know, he did not go back to the soils inspection.

16 Q Okay. Generally what was it that he was doing the
 17 night that you talked about? What function was he
 18 performing?

19 A He was carrying out the inspection by QC of soil
 20 placement.

21 Q Do you remember anything in particular that you
 22 thought he should know that he didn't know?

23 A Yes.

24 Q What was that?

25 A The requirement that structural backfill material

1 be placed within three feet of a structure.

2 Q Did you ever hear of Management Analysis
3 Corporation?

4 A Yes.

5 Q Are they now doing any work for Consumers or
6 Bechtel?

7 A Yes.

8 Q What are they doing, generally?

9 A They run audits on our QA program.

10 Q Have they reached any findings?

11 A I don't recall. I am not aware of any findings.

12 Q Have they completed their work?

13 A I am not sure.

14 Q Mr. Horn, I want to show you NRC Deposition
15 Exhibit Number 1, page 12. At the bottom of the page there
16 is a paragraph that has, among other words in it, a
17 reference to a herd of mules, and I want to ask you to read
18 that.

19 MR. ZAMBRINI: You are referring to paragraph
20 number 6?

21 MR. PATON: Yes, paragraph number 6.

22 BY MR. PATON: (Resuming)

23 Q Have you finished reading that?

24 A Yes.

25 Q Do you understand the paragraph?

1 A Yes.

2 Q Do you agree -- I am going to take a part of this
3 out and ask if you agree with it. I am just changing it to
4 make it a question.

5 Do you agree, from a technical point of view, with
6 this statement: If the compaction could be achieved with a
7 herd of mules walking over the fill, it would be acceptable
8 as long as it got the 95 percent compaction -- within the
9 confines of the Midland case and all that you know about it
10 and the requirements for compaction at Midland?

11 MR. ZAMARIN: I will object to the form of the
12 question in that you say from a technical point of view or a
13 geotechnical point of view or from his responsibilities at
14 QA.

15 BY MR. PATON: (Resuming)

16 Q Within your own expertise, which I assume you are
17 familiar with.

18 MR. ZAMARIN: The same objection as to form.

19 BY MR. PATON: (Resuming)

20 Q I will ask you a different question.

21 Do you have an opinion as to whether or not you
22 have the competence to state whether the procedure suggested
23 by this paragraph is sound engineering practice?

24 A Yes.

25 Q Is the procedure suggested by this paragraph sound

1 engineering practice?

2 A No.

3 Q Was there some damage to the rip rap at the dike
4 sometime within the last year?

5 A Not that I am aware of.

6 Q Was there any damage or disturbance to the dike
7 within the last two years that you are aware of?

8 A There were some problems with the dike, and it was
9 within the last two years.

10 Q Do you know anything about it? Do you know what
11 happened?

12 A No.

13 Q Did Canoni build the dike around the cooling pond?

14 A Yes.

15 Q Is any of the dike around the cooling pond
16 listed?

17 A No.

18 Q Do you know whether there is any structure system
19 or component within the cooling pond that is a Category I
20 structure?

21 A Yes.

22 Q What is that?

23 A The discharge lines from the surface water out to
24 the emergency cooling pond.

25 Q Is it within your technical competence to know

1 whether failure of the dike could adversely impact those
2 discharge lines?

3 A No.

4 Q Did you have any connection with the construction
5 of the dike within your professional responsibilities?

6 A Yes.

7 Q What was that? What connection did you have?

8 A The part of the dikes were Q and were later made
9 non-Q.

10 Q What part of the dike was it? Let me interrupt.
11 By Q, do you mean Q listed?

12 A Yes.

13 Q That means to you subject to Appendix B?

14 A Yes.

15 Q What part of the dike was at one time Q listed?

16 A The part of the northeast dike was Q. All of the
17 north plant was Q, and part of the west plant dike was Q.

18 Q Are you referring to the dike around the cooling
19 pond?

20 A This is the total, the dike that surrounds the
21 entire project. The plant, the power block and the cooling
22 pond.

23 Q Referencing the dike that is around the cooling
24 pond only -- do you understand what I mean by that?

25 A Yes.

1 Q Did you have any professional responsibility with
2 respect to the construction of that dike?

3 A I am not sure where the part of the northeast dike
4 is that was Q with respect to the actual surface water of
5 the cooling pond.

