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April 3, 1981

Dear Mr. Denton,

I am pleased to hear that you are taking a closer look at the Midland soil settlement issues. In the two years I have been actively intervening in the soils proceeding, I have become progressively concerned with the NRC posture in this matter. Unfortunately I was under the impression that as a party to this proceeding, I was not supposed to contact you or other top NRC officials about any of the issues of this proceeding.

Only yesterday, in a conference call, did I request permission to contact you, as Mr. Selby had on behalf of Consumers, to present my perspective of the situation. With the ASLE approval I received, I wish to provide you a brief factual account of certain key events that reveal how the soil settlement issues have been handled by the NRC thus far.

As you know, the Dec. 6, 1978 Order Notifying Construction Permits set forth three main issues: the soils CA breakdown (Appendix A); the lack of acceptance criteria (Section II, p3); and the false FSAP statements particularly the Material False Statement (Appendix B). It called for a halt to soil remedial work pending the approval of an amendment modifying the construction permits.

The CA Stipulation of June 5, 1981 was an agreement between the NRC and Consumers not to litigate the soils CA breakdown issues of the Dec. 6 Order (Appendix A). The stipulation was predicated upon the "reasonable assurance" judgement of Mr. Keppler following the May 18-20, 1981 inspection. Upon receiving the NRC's reasonable assurance that CA was satisfactory, Consumers agreed not to contest the soils CA breakdown of the Dec. 6 Order.

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On March 13, 1981, Consumers presented a CA program update to Region III and Mr. James Cook personally invited Mr. Keppler to visit the site to assess their CA operations. Discussions took place through March and April between the NRC and Consumers regarding the possible CA Stipulation. The terms of this agreement were set forth in an eight page Confidential Proposed CA Stipulation received from Consumers by the NRC on or about May 6, 1981, which has remained confidential. Following the May 18-22 inspection the CA Stipulation was finalized.

As a result of the CA Stipulation, the NRC did not intend to submit their exhaustively documented testimony for the period prior to Dec. 6, 1979 during which the soils CA breakdown occurred, however in the hearing, I succeeded in introducing those documents myself. As a result, the ASLB was able to get an idea how and why the soil settlement problems occurred.

The Board did not accept part three of the CA Stipulation noting CA improvements and reasonable assurance in 1980-81, without hearing testimony on it. Therefore the focus of the hearing became whether CA implementation had improved in 1980-81 as Consumers and the NRC believed. However the NRC prepared testimony on this 1980-81 period consisted of a brief summary statement without documentary attachments aside from the five day inspection results.

The ultimate issue before this Board is whether reasonable assurance exists that CA will be properly implemented in the future, particularly regarding the soils remedial work. The NRC has offered

their conclusory judgment on this key issue before the hearing even began, and in so doing has placed themselves in the untenable position of having a position to defend regarding Consumers CA shortcomings in 1997-98, rather than objectively laying the facts before the ASLE for their decision.

In addition to the CA stipulation, there have been similar stipulation agreements regarding the acceptance criteria issues (sec. II) relating to soils remedial work, and the parties and Board have been informed that a stipulation agreement was being considered to "resolve" the remaining Material False Statement Issue (Appendix B).

But most significant is the manner in which the NRC has allowed Consumers to proceed bit by bit with the soils remedial work before the ultimate safety questions have been resolved. Sections III and IV of the Dec. 6 Order state that soils remedial work is not to proceed until such time as an Amendment modifying the construction permits has been approved. But because the Order does not take effect until the ASLE issues its ruling (section VI), Consumers has been allowed to begin soils remedial work in the interim.

In the initial testimony of this hearing, the NRC was to address a Board question raised at the January prehearing conference, as to whether there was any construction activity, which should be halted pending resolution of the still-attendant questions. The Staff instead responded that there were "a number of construction activities important to Consumers's operating needs" and proceeded to give concurrence for 12 permanent decontamination wells. It is that time soils remedial

work has been approved at the Forsted Water Storage Tanks and at the Auxiliary Building, and additional wells have been installed.

Your interest in these matters comes as a welcome and desperately needed willingness to ask the essential questions, and it comes not a moment too soon. For failure to ask basic cost/benefit questions at the outset, renders them moot questions in the end. In the face of billion dollar sunk costs, safety standards are compromised and the "risk" Consumers has chosen to take and been allowed to pursue in these soil settlement matters amounts to no risk at all.

It is not surprising that faced with the pressures of the Dow Steam Contract deadline, Consumers has pushed ahead to complete the plant on time. But when I read the NRC's Draft Environmental Statement recommending an operators license because no "compelling environmental or safety concerns" had arisen since the construction permit review, I was shocked. And I all but lost faith that the NRC would maintain its charge to protect public health and safety in its attempt to meet Consumers's pressing licensing needs.

Thank you for at least considering the essential cost/benefit and safety questions of the soil remedial work while such consideration can still be meaningful.

Respectfully,

Barbara Hamlin

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