

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 IN THE MATTER OF:) Docket Nos. 50-329-OL
4) 50-330-OL
5 CONSUMERS POWER) 50-329-OM
6 COMPANY) 50-330-OM
7 (Midland Plant,)
8 Units 1 & 2))

9 The deposition of JAMES GEORGE KEPPLER,
10 called by the Consumers Power Company for
11 examination, taken pursuant to the Federal Rules
12 of Civil Procedure of the United States District
13 Courts pertaining to the taking of depositions
14 and the Rules and Regulations of the Nuclear
15 Regulatory Commission, taken before CORINNE T.
16 GENNA, a Notary Public within and for the County
17 of DuPage, State of Illinois, and a Certified
18 Shorthand Reporter of said state, taken at
19 Nuclear Regulatory Commission Region No. 3,
20 799 Roosevelt Road, Glen Ellyn, Illinois, on
21 the 6th day of January, A.D. 1981, at 9:40 a.m.
22
23
24

WOLFE, ROSENBERG & ASSOCIATES
Certified Shorthand Reporters
188 West Randolph Street
Chicago, Illinois

Phone: 782-8087

February 10, 1981

U.S. Nuclear Regulatory Commission
Office of Executive Legal Director
Maryland Nat'l Bank Bldg., #9604
Washington, D.C. 20555

ATTN: Mr. Bradley Jones

Re: In the Matter of: Consumers Power Co.

Deposition(s) of:
JAMES GEORGE KEPPLER

Dear Counsel:

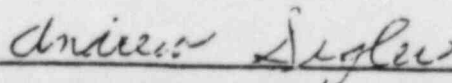
In order to facilitate acquisition of signature of the above deponent(s) to the deposition(s) listed above, we are forwarding to you the signature page from the original transcript and change sheets upon which the deponent may make changes.

Please have the deponent(s) fill out and sign each change sheet for each such change desired, sign the signature page, and return them to the undersigned. Please note that the signature page requires a notarization.

Your cooperation is greatly appreciated.

Sincerely yours,

WOLFE, ROSENBERG & ASSOCIATES, INC.



Andrew Sigler

Enclosures:

Signature Page
Change Sheets

cc: Mr. Ronald G. Zamarin
File

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9 I hereby certify that I have read the
10 foregoing transcript of my deposition given at the
11 time and place aforesaid, consisting of Pages 1 to 245,
12 inclusive, and I do again subscribe and make oath that
13 the same is a true, correct and complete transcript of
14 my deposition so given as aforesaid, and includes
15 changes, if any, so made by me.

16 _____
17 JAMES GEORGE KEPPLER

18
19 SUBSCRIBED AND SWORN TO
20 before me this ____ day
21 of _____, A.D.1981.

22 _____
23 Notary Public
24

I desire to make the following changes to my deposition:

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PRESENT:

MESSRS. ISHAM, LINCOLN & BEALE,
(One First National Plaza,
Chicago, Illinois 60603), by:
MR. RONALD G. ZAMARIN,

appeared on behalf of the
Consumers Power Company;

MR. WILLIAM D. PATON,
(United States Nuclear Regulatory Commission,
Washington, D.C. 20555),

appeared on behalf of the
Nuclear Regulatory Commission.

ALSO PRESENT:

MR. GILBERT S. KEELEY,
MR. BENJAMIN W. MARGUGLIO,
Consumers Power Company;

MR. EUGENE J. GALLAGHER,
MR. R. C. KNOP,
Nuclear Regulatory Commission.

REPORTED BY: CORINNE T. GENNA, C.S.R.

I N D E X

WITNESS

DX

CX

RDX

RCX

JAMES GEORGE KEPPLER

By Mr. Zamarin

4

67

E X H I B I T S

NUMBER

MARKED FOR ID

CPCo Deposition Exhibit

No. 1

69

No. 2

76

No. 3

122

No. 4

131

Nos. 5 and 6

132

No. 7

141

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1 MR. ZAMARIN: Let the record show that this
2 is the deposition of James Keppler, taken
3 pursuant to Notice and agreement of the parties
4 and per the direction of the Licensing Board.

5 It is taken in accordance with the
6 Federal Rules of Civil Procedure and the Rules
7 of the Nuclear Regulatory Commission.

8 Would you swear the witness, please.

9 (WHEREUPON, the witness was duly
10 sworn.)

11 JAMES GEORGE KEPPLER,
12 called as a witness herein, having been first
13 duly sworn, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. ZAMARIN:

17 Q Would you state your full name.

18 A James George Keppler.

19 Q Where do you live?

20 A I live in Glen Ellyn, Illinois.

21 Q Do you have a resume?

22 A Yes. She is typing one, and she will
23 give it to you. We had to change the numbers of
24 facilities and the regions since the last one was

1 done.

2 Q What is your current position with the
3 NRC?

4 A I am the Director of the NRC's Region 3
5 office.

6 Q What are your responsibilities as
7 Director of the Region 3 office?

8 A As Director of the Region 3 office, my
9 responsibilities are to carry out the regulatory
10 program in eight states in the Midwest, primarily
11 related to inspection and enforcement activities,
12 but it also involves some other activities that
13 have been decentralized or have been assigned
14 to the regional office.

15 Q What are those other activities to which
16 you referred?

17 A Materials licensing work, public affairs
18 work, state liaison activities and very shortly
19 operator licensing examinations.

20 Q What is it that you do on a day-to-day
21 basis in carrying out regulatory programs in
22 the eight states in the Midwest?

23 A My job as Director of the office is
24 to assure that the resources and needs of the

1 office are obtained, to assure that the NRC
2 inspection program gets carried out in accordance
3 with policies established by Washington, by our
4 headquarters office in Washington, and to evaluate
5 and take actions, as necessary, to assure that the
6 public health and safety is protected and that
7 licensed activities are conducted in accordance
8 with the rules and regulations of the NRC.

9 Q Would you describe the organization
10 of the Region 3 office?

11 A We are organized into five main branches,
12 one of which conducts the inspection program for
13 reactors under construction and for reviews of
14 in-service inspections and major modifications
15 at operating facilities.

16 A second branch carries out the
17 reactor operations inspection activities at
18 operating nuclear power plants and plants in the
19 pre-operational testing stages.

20 A third branch conducts the safeguard
21 inspections, which includes material control and
22 accountability and physical security at fixed
23 facilities and is involved in the transportation
24 of special nuclear material.

1 And the fourth branch conducts the
2 health physics, environmental and emergency planning-
3 type inspections at all facilities licensed by the
4 NRC.

5 A fifth branch is involved with the
6 administration of the office.

7 Now, in addition to these five branches
8 which are primarily oriented toward the inspection/
9 enforcement activities of the office, we have a
10 component that handles the investigative activities
11 of the office.

12 We have a materials licensing component,
13 which does certain licensing work for by-product
14 materials licensees. We have a public affairs
15 officer -- two public affairs officers and a
16 state liaison officer.

17 I think that adequately describes the
18 composition of the office.

19 Q Who reports directly to you within the
20 inspection program for reactors under construction?

21 A The Branch Chief, Mr. Fiorelli.

22 Q How does the branch or area or group
23 that is responsible for investigative activities
24 differ from the inspection program group?

1 A It's my policy to have all allegations
2 that are made either by workers or members of the
3 public investigated by a group of people
4 independent from those that have the day-to-day
5 responsibility for overseeing the inspection
6 program.

7 Now, let me just elaborate on that a
8 little bit further so I do not mislead you.

9 The primarily responsibility for an
10 investigation rests with an investigator assigned
11 from this investigative unit. The investigators
12 normally are not people who have a technical
13 background, but are people who are skilled in
14 investigative techniques as a background.

15 Sometimes because of the technical
16 nature of the investigation, it is necessary to
17 have technical people assist the investigator.
18 So, in a technical investigation, the investigative
19 team may be led by an investigator with some
20 assistance from some of the technical people.

21 The investigation group also is
22 assigned responsibility for certain cases that
23 involve incidents or where particular need exists
24 to establish precise sequence of events or perhaps

1 where there is a question as to the accuracy of
2 information being provided to the NRC.

3 But it's largely a judgmental decision
4 on my part as to when an investigation is conducted
5 in those cases.

6 The investigative group reports directly
7 to me through the Assistant to the Director.

8 Q Who is the Assistant to the Director?

9 A Mr. Norelius.

10 Q Could you spell that, please?

11 A N-o-r-e-l-i-u-s.

12 Q Is there just one Assistant to the
13 Director?

14 A Yes.

15 Q When you say the Director, we are
16 referring to you?

17 A To me.

18 Q With regard to the soils issues at
19 Midland, I recall that a March 22 investigative
20 report -- I believe that was Report 78-20 -- was
21 styled an investigative report.

22 Do I take it, then, at least part of
23 that effort was conducted by this investigative
24 group?

1 A That's correct. I believe Mr. Phillip
2 was the investigator on that case.

3 Q What was the reason for your having
4 that group participate in the investigation or
5 inspection with regard to the settlement?

6 A I'd have to go back and look at the
7 report, but I think it should state right in the
8 report what the reason for the investigation was.

9 (WHEREUPON, a certain document
10 was tendered to the witness.)

11 BY THE WITNESS:

12 A The investigation was initiated for
13 two purposes. One, to obtain information as to
14 whether a serious breakdown in the quality assurance
15 program had occurred and whether the matter had
16 been reported properly to the NRC; and, secondly,
17 to determine whether or not information provided
18 to the NRC through the safety analysis report
19 were, in fact, correct.

20 BY MR. ZAMARIN:

21 Q What was it about those two areas of
22 inquiry that prompted you to have the investigative
23 group as opposed to the inspection and enforcement
24 group handle this matter?

1 A I'm not sure I recall. If I talked
2 to some people, I might refresh my memory. if I
3 talked to Gerry Phillip.

4 Q But as you sit here now, you cannot
5 recall why?

6 A I don't. I guess -- let me give you
7 a reaction.

8 I know at that time I was very
9 sensitive to past problems in quality assurance,
10 and I recall that I felt a strong need to
11 determine why this problem occurred the way
12 it did and why it wasn't found out for a long
13 period of time.

14 I recall being concerned about the
15 timeliness of reporting it and whether or not
16 there was evidence -- since it occurred over a
17 fairly long period of time, whether or not there
18 was evidence that would suggest the problem should
19 be reported sooner to the NRC.

20 Whether or not I was aware at that time
21 that there appeared to be conflicting statements
22 with the FSAR and what, in fact, we knew about
23 the placement of soils, I'm not sure at this
24 moment. I don't recall whether that was a

1 consideration at that particular time.

2 Q Did you ever find any evidence which
3 suggested that the problem should have been
4 reported sooner?

5 A To the best of my knowledge, I don't
6 believe that I ever deducted that there was a
7 basis that suggested to me that the company did
8 not report that in a timely manner. If there had
9 been, we would have taken stronger action about
10 it. So, that would have been a regulatory issue.

11 I think we were aware that there had
12 been a problem with the administrative building,
13 and our feeling was that perhaps the company
14 should have taken a clue from that, so to speak.
15 But I -- we did not come to any conclusion that
16 the company did not inform us when they learned
17 of the problem.

18 Q Did you ever learn whether the company
19 had conducted any investigation regarding the
20 administration building grade being a failure
21 that would have either provided a clue as to whether
22 there was this problem or there was not this
23 problem?

24 A I don't recall any of the details of

1 the company's investigation, but let me say that
2 we satisfied ourselves through our investigative
3 effort that there was not a misreporting problem
4 to the NRC, because I recall that was one of the
5 things I specifically asked to be reviewed.

6 Q Who besides Mr. Fiorelli reports directly
7 to you with regard to Midland?

8 A In the nature of any aspects of the
9 pre-operational testing program, Mr. Heishman
10 reports to me.

11 Q Would you spell Heishman, please?

12 A H-e-i-s-h-m-a-n.

13 However, we really have barely touched on
14 that area as far as Midland goes.

15 Mr. Davis, up until yesterday, reported
16 to me through his role as Branch Chief of, the
17 Fuel Facilities and Materials Safety Branch, and
18 his organization would have been responsible for
19 environmental inspections at the facility.

20 I don't believe we have touched in
21 any other areas there other than environmental,
22 and I don't believe that Mr. Hind in Safeguards
23 has had any involvement at Midland.

24 Q H-i-n-d?

1 A H-i-n-d.

2 But if there had been any matters that
3 related to safeguards, and we really do not get
4 involved in that until fuel gets on the site --
5 there is no fuel on the site at Midland that I am
6 aware of. But unless there was a security-related
7 problem --

8 I believe maybe his people did get
9 involved slightly in a vandalism problem up at
10 the site, now that I think about it. There was
11 a vandalism problem in the control room where
12 some wires were cut and/or some dials were
13 damaged that came to our attention. And Mr. Hind's
14 people investigated there or conducted an
15 investigation of that particular matter.

16 With respect to investigations that
17 have been done there, Mr. Norelius would have
18 reported to me on those matters. And there have
19 been investigations other than the soil matter.

20 Could I take a look at this report
21 just for a minute?

22 Q This is the March 22, 1979 cover letter
23 transmitting what I believe has been identified
24 previously as Investigative Report 78-20.

(WHEREUPON, the document was
tendered to the witness.)

BY MR. ZAMARIN:

Q Actually, I have some specific questions
that I will ask you about later, if you want to
wait.

A That is fine. I just want to check one
point here.

Q Okay.

A Okay. I didn't see what I was looking
for.

Q Can you tell me what Mr. Fiorelli's
title is again?

A He is the Chief of the Reactor Construction
and Engineering Support Branch.

Q Where does that fit in with what you
described earlier as the inspection program group
for reactors under construction and the safeguards
inspections group? I mean, how does he fit?
Is he over all of those five areas?

A He just is over the construction.

Q He is just --

A But his staff also reviews in-service
inspection and major modifications or engineering

1 problems at operating plants.

2 Q Then would the Assistant Director,
3 Mr. Norelius, be Mr. Fiorelli's superior?

4 A No. They both report directly to me.
5 He would be in charge of reactors under construction.

6 Q Does Mr. Norelius have more to do with
7 that investigative group than any of the other
8 groups you described?

9 A The investigative group reports to
10 Mr. Norelius, yes. Mr. Norelius also serves as
11 the Regional Enforcement Coordinator and becomes
12 involved in all escalated enforcement actions.

13 Q You say that he serves as Regional
14 Enforcement Coordinator and becomes involved in
15 all escalated enforcement actions.

16 A By that I mean those actions that are
17 handled out of Washington.

18 Q In what way does he become involved in
19 those?

20 A He becomes involved in the review of
21 those to assure that they meet the criteria
22 for escalated enforcement action, and he prepares
23 the regional recommendations to headquarters,
24 including a draft of the enforcement action.

1 Q Did he do that with regard to the Midland
2 soils matter?

3 A Which particular action are you referring
4 to?

5 Q With regard to his action for the
6 Midland soils matter action?

7 A Yes.

8 Q What I am talking about is whether he
9 has acted as Regional Enforcement Coordinator
10 with regard to any facet of the Midland soils
11 issue.

12 A The answer is yes, but my hesitation
13 is associated with the fact that the proposed
14 regional action was not adopted by headquarters as
15 initially proposed; and there resulted some
16 meetings between the regional people and the
17 headquarters people in which many of the management
18 people became involved. And the decision as
19 to the course of action was reached jointly from
20 those meetings.

21 And I am a little bit at a loss as
22 to then whether we came back and then redrafted
23 the proposed action or whether it was done out
24 of Washington.

1 I don't recall specifically. I could
2 check that point, if that is important.

3 Q As we go along today, I might have some
4 stuff that might refresh your recollection on
5 that.

6 When the Regional Enforcement Coordinator
7 prepares a recommendation or a regional
8 recommendation with regard to enforcement, do
9 you then have the final say as to whether that
10 shall be the regional recommendation or not?

11 A Absolutely.

12 Q What was the proposed regional action
13 by Region 3 that was not adopted by headquarters
14 with regard to the Midland soils?

15 A We had proposed issuance of a civil
16 penalty for what appeared to us to be a material
17 false statement.

18 Q When you say "what appeared to us to
19 be a material false statement," is that what had
20 been alleged as a material false statement in
21 the December 6 order?

22 A That's correct.

23 Q Do you recall that proposed civil
24 penalty being \$5,000?

1 A Yes.

2 Q Do you have any understanding or
3 any knowledge of why headquarters did not adopt
4 that proposal?

5 MR. PATON: Let me instruct the witness to
6 answer that question as best you can based on
7 any information that he has heard or any information
8 that he has seen, but not to speculate on what may
9 have gone on in someone's mind.

10 THE WITNESS: I am not sure I know what you
11 are telling me.

12 MR. PATON: Can we have a minute?

13 MR. ZAMARIN: Go ahead.

14 (WHEREUPON, a recess was had.)

15 MR. ZAMARIN: Could you read the last question
16 back?

17 (WHEREUPON, the record was read
18 by the reporter as requested.)

19 BY MR. ZAMARIN:

20 Q Do you recall what the proposal was?

21 A Yes. At the time the civil penalty
22 proposal was made and was being considered by
23 Washington, the entire soils problem and issues
24 related to it became the subject of a meeting in

1 Washington involving regional people, IE
2 headquarters people, NRR people and OELD people.

3 There were really two major aspects under
4 discussion. One involved the adequacy of the work
5 involving the diesel generator building, the
6 technical adequacy of it. And the other aspect
7 involved whether the quality assurance problems
8 related to this particular area of work were
9 indicative of a broader background of quality
10 assurance for the project.

11 And I think it's fair to say that there
12 were differing views relative to this latter
13 issue as discussed back then.

14 Now, when we were talking about what
15 enforcement action would be taken against the
16 company, it became apparent from the meetings
17 that the management felt that we were not focusing
18 on the bigger problem, namely, the technical
19 adequacy of the problem in the repair program,
20 by just issuing a civil penalty.

21 The NRR people were not in a position
22 at that time to state that they could confer in
23 Consumers Power's actions. And the question
24 focused as to what action would be better to take

1 in view of this. That led to the decision to
2 issue the order in question.

3 Q Do you know why the order was issued
4 on December 6, 1979, when 50.54(f) questions had
5 been provided to Consumers on November 19, 1979,
6 which had not been answered by December 6?

7 A I can't give you the reason for that.

8 Q Do you know who could give me the
9 reason for that?

10 THE WITNESS: You?

11 MR. PATON: No.

12 BY THE WITNESS:

13 A I don't.

14 I don't know whether it's appropriate,
15 but I think we might as well put some things on
16 the table here. I would like to give you my
17 perspective as to how these things tied together
18 and why they did.

19 I mentioned that there were differing
20 views of at least considerations associated with
21 quality assurance and the implication of this
22 particular problem on the total quality assurance
23 program.

24 When you go back to the hearing that was

1 held in 197- -- was it '4 or '5?

2 Q I think it is '4.

3 MR. PATON: The decision was '4.

4 BY THE WITNESS:

5 A (Continuing) -- there were two
6 considerations that were involved in that hearing.
7 The first consideration was whether or not the
8 licensee had taken sufficient action to achieve
9 compliance with respect to specific problems that
10 had been identified by the NRC.

11 And the second issue, which was a much
12 broader issue, was whether there was reasonable
13 assurance that the quality assurance program would
14 be effective in the future to assure compliance
15 with applicable requirements.