6 Q Other than that portion, did you have any
7 responsibility with respect to the construction of the dike
8 around the cooling pond?

9 A No.

10 Q Who supervised for Consumers Power the
11 construction of the dike around the cooling pond?

12 A The question is too general. I don't know --

13 Q Cononi did the work.

14 A Yes.

15 Q Who would then at Consumers Power have
16 responsibility in that regard?

17 A It would have been Don Sibbald. He would have been
18 watching the contract.

19 MR. PATON: Why don't we take five minutes?

20 (A brief recess was taken.)

21 MR. PATON: I have completed this stage of the
22 deposition of Mr. Horn, since everything seems to be, sine
23 die.

24

25

1 EXAMINATION BY COUNSEL FOR CONSUMERS POWER COMPANY

2 BY MR. ZAMARIN:

3 Q In response to one of the questions by Mr. Paton
4 with regard to your decision not to stop work in soils
5 placement, you indicated that you didn't think there would
6 be a high cost impact on continued work, and therefore you
7 didn't stop the work.

8 Can you tell us what you mean by high cost impact?

9 A The consideration made for that high cost impact
10 would be if work would continue at its present requirements
11 and later determined to be unacceptable, to go back in and
12 remove that material or repair the consequences of that
13 material.

14 Q So you are talking about the cost of going back
15 and redoing some work if it is later found that that is
16 necessary, and that is the cost impact you referred to.

17 A Yes. Not the cost impact of stopping work at that
18 time.

19 MR. ZAMARIN: I also have two exhibits. One has
20 been marked Consumers Exhibit Number 1 as of today's date,
21 and it is headed "Oral Communications Record dated
22 10/2/80."

23 (The document referred to was
24 marked Consumers Exhibit
25 Number 1 for identification.)

1 BY MR. ZAMBIN: (Resuming)

2 Q I would simply like you to look at that and tell
3 me if that is a record of a telecon that you made.

4 A Yes.

5 Q In that telephone conversation between you and Mr.
6 Gallagher, I believe it was, he requested certain information
7 with regard to Specification C-210; is that correct?

8 A Yes.

9 Q Did he state why he wanted that information?

10 A To the best of my recollection, it is that this
11 information was missing from previous investigations and
12 that they wanted that information.

13 Q Did he tell you why he thought it was missing from
14 previous investigations?

15 A The lead-in to that conversation was that one of
16 the inspectors he was with had thrown out his information.

17 Q Do you recall what advice -- and you can reflect
18 your recollection with Exhibit Number 1 -- that Mr.
19 Gallagher requested of you on October 2, 1980?

20 A There were two requests that I had to pursue. One
21 was to identify the persons that prepared, checked and
22 approved the Specification C-210 based on the cover sheet to
23 that specification, and my understanding was that I also
24 identify the group that they were affiliated with.

25 MR. ZAMBIN: I have here what has been marked

1 Consumers Exhibit Number 2 for identification.

2 (The document referred to was
3 marked Consumers Exhibit
4 Number 2 for identification.)

5 BY MR. ZAMARIN: (Resuming)

6 Q Does that contain some or all of the information
7 that you understand Mr. Gallagher to have requested on
8 October 2, 1980?

9 A No. This information does not include the actual
10 group that they were with.

11 Q Other than that information, does it contain all
12 the information that you understood Mr. Gallagher to have
13 requested?

14 A Yes.

15 Q Was it your understanding at the time of your
16 telephone conversation with Mr. Gallagher on October 2, 1980
17 that this information was requested for the purposes of this
18 hearing with which we are involved or discovery with regard
19 to the hearing?

20 A Yes, that was my understanding.

21 MR. ZAMARIN: I have no further questions.

22 THE WITNESS: You forgot number two request. I
23 said there were two items.

24 BY MR. ZAMARIN: (Resuming)

25 Q What was the other request?

1 MR. ZAMARIN: I have no further questions.

2 MR. PATON: I have no further questions. I want
3 to place a couple of statements on the record.

4 The first statement I want to make is that Mr.
5 Zamarin asked me about a week ago, discussed with me the
6 matter of NRC employees requesting information from
7 Consumers employees, and requested that NRC employees not
8 ask Consumers employees to prepare information specifically
9 for the purpose of the proceedings that we are now involved
10 in. By that I mean what is known as the OL/OM proceeding.