16 At that hearing the staff concluded
17 positive answers to both cases, but I left a
18 message to the Hearing Board that if I felt the
19 quality assurance program was inadequate in the
20 future, I would not hesitate to shut down the
21 project.

22 Now, subsequent to that hearing there
23 were a number of problems associated with the
24 Midland project that had, to varying degrees,

1 identified weaknesses in the quality assurance/
2 quality control program. In each of these
3 instances, the NRC drew the conclusion, and when
4 I say the NRC, I mean Region 3 drew the conclusion,
5 that the problems were isolated in nature and
6 did not represent a breakdown in the overall
7 quality assurance program.

8 As problems occurred in various areas,
9 different phases of the work going on, it
10 represented a challenge to that conclusion; and
11 the soils problem was one additional area that
12 challenged that decision.

13 It was my conclusion at the time, based
14 on discussions with my staff and our overall
15 assessment of the project, that the soils
16 problem, again, was viewed as an isolated type
17 of problem, an isolated area in the quality
18 assurance program and that it did not have
19 broader implications.

20 I think some of the people in the
21 NRC felt that this problem, in concert with
22 others, was suggestive that the total program was
23 not good.

24 Now, during the period, I guess it was

1 in early 1978, we concluded that there were enough
2 problems at Midland that I felt that we should
3 get additional input as to the adequacy of our
4 assessment with respect to the Midland quality
5 assurance program in general.

6 That led to that February memo that --
7 February, I believe, 15 memo, which I believe you
8 have a copy of, and documented our assessment of
9 the Midland quality assurance program as of that
10 date.

11 When the soils problem was identified
12 and some -- I believe there were other problems
13 too, but I can't recall others at this particular
14 moment -- we reconsidered the overall Midland
15 quality assurance program back in the late fall
16 or -- I guess late fall of '79 and again adopted
17 the position that we felt the overall quality assur-
18 ance program was still effective.

19 I did at that particular time conclude
20 that had we known about the quality assurance
21 problems on the soil thing as they were going on,
22 that I would have taken steps to stop the soils
23 work at the site. But I did not relate the soils
24 problem to draw the inference that the total

1 project quality assurance program was unacceptable.

2 If I could come back to the action that
3 then was taken, the order was intended by the NRC
4 to deal with the technical adequacy of the work,
5 as well as the quality assurance problem that
6 related to the soils foundation and the material
7 false statement.

8 Q You indicated that had you known about
9 QA problems with regard to the soils as they were
10 occurring, that you would have been inclined to
11 stop the work.

12 A I would have stopped the work.

13 Q You would have stopped the work. What
14 QA problems, specifically with regard to soils,
15 do you refer to?

16 A The ones that are identified in the
17 investigation report.

18 Q Are you talking about NCRs? Can you
19 take a look at the report and tell me just what
20 you are talking about?

21 (WHEREUPON, the document was
22 tendered to the witness.)

23 BY THE WITNESS:

24 A I am referring to the conclusions that

1 are contained in the summary of the report, which
2 states as follows:

3 "Information obtained during this
4 investigation indicates: (1) A lack of
5 control and supervision of plant fill
6 activities contributed to the
7 inadequate compaction of foundation
8 material; (2) Corrective action regarding
9 nonconformances related to plant fill
10 was insufficient or inadequate as
11 evidenced by the repeated deviations
12 from specification requirements;
13 (3) Certain design bases and construction
14 specifications related to foundation type,
15 material properties, and compaction
16 requirements were not followed; (4) There
17 was a lack of clear direction and support
18 between the contractors engineering office
19 and construction site, as well as within
20 the contractors engineering office."

21 Those points, which to me represent that
22 there was not a well implemented quality assurance
23 program for that activity.

24 Q I believe you were reading from the bottom

1 of Page 2, what is numbered Page 2, "Summary of
2 Facts," from the March 22, 1979 Investigative
3 Report 78-20; is that right?

4 A Yes.

5 Q What information did you have that
6 corrective action regarding nonconformances
7 related to plant fill was insufficient or
8 inadequate?

9 A Well, I'd have to go back now into
10 the specifics of it, but, basically, when we
11 conducted our investigation of these matters, we
12 had a meeting with the utility and its contractors
13 in which we discussed openly the findings from the
14 investigation. And all of these points were
15 discussed with the utility at that time.

16 Now, I don't have the specifics at my
17 hand at this moment. I'd have to go back into
18 the details of the report, but I was involved
19 in the meeting with the company, and I was involved
20 in the assessment that the quality assurance
21 program was ineffective.

22 Q This statement is that it "was insufficient
23 or inadequate as evidenced by the repeated
24 deviations from specification requirements."

1 Is that to say, then, that this is a
2 hindsight conclusion? It is based on an end
3 result, saying that if there were these repeated
4 deviations, it had to be insufficient and
5 inadequate?

6 A I think, by definition, it's a hindsight
7 conclusion, because I would have taken action
8 had I known about the problems ahead of time.

9 Q Was there any way you could have known
10 about the problems ahead of time?

11 A Yes, I think there are.

12 Q How?

13 A I think that some of the records that
14 were reviewed after the fact showed that there was
15 a problem. So that had we looked at those particular
16 records, they could have provided an indication of
17 the problem.

18 Q What records are those?

19 A Nonconformance Reports or whatever the
20 records were that are discussed in the report.

21 Q Had any type of inspection been conducted
22 by Region 3 prior to this investigation which
23 dealt with this area?

24 A In the area of soils?

1 Q Yes.

2 A I'm not sure of -- I am not aware of
3 any.

4 Q I had asked a question earlier, and you
5 answered my question with regard to the hindsight.
6 Let me take that out of the question and ask you,
7 on the summary statement that "corrective action
8 regarding nonconformances related to plant fill
9 was insufficient or inadequate as evidenced by
10 repeated deviations from specification requirements,"
11 to your knowledge, is that based simply upon the
12 fact that there were repeated deviations as opposed
13 to any facts other than those repeated deviations
14 which were uncovered during the investigation?

15 A As I recall, I think the statement is
16 based as well upon some conversations with some
17 of the people -- the interviews with some of the
18 people involved as to what they knew about the
19 problem and as to what they did about the problem,
20 but I don't have the details.

21 The investigation was more than just a
22 review of records. It also involved interviews
23 and discussions with a lot of people.

24 Q You do not have any recollection as to

1 what, if any, of that information went into this
2 conclusion?

3 A No, I don't.

4 Q Do you have any knowledge of corrective
5 action with regard to which particular nonconformances
6 was insufficient or inadequate?

7 A At the time we met with the company, we
8 went into great detail on these things; but I
9 don't recall them at this time. The meeting was
10 very specific, and all information that was found
11 during the investigation was discussed in detail
12 with the utility.

13 Q I take it you were in attendance at
14 that meeting?

15 A Yes, I was.

16 Q Other than that meeting and the
17 investigation by Mr. Phillip and Mr. Gallagher,
18 did you have any other information upon which
19 you relied?

20 A For what?

21 Q For your conclusions stated in Investigative
22 Report 78-20? I think that Mr. Maxwell was also
23 involved.

24 A Yes. The Investigation Report is

1 prepared by the people who did the investigation.
2 I neither review that report, nor do I approve
3 that report. I write -- the letter to the company
4 is sent out under my signature. But in terms of
5 the specific report which is attached that we
6 are talking from, that is prepared by the
7 investigators and inspectors.

8 Q So, you then have no input into the
9 Investigative Report itself?

10 A No, that's their investigation. I did
11 not participate in the investigation.

12 Q Did you discuss this report with either
13 Mr. Gallagher or Mr. Phillip or Mr. Maxwell sometime
14 in March of 1979?

15 A You are asking about the report itself?

16 Q Yes.

17 A I don't recall that I did. I recall
18 reading the report before it went out and, as I
19 recall, the issues were basically the ones that
20 were discussed with the licensee at the meeting
21 here. I don't recall anything being different or
22 that flagged my attention on any part.

23 Q Do you recall when that meeting was
24 held?

1 A I don't know off the top of my head,
2 but I'm sure we have got a record of the meeting
3 or a date of the meeting. It may even be discussed
4 in the report, for all I know.

5 Q I notice on Page 2 of the report,
6 Report 78-20, under "Scope," it indicates:

7 "An investigation was performed to
8 obtain information relating to design
9 and construction activities affecting
10 the diesel generator building
11 foundations and the activities
12 involved in the identification and
13 reporting of unusual settlement of
14 the building."

15 Is it your understanding that the
16 investigation was limited in scope to just the
17 diesel generator building?

18 A No. The investigation was related to
19 areas other than the diesel generator building
20 over which -- which were built on questionable
21 soil.

22 Q So, the statement of scope here is a
23 little narrower than what the investigation actually
24 was at that time, to your understanding?

1 A I think that's a fair statement, yes.

2 Q Can you tell me what you mean when you
3 use the expression "breakdown in quality
4 assurance program"?

5 A The way I view the word "breakdown in
6 quality assurance" is that I mean there were
7 multiple examples where the quality assurance
8 program/quality control program should have either
9 precluded a problem from occurring or should have
10 caught a problem from occurring at a timely -- in
11 a timely manner and that the efforts in connection
12 with this were not effective.

13 Q Is that determination, then, totally
14 result oriented as opposed to programmatic, for
15 example, as far as your evaluation and determination
16 goes?

17 A I think it is. I think that's the way
18 I would characterize it. And when you talk about
19 "result oriented," I mean the result can be either
20 positive or negative, but it is result oriented.
21 It's based upon an after-the-fact determination.

22 Q Was the reason that it took from March 22,
23 1979, the date of Investigative Report 78-20, to
24 December 6, 1979, for the initiation of enforcement

1 action the resolution of these differing opinions
2 between Region 3 and headquarters and persons within
3 NRC?

4 A No. I would say the differing opinions
5 with respect to quality assurance really had
6 minimal impact on the time. I think some of the
7 things involved were determinations as to material
8 false statements, as to whether these constituted
9 material false statements. As I recall, we
10 initially thought that there were maybe several,
11 rather than just one.

12 Q Five, I think.

13 A And I guess -- let me look at the date
14 of this thing.

15 The statement on the top of the letter
16 on Page 2 which says that "The results of this
17 investigation continue to be under review by the
18 NRC staff and upon completion of this review,"
19 that was intended to deal primarily with the
20 material false statement concerns.

21 Again, when we were back -- the decision
22 to issue the order was based primarily on a
23 refocus of the technical aspect of the problem
24 rather than the narrow look at the material false

1 statement part of it.

2 MR. ZAMARIN: Could you read that answer back,
3 please?

4 (WHEREUPON, the record was read
5 by the reporter as requested.)

6 BY MR. ZAMARIN:

7 Q Where does the quality assurance
8 evaluation fit into that decision to issue the
9 order?

10 A It was a collective decision to include
11 that into it, since we were going to focus on the
12 adequacy of it, the technical adequacy of it.

13 Then the question came up as to, assuming
14 the staff makes a favorable decision or whatever
15 decision it makes, then the concern is what steps
16 have been taken to assure that the quality assurance
17 problems that were identified in connection with
18 the soils work have been corrected and that there
19 is assurance that they will be adequate in the
20 future. It was a collective decision.

21 Q To your knowledge, is there any
22 periodic submission by Consumers or Bechtel -- and
23 when I refer to Consumers, I also mean their
24 contractors -- to the NRC or Region 3 of documents

1 with regard to their QA operation or NCRs or something
2 of that nature?

3 A I think there are documents that are
4 provided to the NRC as a result of the order of
5 the Hearing Board.

6 Q That was ALAB-106?

7 A I believe that's correct.

8 Q Is it your recollection that at least
9 quarterly submissions of NCRs are provided to the
10 NRC by Consumers?

11 A I don't know what the frequency of
12 submission is.

13 Q Do you know if anyone during the period
14 following the ALAB-106 decision has reviewed those
15 NCRs that are submitted by Consumers as they are
16 submitted by Consumers?

17 A I believe that our program -- our
18 inspection program requires reviews of Nonconformance
19 Reports and other types of licensee reports. As
20 to the details of what was done with the particular
21 reports you are talking about, I can't tell you.
22 The inspection people could tell you that. I doubt
23 very much if we reviewed all of them. That's for
24 sure.

1 Q The reason that I ask that was you had
2 made a comment a little earlier that you believed
3 perhaps that if the information or documents with
4 regard to the soils had been reviewed by Region 3,
5 that the problem would have become known sooner.

6 A The problem may have become known sooner.

7 Q And you would have stopped the work on
8 the basis of what you might have or could have
9 found. I note that in Investigative Report 78-20,
10 starting on Page 17 of the specific findings there
11 is a listing of Nonconformance Reports that were
12 reviewed and which form the basis for the conclusion
13 that corrective action was insufficient or
14 inadequate, and that these reports had been
15 submitted to the NRC in accordance with the
16 direction of the ALAB-106 Board.

17 I also recall in that 106 order the
18 statement that they expected that the staff would
19 review and follow these NCRs. I am just wondering
20 whether refreshing your recollection to the
21 fact that these had been submitted, and I would
22 assume reviewed, if they still would, in your
23 opinion, have likely demonstrated this problem
24 earlier.

1 If you want to hear it back --

2 MR. PATON: I think he understands it. Did
3 you make a reference to some specific place in
4 here?

5 MR. ZAMARIN: Page 17.

6 MR. PATON: Do you see it?

7 THE WITNESS: Yes.

8 MR. PATON: Okay.

9 MR. ZAMARIN: For the record, 17, 18 and 19
10 are the pages.

11 MR. PATON: Off the record.

12 (WHEREUPON, discussion was had
13 off the record.)

14 BY THE WITNESS:

15 A I don't know that I can give you a
16 meaningful answer to your question. Let me say
17 that the amount of review of what the NRC does
18 in terms of its inspection program is a small
19 fraction of what the quality assurance activities
20 that the licensee and its contractors do.

21 The NRC does not do 100 percent
22 inspection of the work. I think to do so would
23 require enormous resources.

24 What the NRC does is to find a sampling

1 inspection program that gives some degree of
2 confidence that the licensee's program is being
3 carried out effectively.

4 Now, in terms of when you get specific
5 and talk about were these particular Nonconformance
6 Reports reviewed, I can't say that. Would we
7 have reviewed them all? I doubt it. I don't think
8 we can -- we have the kind of resources to do
9 that.

10 Were any of them reviewed? I think you'd
11 have to go back and ask the inspectors. I'm sure
12 we do some sampling of Nonconformance Reports,
13 and I guess really that is about the way I would
14 describe it to you.

15 BY MR. ZAMARIN:

16 Q An inspector from which of those
17 sections or groups?

18 A From the reactor construction and
19 engineering support branch would have been the
20 reviewer of those, if they were reviewed.

21 Q As of today with regard to Midland,
22 who would those inspectors be, for example?

23 A Certainly Mr. Cook would have been
24 involved, Ron Cook, the Resident Inspector.

1 He might have reviewed some. Depending upon the
2 area involved, some of our engineering specialists
3 here may have conducted some reviews.

4 Q You mentioned the inspectors. For
5 example, would Mr. Gallagher have been one of
6 the inspectors to which you referred that might
7 likely have reviewed the NCRs?

8 A He may have or may not have. It depends
9 really on the supervisor's decisions as to who is
10 going to carry out that nodule of the inspection
11 program. I think a lot of it would relate to
12 availability of people and the type of effort we
13 were trying to focus on.

14 Q Would that supervisor be Mr. Knop?

15 A Certainly, in part, he would have a
16 say in it.

17 Q Who would have the other part of the
18 say in it?

19 A Probably Mr. Fiorelli, to some degree,
20 and maybe some of the other supervisors in the
21 engineering area, like Mr. Hayes or Mr. Danielson.

22 Q In following up the ALAB-106 direction
23 that the staff should review the NCRs that were
24 submitted quarterly by Consumers, who within

1 Region 3, if anyone, to your understanding, would
2 have that responsibility?

3 A I think the basic responsibility or the
4 decisions as to how much work would be done
5 relative to that would rest with Mr. Fiorelli.

6 Q Has Mr. Fiorelli ever discussed that
7 matter with you, to your recollection?

8 A Discussed what matter?

9 Q The matter of who and to what extent the
10 NCRs that were submitted quarterly by Consumers
11 with the ALAB-106 order should be done.

12 A I don't recall any discussions in the
13 area. I guess I am not appreciative of the
14 question.

15 Q I do not understand that.

16 A I don't know what you are really asking
17 me.

18 Q You had indicated that Mr. Fiorelli would
19 have been the one to decide what resources would
20 be allocated toward review of these quarterly
21 submittals that Consumers was directed to make.
22 My question simply is: Do you ever recall having
23 discussed with Mr. Fiorelli that matter, and that
24 matter being whether or how much resource should be

1 directed toward reviewing the NCRs?

2 A No, I would leave a decision like that
3 to him.

4 MR. ZAMARIN: I do not intend to mark as
5 an exhibit something that has been so clearly
6 identified as this.

7 MR. PATON: I agree. I think that is right.

8 MR. ZAMARIN: Even though we referred to it
9 and he was reading from it, I do not intend to
10 mark like 78-20.

11 MR. PATON: I think it is in some previous
12 deposition. I do not recall.

13 MR. ZAMARIN: I do not have a copy. So, I
14 cannot even reference it with that. I am satisfied
15 with the description as the March 22, 1979 report.

16 MR. PATON: I agree, sure.

17 BY MR. ZAMARIN:

18 Q Within the NRC or within Region 3,
19 in particular -- you can answer it any way,
20 depending on which, if either, is appropriate --
21 is there any program for review of NCRs with
22 regard to some type of trending analysis?

23 A No. The NRC does not require
24 Noncomformance Reports as a general statement to

1 be reported to the NRC.

2 However, our inspection program, I
3 feel sure, call; out that we should do some
4 periodic reviews of Nonconformance Reports to
5 assure that the licensee has a meaningful program
6 for reviewing them and so forth.

7 Q Would that include some kind of analysis
8 with regard to repetitiveness of NCRs to see if
9 there was some kind of a programmatic or generic --

10 A I would think so.

11 Q When you say you would think so, is
12 that because that would be a good program, to
13 your recollection of whatever the inspection program
14 is?

15 A Sure. I think one of the indicators
16 of an effective quality assurance program is how
17 well -- how frequency repetitive problems occur.

18 Q To your knowledge, has there been any
19 change, and by change I mean either improvement
20 or deterioration, of the quality assurance program
21 at the Midland project, say, from January of 1979
22 to January of 1981?

23 MR. PATON: Did you say with soils, or was
24 that a general question?

1 MR. ZAMARIN: General.

2 BY THE WITNESS:

3 A I am going to answer it this way:

4 As problems have occurred throughout the Midland
5 project, I have been very sensitive personally
6 toward whether or not they suggest a weakening
7 or a deterioration in the overall quality assurance
8 program. As each new problem comes up or becomes
9 identified, it challenges my thinking on this
10 overall, largely from the standpoint that when a
11 number of problems occur in isolated areas, it's
12 very hard to define in one's mind when that
13 represents a conclusion that the overall program
14 is ineffective.

15 What I am saying is that each new
16 problem does not help that thinking.

17 Now, when you look at the period you
18 talked about, we became aware of the soils problem,
19 which largely had its roots earlier in time, but
20 which carried on up through the time of the
21 discovery.

22 We became aware of the problem with
23 the reactor vessel bolts, which also had a history
24 to it in terms of its occurrence.

1 We became aware of the Zack problems,
2 which to me were handled very ineffectively by
3 Consumers Power Company, and throughout this
4 period I guess I have still supported my basic
5 conclusion that the overall quality assurance
6 program is still adequate. But I certainly would
7 not derive from that observations of a significant
8 change or improvement in the program.

9 Now, let me just add that the company
10 has taken some steps with its contractors and
11 made attempts to improve the quality assurance
12 program, and these steps are steps that are in
13 the right direction, in my view. However, the
14 time frame is such that I can't draw any inference
15 at this point in time.

16 Q Your reference to the time frame being
17 such that is that these changes are so recent that
18 you do not have any results upon which to base
19 these conclusions?

20 A I like to draw conclusions over a longer
21 period of time.

22 Q Do you have an opinion as to whether the
23 present QA program is better than the QA program
24 that was being implemented in 1976?

1 A That's an interesting question. I just
2 hadn't put it in that type of context before. I
3 don't know that I'd say I see a discernible
4 difference. There may be. But when I judge it
5 on the basis of the numbers and types of problems,
6 I'm not sure I could defend a difference.

7 I think, conceptually, the new program
8 or the revised program can represent an improvement.
9 But I don't know that I can make a meaningful
10 statement at this time just because of the time
11 frame.

12 Q Would the same be true, then, for
13 comparing the present QA program with the QA program
14 that was implemented in any other year, say,
15 between 1976 and 1981?

16 A Well, let me -- I guess maybe to help
17 put this in perspective, one of the things that
18 has led me to conclude that the overall QA program
19 is effective or is adequate, whatever word you want
20 to use, is that the problems themselves, when they
21 surface, have largely been identified by Consumers
22 Power Company.

23 So that in my assessment of things, it
24 isn't that the NRC is coming in and finding these

1 problems that were unknown to Consumers Power
2 Company.

3 On the other hand, the time frame that
4 Consumers is finding these problems and the time
5 frame that Consumers is resolving these problems,
6 that's been the area of concern to the NRC.

7 An example of that is the Zack case,
8 I think. We became aware of the Zack problems
9 largely through an allegation that was made by
10 an outsider. When we looked into it, we found
11 that Consumers Power Company did know about the
12 problems. Consumers Power Company was involved
13 working with the contractors to resolve the
14 problems. However, our assessment of that effort
15 was that it was pretty poor and not effective
16 enough to preclude the kinds of things from
17 happening and really was continuing to allow poor
18 work to go on.

19 So, when you talk about comparisons in
20 time, I think that the way I come out personally
21 is that I have felt that the overall effort for
22 the project has been adequate. However, I think
23 it could be a lot better and should have been a
24 lot better. I have given it a passing grade, but

1 the kinds of things that happen make it very hard
2 to defend the issues in today's climate.

3 Does that help you?

4 Q Maybe, maybe not. I will ask you a few
5 questions, and we will see.

6 With regard to --

7 A I guess I meant does it help you in the
8 comparison of time frame statistics?

9 Q Yes. My response was directed toward
10 that. Yes, obviously it does.

11 With regard to problems with the QA
12 program in certain areas in the past, is it within
13 the ability of Region 3 to determine what changes
14 or what efforts in the QA program or implementation
15 ought to be exercised in order to correct or
16 eliminate a repetition of that same type of
17 problem with the program?

18 A We try to focus, to the extent we can,
19 on what causes the problem, what is the source of
20 the breakdown or the source of the deficiency. And
21 when it becomes more than an isolated case or it
22 becomes a matter of some concern, when we meet
23 with the company to discuss these concerns, yes,
24 we are quick to voice our view as to where we think

1 the problem is.

2 Q Then having knowledge of what has been
3 identified as sources of the problem in the past
4 and the changes that have been made in the QA
5 program, do you have an opinion as the Director
6 of Region 3 as to whether the types of changes
7 have been made which would, if properly implemented,
8 eliminate or reduce the possibility of repetition
9 of those kind of problems?

10 A One of the basic concerns that I have
11 with the Midland project overall has been that
12 Consumers Power has been subservient to Bechtel
13 in the construction of the project. I have felt
14 over the years that Consumers has not played a
15 dominant role in dealing with problems, many of
16 which have been -- had their source with Bechtel
17 or some of its contractors.

18 The recent organization change that
19 occurred last summer, I believe, was intended to
20 deal with that concern. And so, in response to
21 your question, if properly implemented, that
22 organizational change should work to the benefit
23 of the project.

24 Now, there have been in the past, as

1 some of these issues have been brought up and
2 some of the problems have occurred, I guess I
3 have found that Consumers has had to back stop
4 Bechtel in terms of quality assurance activities
5 to assure that things are done properly.

6 As an example, in the civil work, there
7 were numerous situations where reinforcement steel
8 or embedment plates, tendon sheathing or whatever,
9 was either not installed as it should have been
10 or was not done in conformance with the specifica-
11 tions or drawings.

12 The ultimate resolution of that problem
13 to our satisfaction was basically that Consumers
14 did 100 percent overview of the work by Bechtel,
15 including the area of quality assurance/quality
16 control.

17 That was the resolution which led us
18 to the conclusion that that work could continue,
19 was done satisfactorily.

20 Q Is it your opinion that the present
21 QA organization and program is sufficient to do
22 a proper job of QA at the Midland site?

23 A Obviously, the answer to that question
24 is yes, or I'd stop the work. That doesn't mean

1 that we are still not trying to have it better.

2 MR. ZAMARIN: Let's take about three minutes.

3 (WHEREUPON, a recess was had.)

4 MR. PATON: Mr. Keppler remembered something
5 at the break that he would like to add to the
6 record.

7 BY MR. ZAMARIN:

8 Q Go ahead.

9 A At the time you were focusing on the
10 time frame between the issuance of the Investigation
11 Report and the subsequent action taken by the NRC,
12 Mr. Knop called to my attention during the break
13 that we had sent a letter or a memo to Washington
14 dated March 12, 1979, in which we summarized the
15 findings from our investigation and in which we
16 forwarded a compilation of some technical questions
17 that we felt should be addressed in the technical
18 resolution of the problem.

19 We urged that the NRR get heavily involved
20 in this issue at that time. And in that letter,
21 in that memorandum, we made a statement that I
22 should put in the record here. It says:

23 "As an alternate approach to the issue,
24 consideration should be given to an

1 NRC directive or show cause order which
2 could expedite the licensee's confirmation
3 to the NRC that continued construction will
4 not compromise the design function of the
5 involved structures for the lifetime of
6 the plant. It may also expedite the
7 licensee's investigation into the basic
8 cause of the diesel generator settlement
9 and its relationship (or absence) to
10 other Class I structures."

11 In their consideration of this, I am
12 pretty sure that this is what they at least focused
13 on the issuance of the 50.54 notice to the
14 licensee. So, you may have that. If you don't,
15 we will get you a copy.

16 Q This we do not have a copy of. It is
17 one of my things to request today.

18 MR. PATON: Let me see it for just a second.

19 MR. ZAMARIN: Sure. Go ahead.

20 BY THE WITNESS:

21 A So, I bring that up at this time because
22 I think I said to you that all of the consideration
23 tha^t is focused or, at least, a majority of the
24 consideration was focused on the material false

1 statement aspects of it.

2 BY MR. ZAMARIN:

3 Q You had indicated before we broke that
4 you felt that Consumers was subservient to
5 Bechtel, I believe was the word you used. Can
6 you tell me what you mean by that?

7 A I think that the best way I would
8 describe it would be to say that I don't think --
9 I think Consumers is afraid to challenge Bechtel
10 on issues.

11 Q What type of issues, you mean in
12 QA?

13 A Any issues. When Bechtel says that this
14 is the way something should be done or it's okay
15 to do it this way, I think that Consumers has
16 accepted Bechtel's position too easily.

17 Q And by your saying that you think that
18 they have accepted Bechtel's position too easily,
19 do you mean that on, for example, IE type of issues,
20 that Consumers ought to be doing their own
21 independent work?

22 A I think that Consumers has not done a
23 good job of getting after Bechtel when there have
24 been problems, assuring that Bechtel takes more

1 timely or positive corrective actions. And I think
2 that there has been a reluctance on the part of
3 the company to challenge fixes or corrective
4 measures taken by Bechtel.

5 Q When you refer to fixes, you are
6 referring to fixes with regard to the soil
7 settlement and the foundation problems?

8 A I am speaking across the board.

9 Q Can you give me an example of a case of
10 reluctance to challenge a fix?

11 A Yes. I think a good example would be
12 all the problems that occurred with the missing
13 re-bar and embedment problems.

14 Q Can you be more specific about the
15 reluctance to challenge Bechtel's --

16 A Bechtel's quality control was ineffective
17 to pick up the problems. Yet it took considerable
18 time for Consumers to get that situation changed.
19 And I will go as far as to say that rather than
20 get the problem solved through Bechtel, they got
21 the problem solved by doing 100 percent overview
22 of Bechtel's work, which, in my opinion, is
23 tantamount to admitting that Bechtel couldn't do
24 the job.

1 I think a more recent example is the
2 Zack problem.

3 Q Where in the Zack problem is the
4 reluctance to challenge Bechtel?

5 A I think Consumers had identified the --
6 had become aware of the problems and wasn't forceful
7 enough in getting Bechtel and Zack to resolve the
8 problems more timely. They were, in effect --
9 knowing the problems existed, work was allowed to
10 continue in that area.

11 Q In your opinion, if properly implemented,
12 would the reorganization of the Midland project
13 QA that was effective last summer eliminate or
14 reduce what you perceive as this problem of
15 Consumers being too subservient to Bechtel?

16 A Yes. I said that before.

17 Q How long have you been Director of
18 Region 3?

19 A I came to Region 3 in September, 1973,
20 as the Director.

21 Q What had you been doing prior to
22 September of '73?

23 A I was in the Inspection and Enforcement
24 office in Washington as Chief of the Reactor Testing

1 and Operations Branch.

2 Q What had been your experience in
3 QA matters prior to September of '73?

4 Before you answer that, would it help
5 if we waited until you got your resume?

6 A No, I think not. It wouldn't address
7 this particular thing.

8 My involvement in QA matters prior to
9 1973 was in terms of my experience as an inspector
10 and in terms of my involvement in the review of
11 cases that were brought to the attention of the
12 headquarters staff while I was in Washington and,
13 basically, in the reviews that the IE people did
14 back in Washington in terms of assuring that
15 licensees were ready to get an operating license.

16 Q Would you describe your experience as
17 an inspector as it relates to your experience with
18 QA?

19 A Only in the sense that at the time I
20 was an inspector, which was 1965 through 1967, I
21 became involved in terms of the steps taken
22 that licensees implement to assure compliance
23 with the regulatory requirements.

24 So, when you talk about quality assurance,

1 I talk about that in the broad sense there.

2 Q Have you had any formal training or
3 education in the area of quality assurance/quality
4 control?

5 A No.

6 Q How does the quality assurance branch of
7 the NRR interface, if it does at all, with
8 Region 3?

9 A The quality assurance people in NRR are
10 responsible for assuring that the basic quality
11 assurance plan, as defined in the application,
12 satisfies the regulatory intent of the 10 CFR 50
13 Appendix B criteria.

14 The relationship between the regional
15 offices and the licensing group is best described
16 perhaps by saying that NRR looks at the plan and
17 the I & E people look at the implementing
18 procedures and the implementation of the program.

19 Q Is the NRR look at the plan a continuous
20 effort over the life of construction of the plant,
21 for example?

22 A I would -- I guess I would answer that
23 this way: That the NRR people review and approve
24 a basic plan. As information is learned or as

1 problems develop, there is nothing to preclude
2 them from reassessing that or augmenting that
3 effort.

4 Q Does Region 3 prepare and submit any
5 types of reports periodically to anyone else within
6 the NRC with regard to a particular project?

7 A There are several types of correspondence
8 that can be generated. I think I would describe
9 them as there are inspection reports, which are
10 issues dealing with inspections. There are also
11 internal correspondence that can be generated
12 between the regional staffs and the headquarters
13 staff, much like the one I showed you in a
14 memorandum to Mr. Thornburg, in which requests for
15 assistance is sought or in which referral of a
16 technical problem to Washington is done or in
17 which we identify a problem that we might think
18 has broader implications and might be generic to
19 other plants, that kind of communication, feedback
20 type of communication that is useful in the program.

21 Q Is there ever any review or audit or
22 state of the region report done?

23 A I'm sorry.

24 MR. ZAMARIN: Could you read that back, please?

1 (WHEREUPON, the record was read
2 by the reporter as requested.)

3 BY THE WITNESS

4 A I don't know what you are asking for.

5 Q I do not either. That is what I am
6 trying to find out.

7 MR. PATON: Like a State of the Union Address
8 or something.

9 MR. ZAMARIN: Right.

10 BY MR. ZAMARIN:

11 Q Is there any kind of a report that
12 results from an evaluation from the work that
13 Region 3 is doing and how well they are doing it?

14 A There are internal audits conducted by
15 the Washington staff, both internal to the I & E
16 organization, and there are audits done on occasion
17 by the office of Inspector and Auditor. That's one
18 type of formal audit that might be done.

19 I guess another indication of how well
20 regions are performing their jobs would be through
21 the annual appraisal system and through the
22 inspections done by the Performance Appraisal
23 Branch, which is a group of people that report
24 directly to the I & E office Director. Those

1 are presently limited to operating reactors right
2 now, however.

3 Q All of the things you just mentioned --

4 A All of the Performance Appraisal Branch
5 inspections.

6 Q What kind of things are looked at in
7 this internal audit by the Washington staff, for
8 example, the one that is internal to I & 2?

9 A It depends on whatever they may want
10 to come out and pick. They may come out and
11 decide to audit the inspection program at a given
12 facility for a period of time. They may come out
13 and look at a very narrow area of work.

14 Q Have they ever audited, to your knowledge,
15 the inspection program for Midland?

16 A No, they have not.

17 Q How does that differ from the annual
18 appraisal system?

19 A The annual appraisal system is appraisals
20 by my boss of my performance.

21 Q Of your performance?

22 A My personal performance. And I appraise
23 my staff's performance.

24 Q Is this more of a personnel type of a --

1 A Yes.

2 Q I see. Would that appraisal be project
3 specific in any way?

4 A It obviously reflects on happenings during
5 the course of the period of time. So, I guess it's
6 a mixture of both.

7 (WHEREUPON, Mr. Alan S. Farnell
8 entered the deposition proceedings.)

9 BY MR. ZAMARIN:

10 Q Who is Mr. Shewmaker?

11 A Mr. Shewmaker is a staff engineer on
12 the I & E staff in Washington.

13 MR. PATON: S-h-e-w.

14 BY MR. ZAMARNI:

15 Q What does, to your knowledge, Mr. Shewmaker
16 have to do with any of the matters contained within
17 this hearing?

18 A Mr. Shewmaker was involved from the
19 staff of the construction people back there in
20 terms of the assesement that were -- in terms of
21 the technical aspects of the soils problem. He
22 was involved in the meetings back in Washington
23 where we discussed the technical problems. I
24 would say he was primarily from the technical
standpoint, not the enforcement standpoint.

1 Q How would his involvement differ from
2 that of the technical reviewers in NRR?

3 A They are both involved, but I guess in
4 terms of -- let me say it this way: That the I & E
5 staff in Washington probably contains a staff of
6 about somewhere between 100 and 150 people, of which
7 there is management people and there are engineers.
8 They are involved in reviewing the significant
9 problem cases that come up back there.

10 There is a lot of staff effort associated
11 with preparing paperwork and doing reviews to
12 assure consistencies between the regional offices
13 on matters.

14 And there is probably, in the area of
15 construction, there is probably three, four, five
16 people back there who provide technical input into
17 the management in terms of problems that are
18 being followed by the headquarters staff in
19 conjunction with the region. And Mr. Shewmaker
20 was involved in the soils problem.

21 Q I still do not have any kind of grasp
22 for what he did. For example, would he, from
23 an engineering standpoint, review a proposed
24 fix?

1 A He was involved in the consideration of
2 the repair efforts. In the Government you get
3 many people involved in reviews of problems. And
4 in the course of a problem like this, you have
5 technical input being provided by the regional
6 offices, in this case, Region 3. You have
7 technical reviews being done by the I & E people
8 in headquarters and NRR gets involved, too. And
9 collectively, a decision evolves.

10 Q The reason I am pursuing this is we
11 have been advised that he is an intended staff
12 witness at this point. Everybody else, we have
13 seen their names all over documents, and they have
14 been generating reems of paper. I have only seen
15 him copied on two documents in the whole thing.
16 I am really just trying to find out what he does.

17 A I think it's fair to say that in the NRC
18 considerations of the soils problem at Midland,
19 there was direct involvement by the NRR people.
20 There was direct involvement on the part of
21 Mr. Shewmaker representing the IE headquarters
22 group, and there was direct involvement with the
23 regional office.

24 Q Do you ~~know~~ if Mr. Shewmaker provided

1 any input with regard to mechanical engineering
2 aspects of the soils problem, underground piping
3 and things like that?

4 A I'm sure he did. But what, I couldn't
5 tell you.

6 Q Would it also be your understanding that
7 he provided input with regard to the structural
8 aspects of the soil, for example, with regard to
9 underpinning or caissons?

10 A I don't recall.

11 Q Do you know whether he provided any
12 input with regard to geotechnical or soil
13 foundation interaction matters?

14 A I can't answer.

15 The only way I could describe it is to
16 say that he was involved in the problem overall.
17 Whether or not he was relied upon for a specific
18 area of consideration, I don't know.

19 MR. PATON: Could we go off the record?

20 (WHEREUPON, discussion was had
21 off the record.)

22 (WHEREUPON, the deposition was
23 recessed until 1:00 p.m., this
24 date, January 6, 1981.)

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 IN THE MATTER OF:) Docket Nos. 50-329-OL
4) 50-330-OL
5 CONSUMERS POWER) 50-329-OM
6 COMPANY) 50-330-OM
7 (Midland Plant,)
8 Units 1 & 2))

9 January 6, 1981,

10 1:10 p.m.

11 The deposition of JAMES GEORGE KEPPLER,
12 resumed pursuant to recess, at the Nuclear
13 Regulatory Commission Region No. 3, 799 Roosevelt
14 Road, Glen Ellyn, Illinois.

15 PRESENT:

16 MESSRS. ISHAM, LINCOLN & BEALE,
17 (One First National Plaza,
18 Chicago, Illinois 60603), by:
19 MR. RONALD G. ZAMARIN,

20 appeared on behalf of the
21 Consumers Power Company;

22 MR. WILLIAM D. PATON,
23 (United States Nuclear Regulatory Commission,
24 Washington, D.C. 20555),

appeared on behalf of the
Nuclear Regulatory Commission.