11 I did not do anything in response to his request,
12 and we discussed the matter again today. I intend to ask
13 Mr. Hood to send a notice to NRC employees and ask them to
14 refrain from asking Consumers employees to prepare
15 information specifically for the purpose of this
16 litigation.

17 I would submit that any such request coming from
18 Mr. Gallagher in the recent past are from Mr. Gallagher's
19 point of view a very, very logical continuation of the
20 practice he has followed for many years, but I intend to ask
21 him to observe Mr. Zamarin's request and other NRC employees
22 to do the same.

23 MR. ZAMARIN: I will just state that by putting
24 this on the record, we in no way intend to indicate nor do
25 we suspect that there was anything in Mr. Gallagher's mind

1 that was improper in doing this. It is just that we are in
2 kind of an unusual situation where we do want the normal
3 review to continue but that as lawyers we have a certain way
4 that things have to go with regard to the hearing.

5 We certainly don't suggest or intend that there
6 was anything improper in his motivation.

7 MR. PATON: I want to make another statement for
8 the record. It was my intent at the conclusion of Mr.
9 Horn's deposition to leave his deposition open. By that I
10 meant that in the event, which I now consider to be remote,
11 that the NRC would want to take a further deposition of Mr.
12 Horn, that that would be done.

13 I thought that that was within the scope of the
14 understandings between attorneys, and I note that the
15 Consumers attorneys have taken the depositions of three
16 staff witnesses and to this point have left them all open
17 for further depositions, to which I readily agreed.

18 I would also note that the staff has cooperated to
19 whatever time schedule has been suggested by Consumers. To
20 my knowledge, there is no specific agreement that Mr. Horn's
21 deposition be left open. I don't wish to argue the matter;
22 I merely wish to make those comments. If the attorneys
23 cannot reach an agreement, then I suggest that the simplest
24 procedure would be to bring the matter to the Board's
25 attention.

1 MR. ZAMARIN: Okay. Let me just clarify one thing
2 with regard to the scope of the understanding between the
3 attorneys. The reason for adjourning sine die on the
4 depositions that were started of the NRC personnel was
5 because they were not completed at the time when travel
6 arrangements required that they be adjourned.

7 In none of those was there any indication or
8 suggestion that the inquiry was complete. In fact, my
9 recollection is that Mr. Hood's was adjourned sine die for
10 the sole purpose of possibly going back through, I believe
11 it was, 50.54(f) and 50.55(e) matters and his acceptance
12 criteria with regard to those. That was the only purpose
13 for which that was adjourned sine die.

14 We completed our interrogation with regard to
15 everything else, I recall, so that one was not left open.
16 It was just that one matter. And if it were to resume, it
17 would be limited to that one matter because we had already
18 completed our own inquiry with regard to other matters and
19 had so stated.

20 Since the reason for the adjournment of Mr. Horn's
21 deposition at this time is that you have completed your
22 inquiry as of this time, it will remain our position that
23 the deposition is completed and adjourned with further
24 deponents saith not.

25 MR. PATON: A very brief reply.

1 I suspect the problem will go away because I
2 suspect that if the staff has probable cause to believe that
3 Mr. Horn has some very valuable information in this public
4 interest proceeding, that the Board will let us take his
5 deposition. If we do not, they will not, so I don't expect
6 the problems to continue.

7 MR. ZAMARIN: That is a higher authority than
8 either you or I.

9 (Whereupon, at 12:40 p.m., the deposition was
10 concluded.)

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

DEPOSITION OF DONALD ELDON HORN

in the matter of: CONSUMERS POWER COMPANY

Date of Proceeding: October 22, 1980

Docket Number: 50-239-OM & 50-330-OM

Place of Proceeding: Midland, Michigan

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Marilyn Shockey

Official Reporter (Typed)

Marilyn Shockey

(SIGNATURE OF REPORTER)