ALSO PRESENT:

MR. GILBERT S. KEELEY,
MR. BENJAMIN W. MARGUGLIO,
Consumers Power Company;

1 ALSO PRESENT: (Continued)

2 MR. EUGENE J. GALLAGHER,
3 MR. R. C. KNOP,
4 Nuclear Regulatory Commission.

5 REPORTED BY: CORINNE T. GENNA, C.S.R.
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1 JAMES GEORGE KEPPLER,
2 called as a witness herein, having been previously
3 duly sworn and having testified, was examined
4 and testified further as follows:

5 DIRECT EXAMINATION (Resumed)

6 BY MR. ZAMARIN:

7 Q Do you know what the extent of
8 Mr. Gilray's involvement has been with regard to
9 the Midland soils issue?

10 A I believe Mr. Gilray's involvement has
11 been focused on the quality assurance program,
12 rather than the technical aspects of the soils
13 problem.

14 Q Have you had any communication with
15 Mr. Gilray with respect to any conclusions that
16 he might have with regard to Consumers' QA program?

17 A Mr. Gilray has been present in discussions
18 that we have had regarding quality assurance
19 problems at Midland. I don't recall off the top
20 of my head that he voiced any opinion to me with
21 respect to how he felt. If he did, it didn't
22 impact on me one way or the other.

23 MR. PATON: I will make you the same offer
24 on Gilray.

1 MR. ZAMARIN: Thank you.

2 BY THE WITNESS:

3 A Many of the things that we have discussed
4 this morning and involving meetings and different
5 quality assurance problems, Mr. Gilray's been
6 involved in some of these meetings on and off. He
7 is well aware how I feel.

8 BY MR. ZAMARIN:

9 Q Is the extent of your knowledge with
10 regard to Midland QA based solely upon the reports
11 to you of your inspectors and meetings which you
12 have attended with the licensee?

13 A It includes that and it includes other
14 mechanisms by which information is brought to
15 my attention. If you are asking me whether I have
16 gone out and done any inspections into the areas
17 of quality assurance, the answer is no.

18 In addition to the mechanisms that you
19 talk about, we receive reports from the licensees,
20 as part of the regulatory process, 50.55(e)
21 reports. There are inspection findings. There
22 are Part 21 reports.

23 Q I have here what has been marked as
24 Exhibit No. 1 as of today's date, and ask you to

1 take a look at this. You referred to this document
2 earlier. Could you look at it and, once again,
3 describe for the record what that document is.
4 It is dated March 12, 1979.

5 (WHEREUPON, said document, having
6 previously been marked CPCo
7 Deposition Exhibit No. 1, for
8 identification, as of 1/6/81,
9 was tendered to the witness.)

10 BY THE WITNESS:

11 A This is a memorandum that was sent to
12 Mr. Thornburg, T-h-o-r-n-b-u-r-g, who at that
13 time was the Director of the Division of Reactor
14 Construction Inspection in IE headquarters.

15 The memo was to summarize our position
16 with respect to the investigations -- the
17 investigation. I am sorry -- that was conducted
18 as a result of the diesel generator building
19 settlement problem to list the technical concerns
20 that we had with respect to the problem and to
21 discuss courses of action.

22 BY MR. ZAMARIN:

23 Q In this March 12 memorandum, Exhibit No. 1,
24 there is the statement that "Consumers responded

1 that continuing scheduled construction work would
2 not compromise the committed evaluations or
3 remedial actions nor make irrevocable any conditions
4 which do not fully satisfy FSAR licensing
5 requirements."

6 Do you see that on the top of Page 2?

7 A Yes.

8 Q Do you have any basis for disagreement
9 with that statement?

10 A I'm sorry. Which statement?

11 Q The statement that I read, which starts --

12 A About their response?

13 Q Yes.

14 A Personally, yes. I have a problem with
15 the statement, and I guess I would stress that as --
16 emphasize that is a personal view. My concern
17 runs something like this: That the further the
18 project goes without determining first that the
19 corrective program is adequate, I feel that people
20 are more influenced to accept an engineering
21 disposition of the problem than they might otherwise
22 be. That's a personal viewpoint.

23 Q That is, some kind of a balancing that
24 might go on is tipped because of some kind of

1 construction?

2 A Sure or investment and so on. Some of
3 my management takes the strong view that I am
4 wrong on that, and I think there has been evidence
5 to show that the Commission is not afraid to act
6 on a problem area late in the game.

7 It just seems to me personally that it
8 would have been better off to have stopped this
9 work and require a determination that the proposed
10 fix is adequate than to continue to let the project
11 go on. And I think that was evidenced by the
12 memorandum that I wrote urging that the hearing on
13 this thing take place quicker.

14 Q This is related to your personal view
15 that the more construction that is completed, the
16 more likely it is that engineering response would
17 dominate a decision; is that right?

18 A That's my personal view, yes.

19 Q Does that personal view of yours differ
20 from the Region 3, if there is a Region 3 view on
21 it?

22 A I think there is a mixed view internally.
23 That is a fair way to characterize it. There is
24 some that feel the way I do, and there is some that

1 don't.

2 Q Would that be true throughout the NRC?

3 Really, what I am asking is, is there a
4 predominant --

5 A I don't know that I could -- I think the
6 agency's official view is that the amount of
7 completion of a project does not influence its
8 decision. I don't know what other view you could
9 have.

10 Q Did you put any pressure on or in any way
11 encourage the staff to speed up their review in
12 light of this concern that you had about continued
13 construction affecting an ultimate decision?

14 A When the decision was made to issue
15 the order, it was my view at that time that the
16 order would serve the purpose of focusing on the
17 technical adequacy of the site. The ultimate
18 response of the company to request a hearing
19 probably was, I would say, it was a surprise to
20 me personally. And I guess when I look at the
21 fact that a year has expired since that time, ob-
22 viously my concerns still exist.

23 I have at least, on one occasion, made
24 my view known that I felt that this issue ought to

1 be dealt with as timely as it can be, just because
2 of the concern that I do have.

3 Q Why were you surprised that Consumers
4 asked for a hearing?

5 A Well, I don't know that I can give you
6 a reason why I was surprised. I just was. From
7 my vantage point, I had assumed that the action
8 taken was going to force a decision on a timely
9 manner on the adequacy of the proposed corrective
10 action. And, obviously, it didn't.

11 Q Force an action by whom, by the staff?

12 A By the staff and the utility. I mean
13 collectively. It was going to force a regulatory
14 decision on the project.

15 Q Is it your view that once an item is
16 found wrong at the construction site, that
17 construction should stop until that item is
18 resolved?

19 A If the problem potential surfaces enough,
20 the answer is yes.

21 Q Let's take, for example, welds of some
22 kind. The situation perhaps it's recognized that
23 a certain percentage of the welds are likely to
24 be inadequate, say, 20 percent of welds in a certain

1 area; but that management decision is made to
2 continue with the work because all of the
3 inadequate welds are being found and that it's
4 a more appropriate management decision to simply
5 redo those welds as they are found rather than to
6 stop all of the work. Would you consider that to
7 be improper?

8 A I think you have to get down to
9 specifics. But if the welds in question were not
10 being covered up by anything, were accessible still,
11 if the fundamental problem had been corrected, then
12 I would not have a problem with it.

13 Q Can you briefly describe for me what
14 your understanding is of the Zack problem that
15 you referred to this morning?

16 A There was an allegation made to the
17 NRC back a year or so ago that related to faulty
18 work being done in the heating, ventilating and
19 air-conditioning systems of the plant.

20 The specific problems that were involved,
21 I can't recall by memory here, but they did
22 relate to both the procedural aspects of the
23 job as well as the work itself.

24 We investigated that matter and found

1 that the problem was known to both the Consumers
2 Power Company, the Bechtel Corporation and, in
3 fact, there had been meetings with respect to
4 the problem -- some of the problems that had been
5 identified, in an attempt to correct the problem.

6 Basically, the NRC investigation findings
7 were of appropriate concern to me because work was
8 being continued in this area, including work that
9 was known to be bad, and the company's quality
10 assurance program had not halted it.

11 Q Do you know whether this work that was
12 being done continued that included work known
13 to be bad was of the same nature as that which
14 we described before, for example, like a faulty
15 weld being picked up and being corrected while
16 other work was continuing?

17 A I'd have to go back to the Investigation
18 Report; but, again, the Zack issue was an issue
19 in which we brought the company in for a meeting
20 to discuss it, and I was present for the meeting.
21 So, I was personally involved in the issues at
22 the time.

23 Q But you do not recall --

24 A I don't recall what they were specifically.

1 Q -- whether these were things that were being
2 caught and were being fixed as the work went along?

3 A I can't answer that.

4 Q I have here what has been marked as Exhibit
5 No. 2 as of today's date, and it is a memo dated
6 December 29, 1980, to Samuel Chilk, C-h-i-l-k, from
7 Thomas Gibbon, Legal Assistant to Commissioner
8 Bradford. The subject is "Possible Ex Parte Contact
9 in Midland Proceeding," and it has the docket numbers
10 referenced on it. It shows that you were copied this.
11 Have you received a copy yet and had a chance to
12 review it?

13 (WHEREUPON, said document, having
14 previously been marked CPCo Deposition
15 Exhibit No. 2, for identification,
16 as of 1-6-81, was tendered to the
17 witness.)

18 A Yes, I have received a copy. I have not
19 read it to make sure that this was the earlier copy
20 I had reviewed and commented on, but I think it is.
21 BY MR. ZAMARIN:

22 Q The second page of Exhibit 2 contains
23 what is described in the covering memo as some
24

1 notes of a conversation taken by Thomas Gibbon.
2 They refer to statements attributed to you, and
3 he also notes in the memo that "Mr. Keppler notes
4 that while there are some technical inaccuracies,
5 the substance of the discussion is portrayed
6 correctly."

7 Is that an accurate statement?

8 A Yes, that's what I wrote back to him and
9 told him.

10 Q Can you tell me what the technical
11 inaccuracies are? I do not understand that.

12 A Yes. Would it help to explain the
13 background of this?

14 Q If you wish, sure.

15 A I think it might.

16 Let me start by talking about Mr. Gibbon
17 came out to Region 3 on July 30. He spent the
18 better part of the day in the regional office and
19 then accompanied some of our inspectors on an
20 inspection at a construction site other than
21 Midland.

22 One of the purposes of the visit, in
23 addition to the Commissioner's staff getting out
24 and getting a better feel for what's going on

1 overall, was that there had been considerable
2 increased sensitivity at the management and
3 commission level regarding construction problems
4 at nuclear power plants.

5 Examples would involve the Marble Hill
6 problems, in which construction was shut down for
7 better than a year; major quality assurance
8 problems at the South Texas Project; at the
9 Washington Public Power Organization's project
10 that involved escalated action on the part of
11 the Commission. The concerns are focusing on
12 what can we do to make sure that construction
13 problems are identified in a more timely manner.

14 So, one of the things that Commissioner
15 Bradford's Assistant, Mr. Gibbon, wanted to talk to
16 me about was what my views and my staff's views were
17 relative to what the Commission might do to focus
18 on the more timely identification of these types
19 of problems. And one of the -- so, we were talking
20 in a very general sense.

21 But I told him that I felt very strongly
22 that one of the things that I thought the NRC
23 should do is that when a problem of potential
24 safety significance occurs and the staff cannot draw

1 a positive conclusion that the fix to the problem
2 is going to be adequate, that the staff should not
3 allow or the NRC should not allow construction work
4 to continue until that determination has been made.

5 In addition to my own personal concerns
6 about the project becoming more completed, I
7 thought it tended to focus on getting corrective
8 action resolved and the adequacy of that corrective
9 action dealt with in a very timely way. So, that
10 was the basis of the discussion.

11 We discussed to some length some of the
12 things that happened in terms of the assurance of
13 the order at Midland and where we are at right
14 now, and those are his notes that he recalls of
15 that discussion.

16 Now, when he made the determination that
17 he wasn't sensitive to his own role as a Commissioner's
18 Assistant and that he maybe shouldn't have discussed
19 a specific case and wanted to send the matter to
20 all parties, my reaction to him was do it, and I
21 am not about to touch what he says as a -- I don't
22 keep any notes from the discussions.

23 But when I said that there were some
24 technical inaccuracies, I was referring to things

1 like the statement "where I & E found that the
2 diesel generator building had settled excessively."

3 I & E didn't find that. It was reported
4 to us by Consumers Power Company.

5 The statement that there was no QA
6 program, I would have said the word "no effective
7 QA program." That's what I meant by that kind of
8 thing.

9 Now, I do not know if you want me to go
10 through it word by word and pull out others. Those
11 came to mind when I read the thing when he first
12 sent it to me.

13 But in terms of the message that I was
14 trying to leave with him as to my view on the
15 Commission taking stronger action to determine
16 the significance of a safety problem before
17 allowing construction to go on, that was the
18 intent of my message to him.

19 Q With regard to your statement -- I am
20 sorry -- rather than your statement, with regard
21 to what Mr. Gibbon has indicated is his recollection
22 of your statement that says, "Midland is continuing
23 work today," and, of course, this is reference to
24 a conversation back on July 30, 1980, "which will

1 make resolution of the settlement problem much
2 more difficult," is that, as you sit here now, an
3 accurate recollection of the statement that you
4 made?

5 A Pretty close to it. I can't say whether
6 those were my exact words, but I have no quarrel
7 with them.

8 Q What work were they doing that was
9 continuing in July of 1980 that, in your opinion,
10 would make resolution of the settlement problem
11 much more difficult?

12 A What I was referring to was the fact
13 that construction was being allowed to continue
14 in areas that involved foundations over questionable
15 soil, such as portions of the auxiliary building;
16 and piping installations were going on at that
17 time.

18 So, that if someone has to go back and
19 effect a more permanent fix, there is additional
20 work that has been done to take into consideration
21 as to whether something needs to be done with
22 that.

23 I guess what I am saying is that it,
24 again, goes back to the concern I raised earlier

1 about the further along the project becomes, the
2 more things that have to be factored into a
3 decision.

4 Q One thing I forgot to ask you earlier,
5 you indicated that Mr. Davis, until yesterday, was
6 the Chief of Fuel Facility and Materials Safety.

7 A He is now the Deputy Director of the
8 office. I meant to give it. It escaped me.

9 Q Does he replace someone as Deputy
10 Director?

11 A He replaces Mr. Roy as Deputy Director.

12 Q Is Mr. Roy now outside of Region 3?

13 A No. He is still in Region 3. He is
14 out sick right now, and we have not finalized what
15 role he will play yet in the regional office. But
16 he will report directly to me as some kind of a
17 special assistant.

18 Q What is the responsibility of the
19 Deputy Director?

20 A In the past -- let me answer it this
21 way: The Deputy Director is an alter ego,
22 basically, of the Director, serves in his absence
23 when he is gone and handles many of the problem
24 areas that the Director has to deal with.

1 Mr. Roy was assigned as the Deputy
2 Director to Region 3 back in 1977, I believe, at
3 which time there was a strong desire to complement
4 the background of the Regional Director. And
5 Mr. Roy's background is largely in the by-product
6 materials area.

7 Since that time, there has been
8 increased emphasis based on the reactor workload,
9 the importance of the Regional Director being able
10 to assess reactor problems and respond to
11 incidents and so forth.

12 And Mr. Roy's background not being in
13 that area, he decided to step down from that
14 position, and Mr. Davis is stepping into it.
15 Mr. Davis will play a much stronger role as Deputy
16 Director than Mr. Roy did, just simply because of
17 the background.

18 Q In the meeting in Washington with
19 I & E headquarters and Region 3 and NRR and the
20 OELD in which you indicated there was some
21 differing views with regard to whether the quality
22 assurance programs with regard to the soils area
23 of work were indicative of a broader breakdown
24 of quality assurance for the project, were there

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17 the background.

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19 I & E headquarters and Region 3 and NRR and the
20 OELD in which you indicated there was some
21 differing views with regard to whether the quality
22 assurance programs with regard to the soils area
23 of work were indicative of a broader breakdown
24 of quality assurance for the project, were there

1 just simply two views, one, that it was indicative
2 of a broader breakdown and one being that it was
3 not, or were there some other kind of views?

4 A I don't know that I'd characterize it
5 as an either-or situation. I guess the way I would
6 characterize it would be more along the lines of
7 how acceptable was the program or whether we should
8 be doing something more.

9 I don't know that anybody stated
10 emphatically that they felt the quality assurance
11 program was unacceptable, but I think that there
12 were some -- there certainly were some discussion
13 on how many of these things is it going to take
14 to draw that inference and how good or how not good
15 the program was.

16 I don't think it was a matter of it's
17 either acceptable or unacceptable. It was of
18 varying shades in between.

19 Q How did those different views affect
20 the decision as to whether there should be a
21 \$5,000 civil penalty or not?

22 A None. The \$5,000 civil penalty proposal
23 was based upon the fact that that's what our
24 guidelines called for and what our past experience

1 was for handling that kind of a problem.

2 Q What is your understanding of why that
3 material false statement item was included in the
4 December 6 order?

5 A Why?

6 Q Yes.

7 A Because it had to be dealt with. It
8 couldn't be ignored. The Commission reached a
9 decision that a material false statement existed;
10 and therefore, it was highlighted in the order.

11 As far as why we didn't issue a fine
12 for it of \$5,000 was -- well, I will give you my
13 view as to why, but I am not sure that this is the
14 total reasoning.

15 But I think it was that the order was
16 viewed as a firm escalated action and that a
17 \$5,000 civil penalty more or less detracted from
18 the stature of the order itself.

19 Q You indicated that the material false
20 statement was highlighted in the order, and one of
21 the things that escapes me as I sit here now is
22 really, other than it being highlighted in the
23 order, was why it is there. Is there some action
24 that is being asked to be taken on the basis of that

1 statement?

2 A I'd have to go back and take a look at
3 it, but I would say to you that I am not aware of
4 any regulatory action pending on that material
5 false statement issue.

6 THE WITNESS: I don't know. I am not aware of
7 anything.

8 MR. PATON: Off the record.

9 (WHEREUPON, discussion was had
10 off the record.)

11 MR. ZAMARIN: Let's go back on the record.

12 BY MR. ZAMARIN:

13 Q I think that I may have muddied the
14 record a little bit, then, in the way I asked the
15 question in regard to the answer.

16 In your opinion, would the material false
17 statement in the FSAR, if, in fact, it is such, be
18 the basis for an order modifying, suspending or
19 revoking the construction permit for the Midland
20 project?

21 MR. PATON: Just a moment. I object to that
22 question as calling for a legal conclusion.

23 But you can go ahead and answer it.

24

1 BY THE WITNESS:

2 A Isn't that what the Board is supposed to
3 decide?

4 MR. PATON: I cannot think of a better
5 answer, Mr. Keppler.

6 BY MR. ZAMARIN:

7 Q I think the Board will, but I would like
8 to know what your opinion is.

9 A If you want my opinion, I think I
10 probably would have urged a fine for the material
11 false statement and not used it as a part of a
12 determination about the suspension or the
13 modification of a construction permit.

14 But I did not voice that view at the
15 time, and I was really much more concerned about
16 the, again, technical aspects of the problem than
17 I was about the material false statement aspect.

18 Q Is that to say, then, that your opinion
19 is that the material false statement would not,
20 by itself, provide the basis for modification,
21 suspension or revocation of the construction permit?

22 MR. PATON: I also object to that question as
23 calling for a legal conclusion.

24 But you can go ahead and answer it.

1 BY THE WITNESS:

2 A The way I would view the matter, in terms
3 of the way I conduct my business, is that if a
4 material false statement was made with no
5 consideration of willfullness involved, I would
6 recommend the civil penalty for that matter.

7 If willfullness was involved, I'd
8 recommend that the matter be referred to the
9 Department of Justice.

10 If it happened again or multiple times,
11 then that might lead me to want to take a stronger
12 position than just a civil penalty. But you are
13 asking for how I would deal with it initially as a
14 reaction. That would be the way I would do it.

15 BY MR. ZAMARIN:

16 Q Beyond that as to how you would deal with
17 it initially, are there some restrictions as far as
18 the options that are available to the Commission?
19 For example, can the Commission simply go along with
20 modifying, suspending or revoking the construction
21 permit for any reason or no reason at all?

22 I guess really what I was getting at is
23 whether there are certain things, certain actions
24 that can be taken with respect to certain activities

1 and beyond which action cannot be taken?

2 MR. PATON: I object to that as calling for
3 a legal response.

4 But go ahead and answer it, if you want.

5 If you do not feel that you can answer
6 the question, that is a perfectly legitimate
7 answer.

8 THE WITNESS: I'd be hiding.

9 MR. PATON: Okay. You do not want to hide,
10 as you have indicated, but you also do not want
11 to speculate.

12 BY THE WITNESS:

13 A I have a role as a Director of the office
14 to make recommendations on matters that come up.
15 My experience has been that orders are issued
16 when there is a public health or safety issue
17 involved or for what other reason might be
18 determined to be a good cause. And I will generalize
19 that point with you.

20 If you would please define it, I
21 probably could, looking at our enforcement
22 policy. But I think basically, those are the
23 considerations involved in an order.

24 And there is various types of orders,

1 suspension, modification of license, revocation.

2 MR. ZAMARIN: Could I have that back, please?

3 (WHEREUPON, the record was read
4 by the reporter as requested.)

5 BY MR. ZAMARIN:

6 Q In your opinion, is there a public
7 health or safety issue involved with the purported
8 material false statement in the Midland FSAR with
9 respect to the soils?

10 A I'd have to go back and look at the
11 Investigation Report to answer that. Where is
12 the one with the material false statement?

13 MR. PATON: Can we have a minute.

14 MR. ZAMARIN: Sure.

15 (WHEREUPON, a recess was had.)

16 BY THE WITNESS:

17 A Let me tell you the problem I have had in
18 answering your question and try to answer it a
19 little more generally, if that is acceptable to
20 you.

21 When a material false statement is
22 made, there are generally two things that have
23 to be involved, as I understand it, to meet that
24 criteria. One is the statement has to be false,

1 and the statement has to have been material to
2 the staff in the determination of its substance.

3 Now, when you asked the question of is
4 a material false statement by itself a type of
5 issue that would be involved in a suspension or
6 other type of order, I think you have to get back
7 to the materiality of the issue involved to the
8 point that if it was material enough to the point
9 that it changes the accident considerations or
10 the design basis analysis, then that may be a
11 basis to take a suspension action.

12 If it doesn't impact that tight, in other
13 words, if there isn't a health and safety type of
14 consideration to relate to, I would think the
15 answer would be no. And that has sort of been
16 my experience with this kind of thing.

17 BY MR. ZAMARIN:

18 Q I take it, then, you are drawing a
19 distinction between the substance of the statement
20 and the mere fact of the statement having appeared?

21 A Yes.

22 Q You had indicated before lunch or before
23 our lunch, at least, this morning that after that
24 Cadwelding hearing that there were a number of

1 problems associated with the Midland project that
2 identified weaknesses in the quality assurance
3 program. And that in each instance, Region 3
4 concluded the problems were isolated and there was
5 no breakdown in the overall program.

6 As you sit here now, can you recall what
7 those specific identified weaknesses in the QA
8 program were or, again, are you referring to the
9 end result type of a determination that, in fact,
10 if a problem occurred, then there was a weakness
11 because the problem should not have occurred?

12 A Primarily to the latter. I believe that
13 in the February 15, 1979 memorandum that we
14 outlined those particular issues that identified
15 quality assurance problems and the ones that gave
16 us the biggest single concern.

17 Q I have the February 15, 1979 memorandum,
18 which is styled "The Midland Summary Report." That
19 had been marked as Consumers Power Company Exhibit
20 No. 3 as of November 18, 1980. And I haven't
21 the faintest idea whose deposition that was.
22 I think it might have been Gene's.

23 This was Exhibit No. 3 of Gene Gallagher's
24 deposition as of November 18, 1980.

1 I note on Page 5 there is a listing of
2 past problems. Is that what you are referring
3 to, Cadweldsplicing, rebar omission?

4 A Yes. Those are the ones we considered
5 to be the more serious.

6 Q I note that on Page 7 of this report,
7 after a listing of the selective major strengths
8 and past problems, the statement:

9 "A special QA program inspection was
10 conducted in early May, 1977. The
11 inspection team was made up of personnel
12 from Region 1, Region 3 and headquarters.
13 Although five items of noncompliance were
14 identified, it was the concensus of the
15 inspectors that the licensee's program
16 was an acceptable program and that the
17 Midland construction activities were
18 comparable to most other construction
19 projects."

20 Did you have any input into that
21 concensus?

22 A I had an input into the inspection. I
23 required it to be done, because I felt that I
24 wanted a thorough review of it in light of some

1 of the earlier problems. And I also was insistent
2 on getting some inspectors who were not a part of
3 Region 3 involved in that inspection effort.

4 I was briefed on the inspection, and that
5 was the findings of the inspection team; and I
6 concurred in it.

7 Q It also indicates on Page 10 of this
8 summary report that:

9 "Although the licensee's quality
10 assurance program has undergone a number
11 of revisions to strengthen its provisions,
12 no current concern exists regarding its
13 adequacy."

14 Did you also concur in that statement?

15 A Yes.

16 Q Under "Summary and Conclusions," which
17 is on the second-to-last page of this Exhibit No. 3
18 as of November 18, 1980, the second full paragraph
19 reads, and I quote:

20 "Following each of these problem periods,
21 excluding the last, which is still under
22 investigation" --

23 A That is the soils one?

24 Q Yes.

1 (Continuing) --

2 "the licensee has been responsive
3 and has taken extensive action to
4 evaluate and correct the problem and
5 to upgrade his QA program and QA/QC
6 staff."

7 Did you also concur in that statement?

8 A I concurred in that whole document. It
9 wouldn't have gone out without my concurrence.

10 Q The parenthetical, "excluding the
11 last, which is still under investigation," and
12 that is presumably referring to the soils problems,
13 does that mean that you were of the opinion that
14 the licensee had not been responsive or that no
15 statement was made with regard to that item because
16 it was still under investigation?

17 A The latter.

18 Q In your opinion, has Consumers been
19 responsive with regard to attempting to evaluate
20 and correct the problems associated with the soils?

21 A I don't have a position on the soils
22 matter yet.

23 Q Are you leaning either way yet?

24 A Let me be specific. The reason why I

1 say that is a lot of the technical issues are with
2 the licensing people right now. As far as the
3 quality assurance activities go, at least the
4 last I had discussions with my staff on it, we
5 had not done any in depth review of the changes
6 made in the quality assurance program as it relates
7 to the soils thing to make a finding. So, we just
8 hadn't done our inspection effort yet in that area.

9 Whether they have or not now, I can't --
10 I don't know. It has not come to my attention.
11 So, that is the basis of my answer.

12 MR. ZAMARIN: Could you read back that last
13 answer, please?

14 (WHEREUPON, the record was read
15 by the reporter as requested.)

16 BY MR. ZAMARIN:

17 Q Well, do you have an opinion as to
18 whether the quality assurance at Midland would be
19 adequate with regard to the proposed remedial
20 fixes, assuming they were accepted technically
21 by the staff?

22 MR. PATON: You say program, is the program
23 adequate. That's what I thought I heard.

24 MR. ZAMARIN: I do not know. Could you read

1 back the question?

2 (WHEREUPON, the record was read
3 by the reporter as requested.)

4 THE WITNESS: Do you have a problem?

5 MR. PATON: No.

6 BY THE WITNESS:

7 A To answer that question, I have to have
8 assurance that the problems that were found
9 initially with the soils work have been fully
10 corrected and steps taken to prevent their
11 recurrence.

12 To the best of my knowledge, we have
13 not done inspections in this area to draw that
14 conclusion yet.

15 BY MR. ZAMARIN:

16 Q When you say the problems have been
17 corrected, are you referring to the problems in the
18 QA organization or QA implementation?

19 A Yes, as it relates to this particular
20 soils problem.

21 Q Why is it that after all this time
22 that inspection or evaluation has not been done?

23 A My guess is that it hasn't been pressing
24 to do that yet. We got enough other problems to

1 deal with right now that have taken a priority.

2 I would think, also, the consideration
3 is the recent organizational changes that have
4 been made, and the people want to give those time
5 to be implemented. I am just giving you my guess.
6 I don't know. I haven't asked that question.

7 Q Do you have any reason to believe, as
8 you sit here now, that based upon the organization
9 for the QA program that it will not be adequate
10 with respect to the remedial fixes for the
11 foundation problems at Midland that are finally
12 accepted or approved by the Licensing Board?

13 A I don't have any basis to draw a
14 conclusion one way or the other.

15 (WHEREUPON, there was a short
16 interruption.)

17 THE WITNESS: He wants to talk to me for a
18 minute.

19 MR. ZAMARIN: You know what my first question
20 is going to be when he comes back.

21 MR. PATC . "What did you say?"

22 MR. ZAMARIN: That's right.

23 MR. PATON: Do you have any problem with that?

24 MR. ZAMARIN: I mean, if he wants to. He might

1 be better off not doing it. I cannot keep him from
2 doing it.

3 But the first question I will ask you
4 when you come back is what did you two talk about.

5 MR. PATON: Twice what he has done is indicated
6 to Mr. Keppler a couple of -- reminded him of a
7 couple of things or gave him a piece of paper to
8 enhance his answer. I realize it is unusual.

9 MR. ZAMARIN: Why don't we go on, and if it
10 is a matter for clarification, he always has a
11 right to clarify.

12 THE WITNESS: I have prefaced things on what
13 I know. If I am stating a falsehood, you better
14 stop me.

15 MR. KNOP: There is no problem.

16 MR. PATON: We will talk at the break and see.

17 BY MR. ZAMARIN:

18 Q Do you know whether a review by Region 3
19 of the response to Question 23 of the 50.54(f)
20 questions have been performed?

21 A I'm sure my staff has been involved in
22 that review. As to the details, I have not been
23 apprised of it.

24 Q In your opinion, would that review provide

1 the basis for determining whether or not the quality
2 assurance was such that it would provide adequate
3 assurance to the staff?

4 A It certainly should provide some input.

5 Q Would it provide enough input to make
6 that determination, to your knowledge?

7 A I don't know. Again, an important element
8 is the actual inspection work to go back and verify
9 that the problems that had existed before had been
10 fully corrected.

11 Q What problems is it that you refer to here?

12 A The kinds of problems that are discussed in
13 the Investigation Report in the area of quality
14 assurance, things left on the noncompliances and
15 so forth.

16 Q Are you aware of any changes in the
17 quality assurance program or implementation since
18 the time of the items that are noted in the report
19 that would eliminate or ameliorate those types
20 of situations?

21 A Not specifically. I am aware of the
22 reorganization that the company instituted. But
23 as far as the details of specific corrective
24 actions, I have not been involved in them.

1 Q You are aware that there have been
2 other changes also with other inspections and
3 other programmatic, as well as the reorganization?

4 A Yes, I am, yes, only in a very general
5 way.

6 Q Do you have any opinion as to whether
7 those type of changes would likely eliminate or
8 ameliorate the type of problems that existed as
9 indicated in the Investigation Report?

10 A I'm not that familiar with the specific
11 changes that have been made to draw a conclusion.
12 My staff might be able to tell you the answer to
13 that question if you wanted to get it from them,
14 but I can't.

15 Q When you say your staff, to whom do you
16 refer?

17 A Mr. Fiorelli's group.

18 MR. ZAMARIN: Off the record.

19 (WHEREUPON, discussion was had
20 off the record.)

21 BY MR. ZAMARIN:

22 Q To your knowledge, does Region 3
23 presently have any specific concern with regard
24 to Consumers Power Company's present QA program?

1 A. I am aware that some members of my
2 staff have some concerns, yes.

3 Q What are they and who are the members
4 that harbor those concerns?

5 A Mr. Naidu and Mr. Gallagher both have
6 concerns about whether Consumers Power has
7 solved the problem of playing a dominant role in
8 the activity of the site, based upon some of the
9 assignments of people in the organization.

10 Q Assignments of what people are you
11 referring to?

12 A In particular, Mr. Keeley and Mr. Byrd.

13 Q What is it about the assignment of
14 Mr. Byrd that, to your knowlegde, causes concerns
15 about whether Consumers has solved the problem of
16 playing a dominant role in activities at the site?

17 A As a general statement, their concern
18 for Mr. Byrd and Mr. Keeley by the individuals
19 involved relates to their past involvement with
20 areas in which quality assurance problems were
21 identified.

22 Q To your knowledge, have there ever been
23 any specific conduct or omissions by either
24 Mr. Byrd or Mr. Keeley of which Mr. -- did you say

1 Mr. Naidu?

2 A Yes.

3 Q That Mr. Naidu or Mr. Gallagher are
4 aware or related to you that would indicate that
5 Mr. Byrd or Mr. Keeley had some responsibility or
6 failing as related to these past experiences in
7 which QA problems have been identified?

8 THE WITNESS: Could you repeat the question?

9 (WHEREUPON, the record was read
10 by the reporter as requested.)

11 BY THE WITNESS:

12 A If you understand that question, you
13 are better than I am. I don't understand it.

14 BY MR. ZAMARIN:

15 Q You indicated that the concerns about
16 Mr. Byrd and Mr. Keeley relate to their past
17 involvement in areas in which QA problems have
18 been identified, and this statement about
19 Mr. Byrd and Mr. Keeley, I think, is a very serious
20 statement about people's careers. What I want to
21 know is if there are any specific acts or failure
22 to act by Mr. Byrd or Mr. Keeley that either
23 Mr. Naidu, Mr. Gallagher or you are aware of
24 which would indicate any failure or fault on their

1 part with regard to these areas in which QA
2 problems have been identified.

3 A Let me answer the question this way:
4 The concerns, as I understand them, relate to the
5 fact that Mr. Keeley and Mr. Byrd played a role
6 in the quality assurance area involving problem
7 matters in which there were deficiencies in the
8 quality assurance program.

9 In the reorganization of the quality
10 assurance program for the Midland project, Mr. Keeley
11 and Mr. Byrd are shown in prominent positions in
12 that organization. And the concerns raised by our
13 inspectors are whether or not the role that
14 Mr. Keeley and Mr. Byrd can play is enough to
15 offset the talent in comparable roles in the
16 Bechtel organization.

17 The concern raised is not based on
18 experience -- is not based on specific problems
19 which one can talk about. It's a concern about
20 that the organization may not be effective enough.

21 We are not saying it isn't that. They
22 have flagged that as an issue and have urged
23 the company to get together with our people.

24 There have been meetings on the subject,

1 and we have explained the concern up front that
2 we have, because it relates to how well the
3 organization will work in the future. So, we
4 wanted to get the concern on the table right up
5 front.

6 Q What I would like to know is what are
7 the specific items, elements, facts about -- let's
8 take Mr. Byrd -- Mr. Byrd that even suggest that,
9 because of his involvement, that the organization
10 may not be effective enough?

11 A Mr. Byrd certainly was involved in the
12 soils issue.

13 Q How? What did he do with regard to
14 the soils that would cause anyone to suspect that,
15 because of his continued involvement, that the
16 organization may not be effective enough?

17 A You are asking me questions I don't
18 know.

19 Q Well, my understanding is that this
20 statement has been made, and I consider it a very
21 serious question about a man's career.

22 A Absolutely.

23 Q And it ought to be made on something more
24 than air. I am trying to find out the basis for

1 it. So far I have not gotten it. I have not
2 gotten it from the documents. I did not get it
3 from Mr. Gallagher's deposition. It's got to be
4 somewhere.

5 A Well, the statements -- the specific
6 concerns you are going to have to get from
7 Mr. Gallagher and Mr. Naidu. But the issue that
8 we wanted to be up front with was not waiting for
9 the hearing to bring this concern up. It was to
10 let you know that our people have a concern in
11 this area. The validity of that concern may or
12 may not prove real. But in the interest of fairness,
13 we wanted to voice it right up front.

14 Q I take it, then, that as you sit here
15 now, you do not have any position --

16 A One way or the other.

17 Q Did you have any information with regard --

18 A I --

19 Q I am sorry. Go ahead.

20 A I did go to the point of making sure
21 that the company was aware of the concern, and I
22 sat through a meeting involving company people and
23 Bechtel people, in which these concerns were
24 discussed specifically up front to let them know

1 they existed.

2 Q You say the concerns were discussed
3 specifically at that meeting. I take it, though,
4 that no particular facts or items were discussed
5 specifically; is that right?

6 A I think I would characterize it that way,
7 yes.

8 Q I had asked you with regard to Mr. Byrd,
9 and I assume that your responses would be the
10 same with regard to the responses about Mr. Keeley?

11 A Yes.

12 Q Is there any other present concern of
13 Region 3 with regard to Consumers' QA program,
14 other than Mr. Byrd and Mr. Keeley, to your
15 knowledge?

16 MR. PATON: May I ask that question be
17 repeated, please?

18 (WHEREUPON, the record was read
19 by the reporter as requested.)

20 THE WITNESS: Oh, I thought you were --

21 MR. ZAMARIN: He just wanted to hear it again.

22 BY THE WITNESS:

23 A The way I perceive the situation is that
24 the real test of the new quality assurance program

1 or the revised quality assurance program is going
2 to hinge on Consumers Power playing a dominant role
3 in the program. That is the prominent point of
4 the origin of the concern. It focuses, to some
5 degree, on Mr. Keeley and Mr. Byrd, as I perceive
6 it, because certain quality assurance problems
7 occurred in the past where they had a role in the
8 quality assurance organization and in which Consumers
9 Power Company did not take an effective position
10 in solving.

11 I do not know that I would characterize
12 the problem as a Keeley-Byrd problem. I think it's
13 the same problem that we focused on all along as
14 to whether Consumers Power will be effective
15 in assuring that the quality assurance program is
16 implemented.

17 We see, as I am told by my staff, a
18 significant upgrading of the Bechtel organization
19 in this quality assurance program.

20 We are not sure that we see the same
21 upgrading of the Consumers organization. And that
22 is the basis of the speculation, at least the
23 basis -- that is the problem, as I perceive it.

24 Q Is this strictly the QA organization that

1 you are referring to when you say the Bechtel
2 organization and the Consumers organization?

3 A I think it's the combination of the
4 project management and the quality assurance
5 organization.

6 Q And if I understood you correctly, in
7 the past, an identified problem by Region 3 was
8 that the then Consumers organization was not
9 dominant enough and that in situations where there
10 was a problem, in fact, where the problem was
11 resolved in certain instances where the Consumers
12 organization itself stepped in and, in effect, took
13 over the Bechtel QA role.

14 Now, I understand you to be saying there
15 is a concern because you do not see an upgrading
16 of the Consumers organization which is congruent
17 to that of the upgrading of the Bechtel organization.
18 Is that correct?

19 A Yes. I think that you have got to be
20 careful not to focus on the handling of specific
21 problems versus the generic handling of the operation.

22 Q Your concern about the fact that there is
23 an observed significant upgrading of the Bechtel
24 organization but not an observed similar upgrading

1 of the Consumers organization, is that founded in
2 any part upon an identified problem or inadequacy
3 of the Consumers organization, aside from the
4 fact that there have been problems with the project
5 in the past?

6 A I don't think so.

7 Q What, in your opinion, would be necessary
8 in order to upgrade the Consumers organization?

9 A It may prove adequate the way it is.

10 Q Okay. What activity would have been
11 sufficient for you not to have this concern about
12 the fact that there has not been observed this
13 upgrading of the Consumers organization similar
14 to that of the Bechtel?

15 THE WITNESS: Could you repeat it, please?

16 (WHEREUPON, the record was read
17 by the reporter as requested.)

18 BY THE WITNESS:

19 A I guess one way in which the staff
20 would have been more competent is if Consumers
21 had brought in some high-powered talent for the
22 positions in question. That certainly would
23 alleviate the immediate concern.
24

1 BY MR. ZAMARIN:

2 Q You mean replace Mr. Byrd and Mr. Keeley?

3 A Or have not filled them in those positions.

4 Q What positions are you referring to?

5 A Quality Assurance Manager and Project
6 Manager positions.

7 Q Then this is simply based --

8 A I am just giving you a way in which that
9 concern would have gone away. I am not saying it
10 was the only way.

11 Q It would have gone away, and yet this
12 concern is not based on any specific fact about
13 Mr. Keeley's suitability, you know -- let me make
14 sure you understand what I am driving at.

15 A Again, you are talking about this concern
16 that you have with regard to their organization,
17 and it really boils down to two individuals, Walt
18 Byrd and Gil Keeley. Yet, I will repeat what I
19 said before. I have been unable through discovery
20 to get one fact, one failing -- that is not true.
21 We did get some information. Apparently, there
22 was some indication in a deposition that Walt
23 Byrd's background in QA might not be strong enough.

24 So, in fairness, I did get that.

1 With regard to Gil Keeley, it has been
2 zero, other than the fact that he was associated
3 with the project when there were problems. And
4 I have heard today that that same thing applies
5 with Walt Byrd, and that is it and nothing more.

6 Yet, what you are talking about is a
7 position on behalf of Region 3 that these two men
8 ought to be taken out of their jobs in order to
9 satisfy Region 3. If that is the case, and if that
10 is what it is going to take, I think there ought
11 to be basis for it.

12 Maybe it is not fair for me to be
13 pressing you, since you indicated it was your staff
14 that had the concern. I am just trying to find
15 out what the basis is for that.

16 A I think you overstated the case. Let
17 me tell you how I perceive the situation to be.

18 We recently conducted an appraisal of
19 the regulatory performance of each licensee in
20 Region 3, as well as licensees in other regions.

21 In the conduct of preparing for this
22 assessment for the Midland project, concerns were
23 raised by Mr. Naidu and Mr. Gallagher about the
24 effectiveness of the revised quality assurance

1 organization. These concerns were raised to the
2 management of the construction -- Reactor Construction
3 and Engineering Support Branch.

4 When the Review Board, which is comprised
5 of the branch management and all the inspectors
6 that conducted inspections as the site and the
7 NRR Project Manager, when the Review Board completed
8 its review, some of the people then sat down and
9 briefed me on it to prepare for the meeting, to
10 get ready for the meeting with the licensee.

11 At that time, I became aware of these
12 concerns.

13 Now, it was recognized that many of these
14 concerns, if not all, focused on a period of time
15 outside of the appraisal period for which we were
16 conducting this thing.

17 When I learned that my staff had
18 additional concerns about the quality assurance
19 program, it was my decision to want to put them
20 on the table so that they could be dealt with,
21 rather than go to the hearing and have you people
22 hear about them for the first time. So, I made
23 that decision.

24 We did not say anywhere throughout the

1 process that Mr. Keeley and Mr. Byrd were not
2 adequate for this. We have raised a concern. We
3 have flagged the issue for you.

4 And I said very early that our facts --
5 our suspicions may prove not to be factual. But I
6 think it's in the best interest to put these things
7 on the table up front than to have them come out
8 as issues at the hearing to be discussed among all
9 parties at that time for the first time.

10 Q When this was first related to you, did
11 you ask for any specifics with regard to Mr. Keeley
12 and Mr. Byrd?

13 A Yes -- well, we talked about the problems,
14 and I came to the conclusion that there were --
15 there were not hard facts that you could show that
16 clearly the organization wasn't working. It was
17 based upon some observations of the personalities
18 in action, seeing interfaces with the Bechtel
19 people on the job. And a lot of it in the form
20 of -- I don't know -- intangibles that are hard
21 to define, but a definite feeling that it wasn't
22 working the way it should without any hard facts.

23 So, I encouraged Consumers to get
24 with our people to try to get the concerns up front

1 and resolve them, to the extent that they can be
2 resolved.

3 Q Has that been done?

4 A We have had meetings, yes.

5 Q Do you know whether at those meetings
6 any hard facts were presented by anyone in Region 3?

7 A All the concerns were laid on the table
8 at those meetings.

9 Q So, if there were any hard facts, they
10 were all --

11 A We are not holding anything up our sleeve.

12 Q I am not suggesting that. I want to
13 know if whatever it was that was related at that
14 meeting, that would be the extent of any hard facts
15 anywhere in Region 3?

16 A I think that is a fair statement.

17 (WHEREUPON, there was a short
18 interruption.)

19 BY MR. ZAMARIN:

20 Q In your opinion is Consumers Power
21 Company's management adequately committed to
22 quality assurance?

23 A Yes.

24 Q Are summary reports still prepared with

1 regard to Midland now that the SALP program is
2 in effect?

3 A What kind of summary reports?

4 Q I have, for example, the February 15,
5 1979 summary report, and I believe there was one
6 perhaps in October of 1979, October 18.

7 A Those two reports that you refer to
8 were special to Midland.

9 Q I see.

10 A So, those are the only summary reports
11 that were prepared. As you are aware, the SALP
12 program is in existence and was -- reviews
13 were carried out at all power plants related
14 by the NRC last year.

15 Q Have there been any summary reports
16 or status reports since the October 18, 1979
17 Midland status report?

18 A I don't believe so.

19 Q With regard to the February 15, 1979
20 Midland summary report, which has been marked
21 as Consumers Exhibit No. 3 for the Gallagher
22 deposition of 11/18/80, was input obtained from
23 all Region 3 inspectors for this report, to
24 your knowledge?

1 A All of the Region 3 inspectors that
2 were involved with the Midland inspection program
3 were consulted with respect to that report, and
4 I believe all were asked to read it in final to
5 make sure that it represented -- it did not
6 represent any dissenting views on the matter.
7 That was done.

8 Q Do you recall whether there were any
9 dissenting views?

10 A Not in substance there weren't.

11 Q Were there dissenting views in something
12 other than substance? I do not know what you mean.

13 A As I recall, there might have been some
14 views as to how certain things were said, but the
15 basic summary and conclusions were supported by
16 the -- were unanimously supported.

17 Q I notice on the cover memorandum to
18 Thornburg from you there is a statement that
19 there was a meeting with representatives from
20 the Division of Reactor Construction Inspection,
21 I & E, NRR and OELD at I & E headquarters on
22 February 6, 1979. Do you recall that meeting?

23 A Yes.

24 Q Do you recall what the purpose of that

1 meeting was?

2 A Yes. It was to -- as I mentioned
3 earlier to you, I was aware that there had been
4 problems in the areas of quality assurance
5 at Midland, and we had assessed these problems
6 in an ongoing manner from Region 3's point of
7 view. But I was concerned that maybe we were too
8 close to the project, and I thought it was
9 important, in view of the commitments I made at
10 the hearing, the earlier hearing, that we prepare
11 that summary piece of paper and to go before the
12 staff people and determine whether there were
13 differing views as to our assessment of the
14 project.

15 So, I requested the meeting for that
16 purpose. I then documented that piece of paper --
17 documented that assessment and sent it to the
18 Washington people, to our headquarters people.

19 Q When you say you documented it, does
20 that summary report contain input also from these
21 other individuals who were at the meeting?

22 A No. That was our position that we
23 went in with.

24 Could I see that just for a second,

1 meeting was?

2 A Yes. It was to -- as I mentioned
3 earlier to you, I was aware that there had been
4 problems in the areas of quality assurance
5 at Midland, and we had assessed these problems
6 in an ongoing manner from Region 3's point of
7 view. But I was concerned that maybe we were too
8 close to the project, and I thought it was
9 important, in view of the commitments I made at
10 the hearing, the earlier hearing, that we prepare
11 that summary piece of paper and to go before the
12 staff people and determine whether there were
13 differing views as to our assessment of the
14 project.

15 So, I requested the meeting for that
16 purpose. I then documented that piece of paper --
17 documented that assessment and sent it to the
18 Washington people, to our headquarters people.

19 Q When you say you documented it, does
20 that summary report contain input also from these
21 other individuals who were at the meeting?

22 A No. That was our position that we
23 went in with.

24 Could I see that just for a second,

1 please?

2 Q Sure.

3 (WHEREUPON, the document was
4 tendered to the witness.)

5 BY THE WITNESS:

6 A I believe the purpose of forwarding it
7 this way, yes, was that I thought the matter
8 should be referred to the Licensing Board.

9 BY MR. ZAMARIN:

10 Q Why was that?

11 A Just to be aware of it.

12 Q Since February of 1979, has the resident
13 site coverage with respect to Midland continued?

14 MR. PATON: Do you mean the resident
15 inspector?

16 MR. ZAMARIN: I do not know. It says,
17 "resident site coverage."

18 BY MR. ZAMARIN:

19 Q I assume resident site coverage would
20 be resident inspector.

21 A We have had a resident inspector since
22 that time. I am not sure of the date, but we can
23 get that information for you. But from the date
24 the resident inspector was put out there, we have

1 had a resident inspector at the Midland site.

2 Q And since February or mid-February, 1979,
3 to your knowledge, has there been a continuing
4 inspection program by regional inspectors on the
5 Midland project?

6 A Yes.

7 Q To your knowledge, since February or
8 mid-February, 1979, has there been a licensee
9 overview program in effect at the Midland project?

10 A The licensee's overview program has
11 been periodically assessed as part of our
12 inspection program, and the degree of that
13 implementation program has been verified to our
14 satisfaction.

15 Q I note on Pages 9 and 12 of this
16 Exhibit No. 3 from the Gallagher deposition, there
17 are some statistics with regard to number of
18 noncompliances per number of inspections per number
19 of inspector hours on site for the years 1976,
20 '77 and '78.

21 To your knowledge, has Region 3 updated
22 any of these statistics with regard to '79 and '80?

23 A We should have this information, yes.

24 Q As you sit here now --

1 A In fact, I believe this information
2 was included in the SALP preview.

3 Q In the records that are downstairs in
4 that little room that Mr. Farnell is wallowing
5 around in right now, does that include any input
6 or memorandum with regard to the SALP approval
7 or that SALP Board meeting that was held here
8 to provide input?

9 A I would think everything that we have
10 on the Midland project is in that room.

11 Q Is there a customary document around
12 here styled something like a daily staff report
13 or something like that? Does that ring a bell
14 at all?

15 A Sure.

16 Q Daily staff note. Are these maintained
17 in the file anywhere, do you know, or are they
18 discarded?

19 A I'm sure they are maintained, but I don't
20 know for what retention period. But the information
21 is retrievable either through Washington or --

22 Q Would those be maintained, if they are
23 maintained at all, in Region 3 there in that
24 little room downstairs?

1 A Yes.

2 Q What is the purpose of these memoranda
3 subject daily staff notes?

4 A It's to inform the Commission of problems
5 of a certain threshold that have occurred at
6 nuclear plants, to inform them of significant
7 enforcement actions and also to document any
8 key matters which the Commission might wish to
9 be kept informed about from some of the other
10 offices.

11 The one you have there just has input
12 from I & E, but some of them have input from NRR
13 or standards or research, depending upon the
14 nature of the item. It's a daily notification.

15 Q I notice on this one dated January 6,
16 1981, which is marked as Consumers Exhibit 3 as
17 of today's date, it refers to a \$38,000 fine
18 with regard to the Midland Nuclear Power Station.
19 Can you tell me what that is with regard to?

20 (WHEREUPON, said document, having
21 previously been marked CPCo
22 Deposition Exhibit No. 3, for
23 identification, as of 1/6/81,
24 was tendered to the witness.)

1 BY THE WITNESS:

2 A That fine was issued for the noncompliance
3 problems identified with the Zack work at the site.

4 BY MR. ZAMARIN:

5 Q To me that seems like an unusual number.
6 Do you know how that was arrived at, I mean, 38
7 instead of 40,000 or 30?

8 A Yes. Our enforcement policy, which
9 was in effect at that time, there were certain
10 dollar values that could be applied for various
11 items of noncompliance. And it -- how the actual
12 number is arrived at will be explained in the
13 enforcement letter, but it's so much per item of
14 noncompliance.

15 Q I note on here that it says proposed
16 imposition of civil penalties.

17 A Yes.

18 Q Does that mean that that is not final?

19 A No. It means that when we take
20 enforcement action, we notify the licensee of
21 our intent to issue a civil penalty. They then
22 can either pay the civil penalty or they can
23 respond as to why it shouldn't be assessed. Then
24 the staff will make a judgment, and if, in its

1 judgment it believes that the civil penalty still
2 should be issued, then we will order it so. Then
3 the company has the option of paying it or going
4 to a hearing.

5 Q Is it Region 3 who decides precisely what
6 dollar amount to apply to these items?

7 A Headquarters.

8 Q Was it headquarters that came up with
9 the \$38,000 figure?

10 A Yes. We recommended 50,000.

11 Q Big spenders here in Glen Ellyn.

12 Do you have any idea why it was cut
13 from 50 to 38?

14 A Only generally. It's in lumping some of
15 the items of noncompliance, how it's organized.

16 By the way, probably in the same file
17 that you found that in, you should be able to
18 find the paper we sent to Washington recommending
19 the \$50,000 fine. So, that will be the basis for
20 our position, and the one that is finally issued,
21 you can compare.

22 Q Actually, this was so fresh, it hadn't
23 even found its way into a file yet. Maybe you
24 will come across it.

1 A We were to notify the licensee of that
2 tomorrow.

3 Q Were these records that you referred to
4 that were compiled for the SALP appraisal, did
5 they include total man-hours applied to inspection
6 of the Midland project and correlate that with
7 the degree of completion of the project, or was
8 it simply absolute numbers of noncompliances?

9 A I believe in the SALP appraisal we
10 just included absolute numbers of noncompliances,
11 but we have all of that type of information
12 available.

13 Q That would all be available down in that
14 room downstairs, to the best of your knowledge,
15 or, if not, where?

16 A Well, we have the items of noncompliance
17 available. We also have other records that show
18 how much time was spent -- how much inspection time
19 was spent in connection with each project. That
20 is through our man-hour utilization system data.

21 So, if someone wants a number of
22 noncompliances per inspection hours, it's just a
23 matter of dividing it out.

24 Q Is that a statistic that is ever of

1 interest to anyone in Region 3?

2 A Yes, we keep track of it. I guess the
3 time frame that we were working on, to get all
4 these SALP appraisals done, we just didn't generate
5 that specific statistic out. I believe it may
6 have been discussed at the meeting. I am not sure
7 whether it was or wasn't.

8 But quite often, when I hold meetings
9 with licensees to discuss their performance, one
10 of the statistics we talk about is the trend in
11 the noncompliance per inspection man-hour.

12 Q Are you aware of any trend with respect
13 to noncompliance per inspection man-hour for
14 Midland over the past year or two?

15 A No.

16 Q What is the significance of such a
17 trend to you in your meetings with licensees or
18 in your review of licensees?

19 A I don't know that it has a significance
20 really to me. I think, generally, the more one
21 inspects, the more items of noncompliance one
22 finds. I think there is that type of correlation.

23 So, other than a piece of data which I
24 look at along with a lot of other pieces of data,

1 by itself, I'm not sure it tells me anything.

2 Q But at least --

3 A Noncompliances by themselves carry
4 varying degrees of weight with me. It depends on
5 what else. I don't take noncompliance data by
6 itself and make a judgment on a licensee's performance.

7 Q The more man-hours of inspections, the
8 more noncompliances you would expect to find?

9 A I think so.

10 Q What does RCI stand for? This is in
11 reference to whatever Mr. Thornburg used to be
12 Director of.

13 A Reactor Construction Inspection.

14 Q To your knowledge, have noncompliances
15 been written on other applicants besides Consumers
16 Power Company as a result of discrepancies between
17 an FSAR document and a design document?

18 A Discrepancies between an FSAR and a
19 design specification, I think more properly would
20 be classified as a deviation rather than a
21 noncompliance.

22 Q Are you aware of any such deviations
23 with regard to applicants other than Consumers
24 Power Company?

1 A Sure. That is not a common notification
2 on our part.

3 Q Are you aware of any such deviations
4 which were considered to be of a nature that the
5 information was material?

6 A I don't recall any such cases coming up.

7 Q Is that to say, then, that the ones that
8 you do recall, you recall as being immaterial or
9 that you just simply do not recall either way what
10 they were?

11 A We have issued enforcement letters to
12 licensees where a deviation exists. Is that what
13 you are asking me?

14 MR. PATON: I am not sure.

15 Off the record.

16 (WHEREUPON, discussion was had
17 off the record.)

18 MR. ZAMARIN: Let's go back on the record.

19 BY MR. ZAMARIN:

20 Q I believe you have indicated that you
21 do not recall whether these deviations resulting
22 from discrepancies between design documents and
23 FSAR documents were, quote, "material" or not.

24 Is that because you simply do not recall

1 whether any of those were either material or
2 immaterial? In other words, that you just do not
3 recall one way or the other what the nature of
4 those deviations were?

5 A Yes.

6 Could I go off the record?

7 Q Sure.

8 (WHEREUPON, discussion was had
9 off the record.)

10 BY MR. ZAMARIN:

11 Q Were any of the deviations that you
12 recall with regard to other licensees of a similar
13 nature to the purported material false statement in
14 the Midland FSAR?

15 A One case that comes to mind was in
16 connection with the DC Cook plant in which the
17 licensee informed the staff that certain components
18 had been electrically qualified for the environment
19 of a accident situation. We learned that that
20 information wasn't so. It was a deviation from
21 a commitment contained in the application. We
22 issued a civil penalty for that.

23 Those are the only two material false
24 statement cases that come to my mind at present in

1 Region 3. There had been others elsewhere in the
2 country.

3 Q Do you know anything about those others
4 elsewhere?

5 A One case that comes to mind is still
6 under litigation as the Nine Mile Point case.

7 Q That does not ring any bell.

8 A This is a case where the licensee informed
9 the Commission that certain action had been taken
10 in response to a NRC order. It's a very recent
11 case. An investigation disclosed that the actions
12 that were certified to have been taken had not
13 been taken.

14 Q Are there any others that come to mind?

15 A I know there have been others, but I
16 can't recall specifically which utilities were
17 involved.

18 Q Was the DC Cook civil penalty a \$5,000
19 civil penalty?

20 A Yes, it was.

21 MR. PATON: Off the record.

22 (WHEREUPON, discussion was had
23 off the record.)

24 MR. ZAMARIN: Why don't we go back on the

1 record?

2 BY MR. ZAMARIN:

3 Q As a continuation, I understand,
4 Mr. Keppler, that you have not finished that last
5 answer that you wanted to clarify a bit.

6 A Let me correct the earlier answer by
7 stating that there was two material false statements
8 in connection with the DC Cook matter, both of
9 which were assessed \$5,000 fines for a total fine
10 of \$10,000.

11 Q I have here what has been marked
12 Exhibit No. 4 as of today's date, a letter dated
13 November 20, 1978, on the letterhead of the
14 Law Offices of Myron Cherry, and I would like to
15 show that to you and ask if that is a copy that
16 you received from Mr. Cherry.

17 (WHEREUPON, said document, having
18 previously been marked CPCo
19 Deposition Exhibit No. 4, for
20 identification, as of 1/6/81,
21 was tendered to the witness.)

22 MR. ZAMARIN: I am also going to give you
23 what has been marked as Exhibits 5 and 6, which
24 is a memo that you wrote apparently to Thornburg

1 with regard to that letter, and then a letter
2 that you wrote to Cherry. I think it is only fair
3 that I give you all of these before I ask you
4 questions about any of them. So, I will do that.

5 (WHEREUPON, said documents,
6 having previously been marked
7 CPCo Deposition Exhibit Nos. 5 and 6,
8 for identification, as of 1/6/81,
9 were tendered to the witness.)

10 BY MR. ZAMARIN:

11 Q I have shown you Exhibit No. 4, which
12 is the November 20, 1978 letter from Myron Cherry
13 to you. Do you recall having received that letter?

14 A Yes, I do.

15 Q I showed you a November 24, 1978 memorandum
16 for Mr. Thornburg from you dated November 24, 1978.
17 Do you recall that as being a copy of a memorandum
18 from you to Thornburg?

19 A Yes.

20 Q I have shown you Exhibit No. 6, which is
21 a December 14, 1978 letter from you to Myron Cherry
22 with enclosures and attachments. Do you recall
23 having sent that letter to Mr. Cherry?

24 A Yes.

1 Q Did you discuss with Mr. Thornburg,
2 to your recollection, your response to Mr. Cherry's
3 letter before you sent it to Mr. Cherry?

4 A Yes. We prepared the response from
5 this end, and we sent it to Washington to be
6 reviewed back there to see whether they had any
7 problems with it.

8 Q Did they?

9 A As I recall, the only concern that was
10 raised was in connection with the statement
11 concerning the charge against Mr. Cook.

12 Q And the statement that you are referring
13 to about the charge to Mr. Cook was Mr. Cherry's
14 statement, and I quote: "I also wish to inform
15 you that my lines of communication have reported
16 to me that the resident inspector currently on
17 the Midland site may not be doing his job and
18 may, in fact, have been co-opted by Midland
19 personnel"? Is that it?

20 A Yes. There should be an attachment
21 to this, our draft letter to Mr. Cherry. So that
22 should be in our file. So, you could compare the
23 two, if you wished.

24 Q Presumably we will have that at the end

1 of the day.

2 A As I recall, the only issue that we
3 were asked to rephrase was the response to
4 Mr. Cherry in connection with the charge on
5 Mr. Cook.

6 Q Do you recall what the nature of that
7 rephrasing was?

8 A No. It was some kind of a legal
9 assistance we got.

10 Q Obviously nothing important then.

11 A I don't recall anything else on that.
12 Our draft was sent there, and it should be in the
13 file.

14 Q To your knowledge, was an investigation
15 conducted with regard to this accusation by
16 Mr. Cherry that Ron Cook wasn't doing his job and
17 had been co-opted by Midland personnel?

18 A An investigation was conducted by the
19 Office of Inspection and Audit.

20 Q Do you know what the results of that
21 investigation were?

22 A The charges could not be substantiated.

23 Q Do you know if any basis whatsoever was
24 found for those charges?

1 A I believe there was no basis found.

2 Q Did that surprise you?

3 A No. But anytime any wrongdoing is
4 alleged against my people, it's a standard practice
5 to get an outside audit done of it.

6 Q In your memo to Mr. Thornburg on
7 Exhibit No. 5 you indicate that you had discussed
8 Mr. Cherry's charges with regard to the resident
9 inspector with Morris Howard, who was the Acting
10 Director of the OIA at that time; is that correct?
11 What was he Acting Director of?

12 A Acting Director in support of
13 investigation and enforcement.

14 Q And that with regard to whether more
15 specific information should be requested from
16 Mr. Cherry, that he said you had discussed the
17 letter with OIA and get back to you. Did he
18 ever get back to you with regard to that, do you
19 recall?

20 A Yes, and it was decided that OIA would
21 conduct an investigation.

22 Q So, you do not know whether any more
23 specific information was requested from Mr. Cherry?

24 A I believe that Mr. Cherry was contacted

1 by OIA people for specific information and he, in
2 turn, was referred to, I believe, to Mrs. Sinclair.

3 Q Do you know what Mrs. Sinclair told him,
4 if anything?

5 A I don't think she was able to give any
6 meaningful charges. As I recall, the report
7 prepared by the Office of Inspector and Auditor
8 concerning the matter, no specific charges were
9 identified.

10 Q In the first paragraph of your December 14,
11 1978 letter to Mr. Cherry, which has been marked
12 as Exhibit No. 6, there is the statement that:

13 "While some deficiencies in the
14 implementation of the quality assurance
15 program have been found during construction
16 since the Cadwelding suspension in 1973,
17 in our judgment these deficiencies were
18 isolated rather than generic in nature,
19 were resolved in a responsible manner,
20 and did not represent a serious breakdown
21 in quality assurance."

22 Did that statement represent a
23 consensus of Region 3 as of December 14, 1978?

24 A Yes. The statement is consistent with

1 the information contained in the February 15
2 memorandum.

3 Q In enclosure number one to Exhibit 6
4 you have some discussion in there with regard to
5 public health and safety being not predicated on
6 error-free construction and that relating to
7 the defense in depth theory of construction of
8 nuclear power plants. Is that, in fact, an
9 NRC position?

10 A Absolutely.

11 Q I take it, then, that it is an NRC
12 position that, although extensive efforts may be
13 made to obtain high quality, that perfection can
14 never be achieved and, in fact, it is realized
15 and accepted that deficiencies will occur and
16 that has led the safety design of reactors to
17 be based upon the defense in depth concept?

18 A Yes.

19 Q Did you or did someone else in Region 3
20 prepare your response to Mr. Cherry's letter?

21 A The staff drafted the response, but I
22 had a lot of personal input into that letter.
23 That letter pretty much is my letter the way it's
24 shaped.

1 Q When you say the staff drafted the
2 response, you mean primarily putting together
3 the information in the enclosures?

4 A Yes, and they also took a cut at the
5 letter. This would have been Mr. Norelius. He
6 would have, with input from the construction staff,
7 drafted a response. But there is a lot of personal
8 input into that letter. I felt it was a very
9 significant letter.

10 Q What is the distinction between an
11 isolated problem or deficiency and a generic
12 problem or deficiency?

13 A The terminology used there was to try
14 to distinguish between a problem in one facet
15 of the construction work versus the total
16 construction work.

17 Q The problem with one facet being isolated
18 and the general being a generic problem?

19 A Yes, or at least applicable to many
20 areas.

21 Q What is the distinction between a
22 serious breakdown in quality assurance and a
23 mere breakdown in quality assurance? I am not sure
24 I am using your words there. So, you may want to

1 take a look at your letter again. I do not want
2 to mislead you. They may be your words. I don't
3 recall. So, why don't you take a look.

4 A Where are you referring to here?

5 Q That is my problem. I have it in my
6 notes, but I do not see it offhand in the letter.

7 It is following the statement that "Since
8 the Cadwelding suspension in 1973, the deficiencies
9 were isolated rather than generic in nature and
10 did not represent a serious breakdown in quality
11 assurance."

12 I think I had in mind you had not used
13 mere breakdown. Those were my words.

14 What is the distinction here between
15 serious breakdown in quality assurance and something
16 other than a serious breakdown, which I referred
17 to as a mere breakdown in quality assurance?

18 A I think the distinction I had in mind,
19 the problems may have gotten through one or more
20 layers in the quality chain, but they were still
21 ultimately caught by the licensee.

22 Q Had they not been caught, however, at
23 some point in the layers or chain by the licensee,
24 then that would have been a serious breakdown?

1 A I would have characterized that as more
2 serious, yes.

3 Q As more serious or as serious?

4 A As serious.

5 Q What is a breakdown in a quality control
6 program as opposed to a breakdown in quality
7 assurance? Is there any distinction?

8 A Well, I think sometimes we are not as
9 careful in the nomenclature as we could be. But,
10 basically, quality control is the audit aspects of
11 the program; whereas, I view quality assurance
12 as the total program, including the audit
13 activities.

14 Q Do you know whether there was ever any
15 kind of a formal report with regard to the OIA
16 investigation of the charges with respect to the
17 resident inspector made by Myron Cherry in 1978?

18 A A report was prepared, yes.

19 Q Was that strictly an internal report?

20 A Yes, it was. It was not made public.

21 Q Was a copy of that report ever made
22 available to Mr. Cherry, to your knowledge?

23 A I don't believe it was.

24 Q I have here what has been marked

1 as Exhibit No. 7 for identification as of today's
2 date. It is a Midland construction status report
3 as of 10/1/79. And I would like to ask you, to
4 your knowledge, was this a final report as opposed
5 to a draft? I note on the front page it says,
6 "The attached report was finalized."

7 It goes on to state, however, "If you
8 still feel adjustments are necessary, please
9 contact me," me being Gaston Fiorelli. Do you
10 know whether that, in fact, was changed in any
11 way or whether that is a final report?

12 (WHEREUPON, said document, having
13 previously been marked CPCo
14 Deposition Exhibit No. 7, for
15 identification, as of 1/6/81,
16 was tendered to the witness.)

17 MR. ZAMARIN: Is there a question pending?

18 (WHEREUPON, the record was read
19 by the reporter as requested.)

20 BY THE WITNESS:

21 A I believe what this represents is
22 Mr. Fiorelli's summary of his meeting with his
23 inspection staff on the Midland project, and it
24 was to be used as a basis for another meeting

1 with the Washington people concerning the Midland
2 project and our assessment of it.

3 Whether or not there was a change in
4 this report after he put it out that way, I don't
5 know, but I am not aware of any.

6 BY MR. ZAMARIN:

7 Q Did you have to approve this report?

8 A Not that particular one. I think that
9 was done for the purpose of putting everything into
10 writing and giving his staff an opportunity to
11 disagree with any of it if they were so inclined.
12 Again, I don't believe there were any substantive
13 issues as a result of that.

14 Q By your statement you are not aware of
15 there being any substantive issues, by that you
16 mean you are not aware that the staff agreed in
17 any --

18 A There were any substantive disagreements
19 with that, yes.

20 Q On Page 13 of this Exhibit 7, this
21 October 18, 1979 report as of October 1, 1979,
22 it states under "Summary and Conclusions":

23 "Following each of these problem
24 periods, the licensee has taken action

1 to correct the problems and to upgrade
2 his QA program and QA/QC staff. The
3 most prominent action has been an overview
4 program which has been steadily expanded
5 to cover safety-related activities."

6 Do you concur with that conclusion?

7 A Yes.

8 Q To your knowledge, is the overview
9 program that had been steadily expanded to
10 cover safety-related activities still in effect?

11 A Yes.

12 Q On the last page and still under
13 "Summary and Conclusions" is the statement that
14 "The Region 3 inspectors believe the continuation
15 of certain items will provide adequate assurance
16 that construction will be performed in
17 accordance with requirements and that any
18 significant errors and deficiencies will be
19 identified and corrected."

20 One of those items is ceasing to permit
21 work to continue when quality-related problems
22 are identified with construction activities. Would
23 that item be subject to what we discussed earlier,
24 in that if there were a situation where these

1 items were being caught and where a management
2 decision was such that it was more prudent to
3 simply continue with the work, finding these
4 items and correcting them before they are covered
5 up and go along, would that be tantamount to not
6 satisfying that item of ceasing to permit work
7 to continue? It is number four.

8 A The intent of that statement was to
9 focus on the concern that had been raised that
10 while Consumers had identified the significant
11 problems of concern that had been flagged in here,
12 that the timeliness of the corrective action or
13 permanent corrective action was not as fast as
14 we thought it should be. We continued to let
15 some of the same mistakes recur before finally
16 they got a hold of it and took a permanent
17 corrective action. I think that was the tone
18 in which that was given.

19 Now, the example that you gave, as I
20 explained earlier, our position was it was not
21 meant to preclude the licensee from picking his
22 time when to correct the problem as long as the
23 untimely correction did not preclude accessibility
24 to the work or as long as it did not result in new

1 work being done poorly.

2 This would have been amplified, I would
3 say, had we known about the Zack problem at that
4 time. I would have probably put a much stronger
5 position on this type of item. That is exactly
6 what we felt in the Zack case the Consumers should
7 have stopped that work long before.

8 Q You added something that I did not recall
9 in your earlier response to the question when I
10 gave you the example about the welds, for example,
11 if it was management's position or conclusion
12 that 20 percent, for example, of welds would
13 be defective, but that all of those defective
14 welds would be caught and could be repaired
15 properly and that that was, as far as scheduling and
16 cost without compromising quality, a more
17 appropriate way to provide that. I took you to
18 say that that would be acceptable in your view,
19 so long as, in fact, there was still access to
20 those items and that that could be corrected.

21 Now you have added that poor work
22 would not be repeated. In my example, poor work
23 would be repeated to the tune of 20 percent of
24 the welds that we would know would be defective,

1 but that they would be corrected and that it would,
2 as a management decision, would be chosen to
3 go ahead without stopping the work knowing that
4 you would have to go back and catch these and
5 correct them, knowing that you would catch them
6 and correct them all.

7 A I then misunderstood your earlier
8 statement, because I think if you go back and
9 look at my answer, I said the same thing before.

10 Q You did not add to the end.

11 A I did.

12 Q In a situation where you had welds and
13 management knew that without stopping the work
14 and revising certain procedures that about 20
15 percent of the welds were likely to continue to
16 be bad, that they had an adequate program for
17 catching those and for correcting those and
18 that on the basis of schedule and cost, that it
19 was more prudent to proceed that way rather than
20 stopping the work and that, as the bottom line,
21 there would still be all good welds when they
22 were finished. You would consider that to be an
23 unacceptable method of procedure?

24 A I would be opposed to it, yes.

1 Q Why?

2 A Because I think any time you have to
3 make repairs, you are moving in the direction that
4 is undesirable.

5 Q Why?

6 A I think a repaired weld is not as good
7 as a new weld made for the first time. I think
8 any time you make a repair, I think it's -- you
9 run the risk of further bad welds being made.

10 I guess I am of the school that I think
11 that it's bad to -- it's not in the right direction
12 to knowingly install bad work.

13 Q Would your position change somewhat on
14 that if the corrected welds still had to meet some
15 acceptance criteria?

16 A I am assuming they do have to meet an
17 acceptance criteria.

18 Q So, you will still have on the welds,
19 if you go back and follow what I proposed as
20 perhaps an acceptable course of action, which
21 you disagree with?

22 A We would resolve this and get it
23 resolved at a higher level. My position would be
24 not to let you put bad work in that plant knowingly.

1 Q Even though you could be assured it
2 would be corrected, and it would be good work
3 and meet whatever criteria were committed?

4 A Now you get down to specifics, and I
5 guess that you would have to get down to a
6 specific example and talk it through. I guess I
7 can't say categorically I wouldn't consider the
8 matter, but it just does not sound like good
9 business to go that way from a regulator's
10 point of view. It would have work that is known
11 to be defective put into safety-related systems.
12 I am just opposed to it.

13 What I thought you had asked before
14 was that you found 20 percent of the welds
15 defective of the work done up to a point in time
16 and that you wanted to wait and correct that 20
17 percent somewhere down the road, but still continue
18 on with the project having corrected the problem
19 that got you those faulty welds. That was the
20 understanding I was --

21 Q That was not in my question and I do not
22 think your answer indicated that understanding.
23 That is why I wanted to clarify it now.

24 A I think you will find, if you go back, it

1 does.

2 Q We did not need the clarification,
3 but now it is clear.

4 On Page 12 of Exhibit 7, in item seven
5 on Page 12 it refers to a May 8 through 11, 1979
6 Midland construction QA inspection covering, among
7 other things, site auditing and surveillance
8 activities. What does that refer to, site
9 auditing and surveillance activities? Do you know
10 offhand, as you sit here, without seeing that
11 inspection report?

12 A No. The Midland quality assurance and
13 inspection is an inspection that is called for
14 by our inspection procedures to be done when the
15 project is basically 50 percent along.

16 Q I am curious as to when it says "covering
17 purchase control and inspection of received
18 materials design control and site auditing and
19 surveillance activities." I am wondering whether
20 site auditing and surveillance activities means
21 anything to you without referring to the inspection
22 report?

23 A It doesn't ring any special bell with
24 me.

1 (WHEREUPON, Mr. Alan S. Farnell

2 entered the deposition proceedings.)

3 BY MR. ZAMARIN:

4 Q It indicates in the final line of
5 that, with reference to the May 1979 mid
6 construction that "While some items will require
7 resolution, it was concluded the program was
8 adequate."

9 Did you concur in that conclusion?

10 A I accepted the inspection as confirming.
11 I did not get involved in the details of that
12 inspection. From what I saw I had no basis to
13 question that decision.

14 Q What are special findings as opposed,
15 for example, to inspection findings or an
16 inspection report?

17 A The terminology is used when a
18 special investigation is done.

19 Q I notice in the March 15, 1979, I guess
20 that is a preliminary investigation report, that
21 the cooling pond dike is not listed as a category
22 one structure. In your opinion, was the cooling
23 pond dike in March of 1979 a category one structure?

24 A I don't think I had an opinion at that

1 time.

2 Q Have you got one as you sit here now?

3 A No, not really.

4 Q You say not really. I do not know whether
5 you --

6 A I really -- I am sorry.

7 Q You do not?

8 A I don't have an opinion.

9 Q What is the significance of investigation
10 findings? Are they something that have to be
11 accepted or rejected by anyone? Do they become
12 positions of the region or just really what are
13 they?

14 A They are just the findings from the
15 investigation as reported.

16 Q They are some facts or some evidence
17 upon which you would take action or draw
18 conclusions along with other input?

19 A Yes.

20 Could we go back to that cooling pond
21 issue again?

22 Q Sure.

23 A I didn't give you a very complete answer
24 on that. When you asked me my view today as to

1 what I think of the cooling pond, whether it should
2 be a class one structure or not, it would have
3 been a better answer to state that if the cooling
4 pond serves a safety function in the plant, then
5 I think it should be a class one structure. If
6 it doesn't, then it should not be.

7 Q Do you have an opinion as to whether
8 it serves a safety function or not?

9 A I understand that portions of it, and
10 that is -- I don't really know beyond that.

11 Q That is just based on what you have
12 heard?

13 A That is just on hearsay.

14 Q What do you mean when you say a safety
15 function?

16 A That it performs a function to either
17 prevent or mitigate an accident.

18 THE WITNESS: Could we take a short break
19 so I can check to make sure there are no problems
20 before people go home?

21 MR. ZAMARIN: Sure.

22 (WHEREUPON, a recess was had.)

23 MR. ZAMARIN: I have what has been marked
24 as Exhibit No. 14 as of October 8, 1980, the

1 Hood deposition. This is a June 13, 1979 memorandum
2 for Dudley Thompson from Harold Thornburg.

3 I would like to show that to you and
4 ask you if you recall ever having received a copy
5 of that or having seen that before.

6 (WHEREUPON, the document was
7 tendered to the witness.)

8 BY THE WITNESS:

9 A I remember seeing it.

10 BY MR. ZAMARIN:

11 Q I am sorry. I did not hear your answer.

12 A Yes, I recall seeing that.

13 Q There is an April 3rd, 1979 enforcement
14 package referred to therein, and I would like to
15 show you, in fact, not only do I would like to
16 show you, I am going to show you Consumers Exhibit 19
17 as of October 8, 1980, from the Hood deposition.

18 Can you tell me if that is the April 3,
19 1979 enforcement package on Midland that is
20 referred to in the subject heading of this
21 Exhibit 14 from the Hood deposition?

22 (WHEREUPON, the document was
23 tendered to the witness.)

24

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2 for Dudley Thompson from Harold Thornburg.

3 I would like to show that to you and
4 ask you if you recall ever having received a copy
5 of that or having seen that before.

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7 tendered to the witness.)

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10 BY MR. ZAMARIN:

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14 package referred to therein, and I would like to
15 show you, in fact, not only do I would like to
16 show you, I am going to show you Consumers Exhibit 19
17 as of October 8, 1980, from the Hood deposition.

18 Can you tell me if that is the April 3,
19 1979 enforcement package on Midland that is
20 referred to in the subject heading of this
21 Exhibit 14 from the Hood deposition?

22 (WHEREUPON, the document was
23 tendered to the witness.)

24

1 BY THE WITNESS:

2 A Yes, yes, it is.

3 BY MR. ZAMARIN:

4 Q On the first page of the attachment to
5 Exhibit 14 of 10/8/80, and that is the June 13,
6 1979 memo, in item number nine it states that
7 "All statements judged to be material false
8 statements must be examined to see in what 'state
9 of mind' or in what circumstances the licensee
10 made the statement. This is relevant to the
11 question of 'civil penalty' versus 'second chance.'"

12 A I didn't write that.

13 Q I know you didn't. Do you know what
14 they are referring to as the question of civil
15 penalty versus second chance?

16 A No.

17 Q Have you ever heard of anything like
18 that before, other than what you may have read
19 here?

20 A I don't know what is being referred to
21 there. Our position has been that if there is
22 clearly a material false statement, then a civil
23 penalty will be issued.

24 Q You do not know anything about the

1 second chance theory that depends on state of
2 mind?

3 A I don't know what he is referring to.

4 Q Do you know if it was Mr. Shewmaker that
5 prepared these comments, one of which was the
6 statement that I just read?

7 A I don't know.

8 Q On the front down here it says, "Contact:"
9 It has R. A. Shewmaker.

10 What is the significance of having him
11 listed here after the word contact?

12 A That he can answer my questions related
13 to it. So, I would expect that he did write it
14 then.

15 Q Do you recall having any discussion
16 with anyone about this question of civil penalty
17 versus second chance?

18 A None that I can recall.

19 Q Do you recall that having been discussed
20 at any of these meetings that were held among
21 Region 3 and headquarters and perhaps NRR?

22 A No. In fact, it was my understanding
23 that the likely path that we would follow would
24 be if matters were concluded to be material false

1 statements, that we would issue a civil penalty
2 for them.

3 Q I note that on Consumers Exhibit No. 11
4 as of October 8, 1980, the Hood deposition, it
5 refers to your April 3 memorandum and a meeting
6 that was held on August 1, 1980, to provide NRR
7 comments. On enclsoure one it lists the attendees
8 and it does not look to me as though Region 3 was
9 represented. It was August 1, 1979, that meeting.
10 It is reported here by Darl Hood, however, that
11 OELD defined materiality of FSAR statements.

12 To your knowledge, is there someplace
13 within NRC regulations or guidelines, a definition
14 of materiality to which one could refer without
15 having to seek out counsel?

16 A My understanding of the use of the
17 word "materiality" was tied to whether or not the
18 staff considered that matter in determining or
19 in arriving at a position with respect to the
20 project.

21 I don't know that there is any written
22 definition of material false statement anywhere.

23 Q Do you know if that is the same material
24 false statement definition that was used with

1 regard to the DC Cook plant? And when you say
2 that, let me tell you what Darl Hood reports the
3 OELD's definition was, and I will quote the entire
4 paragraph:

5 "OELD defined materiality of
6 FSAR statements. This definition served
7 as a base for judgments in the meeting."

8 That is referring to the August 1, 1979
9 meeting.

10 "A statement was determined to be
11 material if, notwithstanding the fact
12 that it was detected by the I & E
13 investigation, it would or could have
14 an influence upon a safety conclusion
15 of the NRR staff (i.e., if it could
16 have resulted in an improper finding
17 or less probing analysis by the staff),
18 the technical situation and willfulness
19 of any such false statement is relevant
20 to selection of the specific enforcement
21 action deemed to be appropriate."

22 Do you know if that is the same
23 definition that was used as guidance in
24 DC Cook?

1 A I think it embraces the same principles,
2 yes.

3 Q You do not know if it was precisely the
4 same, though?

5 A I don't recall ever seeing a stated
6 definition. But those are the items that were
7 judged to be important, yes.

8 Q When was the DC Cook civil penalty, do
9 you recall?

10 A No, but I can check it quickly, if
11 you would like.

12 Q Maybe we can find that out when we
13 come back on the 16th.

14 A I would say of the order of a couple
15 of years ago, but I will get a precise year for
16 you.

17 THE WITNESS: Do you want to give him a
18 copy of the package?

19 MR. PATON: Off the record.

20 (WHEREUPON, discussion was
21 had off the record.)

22 BY MR. ZAMARIN:

23 Q I have here what was marked as
24 Exhibit No. 16 as of October 8, 1980, the Hood

1 deposition. And it is an August 21, 1979 memo
2 to file from Darl Hood. The subject, "Internal
3 Meeting on Status of Midland Soils," and
4 enclosure two, which is a list of attendees,
5 which, by the way, does not show that you had
6 attended.

7 I would like you to take a look,
8 however, at this exhibit and tell me if you recall
9 ever having seen that before.

10 (WHEREUPON, the document was
11 tendered to the witness.)

12 BY THE WITNESS:

13 A I don't recall seeing this. I think
14 one way of confirming whether or not I saw it
15 is whether or not it's in our files. We are
16 not shown as a recipient of a copy of this, the
17 region isn't. So, there is a question in my mind
18 whether we even received a copy of it. But if
19 we had, there would be a route stamp on the top
20 of it and it would show, if I had seen it, I
21 would have initialled off on it.

22 BY MR. ZAMARIN:

23 Q On the first page, the beginning of
24 the second full paragraph of this Exhibit 16 from

1 the Hood deposition dated 10/8/80, it says:

2 "Mr. Knight reported that the
3 principal technical solutions proposed
4 by the applicant for the major structures
5 appears to be basically sound, such that
6 properly implemented, they can be
7 expected to provide for adequate structural
8 foundation support. He noted, however,
9 that certain details of the applicant's
10 reply were not sufficient and further
11 information will be required from the
12 applicant."

13 Do you know if there has been any change
14 in NRR from that position as I just read it?

15 A I don't know. I have never talked
16 to Mr. Knight on this matter.

17 Q Have you talked to anybody or read
18 anything that would indicate or suggest to you
19 that the position has changed from what I just
20 read?

21 A No, I wasn't even aware of that
22 statement.

23 Q This document goes on to state in
24 the next paragraph that:

1 "Messrs. Haass and Gilray of
2 QAB noted that some instances of poor
3 performance in QA areas revealed in the
4 I & E Investigation Report indicates that
5 additional QA measures beyond those
6 typically imposed by the NRC may be
7 warranted."

8 Do you have any idea what he is
9 talking about when he refers to "additional QA
10 measures beyond those typically imposed may be
11 warranted"?

12 A I don't specifically, but I am sure
13 they would have been a subject of discussion
14 between my staff and the NRR people.

15 Q What types of QA measures beyond those
16 typically imposed by the NRC are there in broad
17 terms?

18 A You are asking me to speculate, and I
19 don't know what was the basis of that discussion.

20 Q I am really not talking about here.
21 Are there different levels of QA measures?

22 A I think you can talk about additional
23 layers of reviews as one thing that would come
24 to mind. Instead of sampling X percent of the work,

1 you do Y percent of the work or you do it more
2 frequently. Those are just some thoughts.

3 Q This document is dated October 24, 1979,
4 but it's marked as Exhibit 16 as of 10/8/80. It
5 states that:

6 "QAB's review is in its final
7 stages of documentation and should be
8 completed before the end of August."

9 To your knowledge, has NRR QAB completed
10 a review of the Midland QA with regard to soil
11 settlement?

12 MR. PATON: You mean at that time?

13 BY MR. ZAMARIN:

14 Q Have they now? As of today, have they
15 completed a review?

16 A I don't know personally.

17 Q Do you know whether you have received
18 any reports from NRR with regard to QA review of
19 Midland soil settlement?

20 A My staff may have. None has crossed
21 my desk.

22 Q In that little room downstairs where
23 you have all those documents and Xerox machines,
24 would everything that comes into Region 3 with

1 regard to Midland be down there? Is a copy kept
2 there?

3 A There should be.

4 Let me go off the record here for a
5 moment.

6 (WHEREUPON, discussion was had
7 off the record.)

8 BY THE WITNESS:

9 A In the past, our routing practices for
10 mail resulted in the mail going first to the
11 inspectors and last to the files. It is possible
12 that there may be some documents -- docketed
13 documents which could be up with inspectors rather
14 than in the files. And I will have my inspectors
15 check and get back to you if there are any
16 documents that were missing at the time you
17 reviewed the files.

18 MR. ZAMARIN: Thank you.

19 We have had a request to terminate at
20 5:30.

21 MR. PATON: By popular demand.

22 MR. ZAMARIN: Yes, very popular. It is now
23 5:33 and 57 seconds, and we can terminate.

24 What we have is a tentative date of

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF DU PAGE)

4 I, CORINNE T. GENNA, a Notary Public
5 within and for the County of DuPage, State of
6 Illinois, and a Certified Shorthand Reporter of
7 said state, do hereby certify:

8 That previous to the commencement of
9 the examination of the witness, JAMES GEORGE
10 KEPPLER, he was first duly sworn to testify the
11 whole truth concerning the matters herein;

12 That the foregoing deposition transcript
13 was reported stenographically by me, was thereafter
14 reduced to typewriting under my personal direction,
15 and constitutes a true record of the testimony
16 given and the proceedings had;

17 That the said deposition was taken before
18 me at the time and place specified;

19 That the said deposition was adjourned
20 to January 16, 1981;

21 That I am not a relative or employee or
22 attorney or counsel, nor a relative or employee of
23 such attorney or counsel for any of the parties
24 hereto, nor interested directly or indirectly
in the outcome of this action.

1 January 16 at 9 a.m. for the resumption of the
2 deposition, and that depends on whether Mr. Bradley
3 Jones can be here or not, I guess.

4 MR. PATON: Right. We will attempt to meet
5 that schedule.

6 (WHEREUPON, the deposition was
7 adjourned until January 16, 1981,
8 at 9:00 a.m.)
9
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

March 12, 1979

CPCO
FOR ID, AS OF

DEP. CL. NO. 1

1/6/81

MEMORANDUM FOR: H. D. Thornburg, Director, Division of Reactor
Construction Inspection
Office of Inspection and Enforcement

FROM: James G. Keppler, Director

SUBJECT: MIDLAND DIESEL GENERATOR BUILDING AND PLANT AREA
FILL

Meetings on this subject were held on February 23, 1979 and March 5, 1979, between Consumers Power Company, Bechtel Corporation and NRC. These meetings were a continuation of the investigation conducted by our inspectors during December 11-13, 18-20, 1978 and January 4-5, 9-11, 22-25, 1979.

During the February 23, 1979 meeting we presented to Consumers Power Company our preliminary investigation findings, a copy of which was previously forwarded to you.

During the March 5, 1979 meeting Consumers Power Company provided their responses to those findings, copies of which are enclosed.

Our summary findings with regard to this matter are as follows:

1. The quality assurance program for obtaining proper soil compaction of the Midland site was deficient in a number of areas.
2. Soil of the type used in the foundation of the diesel generator building is also located, to varying degrees, under other Class I structures. Whereas excessive settlement has been observed with the diesel generator building, the settlement of other Class I structures has not exceeded predicted values.
3. Several incorrect statements are contained in the FSAR with respect to the soil foundation.

In addition to these findings, we have compiled a list of technical questions which bear on the resolution of this problem. These are enclosed for your use in working with NRR.

8104160311

March 12, 1979

As previously discussed with you, one of our concerns is related to why construction activities at the Midland site, which could be affected by a Class I structure settlement should be continued while the total cause of the diesel generator settlement has not yet been determined. During the meeting on March 5, 1979, this question was posed to the licensee. Their response was that continuing scheduled construction work would not compromise the committed evaluations or remedial actions nor make irrevocable any conditions which do not fully satisfy FSAR or licensing requirements. Based on this, they are willing to accept the risk of continued construction.

In that we have questioned the licensee's intent to continue construction, we consider that the matter also warrants examination by HQ. This examination we feel also involves NRR for the following reasons:

1. If one assumes the foundation settlement placement was in accordance with design, then the matter of design adequacy becomes questionable.
2. If one assumes foundation placement did not meet design specification, one must question acceptability of the soils condition under the affected structures. It should be pointed out again, that the type of soils placed under the diesel generator building were also the type placed under other Class I structures and associated pipes and utility lines.
3. In light of items a and b above, the matter of seismic design also becomes one of concern.
4. Because of the licensee's total evaluation of the specific cause for the diesel generator and plant area fill settlement is not yet complete, the question of FSAR design review and its acceptability may warrant further attention by NRR.

As an alternate approach to the issue, consideration should be given to an NRC Directive or Show Cause Order which could expedite the licensee's confirmation to the NRC that continued construction will not compromise the design function of the involved structures for the life-time of the plant. It may also expedite the licensee's investigation into the basic cause of the diesel generator settlement and its relationship (or absence) to other Class I structures.

H. D. Thornburg

- 3 -

March 12, 1979

We will continue to followup on this matter and keep you informed of new information.

for *Gen W. Roy*
James G. Keppler
Director

Enclosures:
As stated

MIDLAND QUESTIONS

1. The licensee has stated that the fill has settled under its own weight. What assurance is provided that the fill has not settled locally under:
 - a. Structures with rigid mat foundations as portions of the auxiliary building or service water pump structure.
 - b. Class I piping in the fill resulting in lack of continuous support causing additional stress not accounted for in design.
2. How has the lack of compaction and the increase in soil compressibility affected the seismic response spectra used in design and therefore, the soil-structure interaction during seismic loading?
3. After current preloading material is removed will additional borings be taken to ascertain that the material has been compacted to the original requirements set forth in the PSAR and construction license application?
4. Since the foundation material is variable as described in 50.55(e) interim report number 4, how can long term differential settlement be predicted to assure reliable startup of the D/G in the event of emergency?
5. What tolerance does the D/G manufacturer require on the alignment of the D/G for reliable operation and startup?
6. Preliminary information indicates that the piping in fill under and in the vicinity of the D/G building have gross deformations induced either prior to or during the preload program. What is the extent of the deformation. Is this deformation beyond predicted? If so, what plans are being taken to correct the condition?
7. The borated water storage tanks and diesel fuel oil tanks have not yet been constructed and are to be located in questionable plant fill of varying quality. Why should those Class I structures be constructed prior to assuring the foundation material is capable of supporting such structures for the plant life?

MIDLAND QUESTIONS

8. PSAR Figure 2.5-48 shows estimated ultimate settlements which indicate a differential settlement across individual mat foundation and within individual structures. Was this differential accounted for in the original design of the mat foundation and in the design of structural member within the structure. If not, what effect does this differential settlement have on additional stresses induced in the mat or in structure members such as slab-beam-column connections?
9. Based on the information provided in CPCo interim report number 4, it appears that the tests performed on the exploratory borings indicate soil properties that do not meet the original compaction criteria set forth in the PSAR and specification for soils work. What assurance is there that the soil under other Class I structures not accessible to exploratory boring meet the control compaction requirements?

MIDLAND QUESTIONS

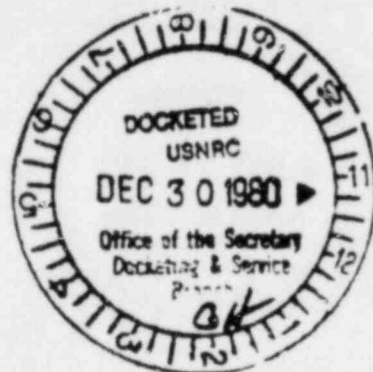
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OFFICE OF THE COMMISSIONER

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



CPCO DEP. EX. NO. 2 December 29, 1980 FOR ID., AS OF 1/6/81

DOCKET NUMBER 50-3290M PROD. & UTIL. FAC. 3300M

MEMO TO: Samuel J. Chilk Secretary

FROM: Thomas R. Gibbon Legal Assistant to Commissioner Bradford

SUBJECT: POSSIBLE EX PARTE CONTACT IN MIDLAND PROCEEDING, DOCKET # 50-3290M AND # 50-3300M

On July 30, 1980, I had extensive discussions with James G. Keppler, Director of Region III, and other Region III personnel on general NRC enforcement issues. During the course of these general discussions, we touched briefly upon the Midland case. I have recently reviewed my notes of these conversations and have now realized that the Midland conversation could be considered an ex parte contact. Accordingly, I request that pursuant to 10 CFR 2.780, you serve a copy of this memo and the attached summary of discussion upon all the parties in the Midland proceeding and also place these documents in the PDR. With regard to the summary of the discussion, Mr. Keppler notes that while there are some technical inaccuracies, the substance of the discussion is portrayed correctly.

Attachment: As stated

cc: James G. Keppler

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Keppler also stated that the Commissioners needed to express in one form or another the philosophy that once something is found wrong at the construction site, construction will stop in that area until the item was resolved. He gave the example of Midland where I&E found that the diesel generator building had settled excessively. They also found that there was no Q/A program of any substance related to the basic foundation of the site. He said there really wasn't a Q/A program in this area. In response to this, the NRC issued an order which said that this should be remedied or work would be stopped in 30 days. The company requested a hearing and, therefore, stayed the order. Midland is continuing work today which will make resolution of the settlement problem much more difficult. Keppler said that the staff had not yet made up their minds on whether the fix proposed by Midland is acceptable. Therefore, the project continues to be built and the problem gets worse. He wanted the work stopped until the problem is solved.

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