



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

U. W. ...
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OCT 12 1982

Government Accountability Project
Institute for Policy Studies
ATTN: Ms. Billie P. Garde
Director
Citizens Clinic for
Accountable Government
1901 Que Street, NW
Washington, D.C. 20009

Dear Ms. Garde:

I have reviewed your September 6, 1982 letter to me and appreciate the opportunity to respond to your concerns.

The Midland allegations submitted by the Government Accountability Project earlier this year have been forwarded to the NRC's Office of Investigations for review and investigation. Region III will provide technical assistance for the investigators on the case.

Your comment that the special inspection team "has not arrived" is simply not true. The Office of Special Cases was formed in mid-July 1982 and the selection of personnel was made at that time. Robert Warnick is director of the new office and Wayne Shafer is chief of the Midland Section. They have been actively involved since then. I understand from Mr. Shafer of my staff that you would like to meet with the Midland Section personnel. I certainly encourage these types of meetings and urge you to schedule a meeting when it is convenient for both you and my staff.

One point needs to be clarified. I did not organize the Midland Section to perform investigations. They are performed by the NRC's Office of Investigations, and all investigators formerly assigned to me now work for James A. Fitzgerald, Acting Director, Office of Investigations. Region III continues to perform technical inspections and provides technical support for OI as requested. Inquiries about investigation policies should be addressed to Mr. Fitzgerald at the NRC in Washington, D.C.

Regarding the Zack Corporation problems, you are quite correct that the LaSalle plant has had priority over Midland. Many of the problems, however, have generic applicability to all the sites where the Zack Corporation is involved. As the investigation at the LaSalle plant and Zack corporate office continues, many of the generic problems that could apply equally to the Midland site are being reviewed. Specific Zack problems at the Midland site will be investigated as manpower availability permits. The Consumers Power Company investigation of the Zack allegations will not be a substitute for the NRC inquiry; we intend to both assess the adequacy of the Consumers Power investigation and continue our own investigation of the allegations relating to Midland. We have set January 1983 as a tentative date for completion of the Zack investigation. Until the investigation is complete, we will not be able to discuss the findings.

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As I am sure you know, the Systematic Appraisal of Licensee Performance (SALP) Program is an assessment of licensee performance based on input from all the inspectors involved in inspections with the licensee. The SALP rating in Support Systems, VI, applied only to Consumers Power Company's quality effort, not to the Zack Corporation. You may wish to discuss this with the Midland Section when you meet with them. NRC procedures require that the licensee be provided the opportunity to respond to the SALP findings, and the meetings we have held with Consumers Power are to fulfill that requirement.

Regarding the question of why Consumers Power Company did not report the Zack QA breakdown to the NRC in the fall of 1981, the documents provided by another allegor revealed that Consumers Power and Bechtel concluded that the problems would not have adversely impacted the safety of operations at the Midland plant. The basis for this decision will be reviewed during our site specific inspection at the Midland site.

The NRC became aware of the Zack Corporation problems in October 1981 when the Commonwealth Edison Company submitted a 50.55(e) report.

I have made no decision as to whether an independent audit of Zack work will need to be conducted at the Midland plant. Consumers Power Company is presently selecting one or more independent contractors to perform an independent third party review of a critical plant system or subsystem. In addition, Consumers Power plans to have an independent contractor conduct an INPO type construction project evaluation. My decision regarding an independent audit of Zack work at Midland will be based on the findings of our investigation and special inspections and the scope and findings of the licensee's third party independent assessments.

Regarding the interview with one of the allegors whose affidavit was presented to NRC by GAP, as you stated, the interview was taped. My staff has reviewed the transcript of this interview and noted no discussion regarding whether or not this person could go to the site to assist the NRC. Some of the allegor's concerns have been looked at by our Region III welding specialist. The balance of the allegors concerns will be addressed either by investigation or special inspection.

Our policy for taking personnel to the site is well known. The information provided by this individual is being reviewed by my staff. When our review is completed he will be contacted by the NRC and requested to accompany us on site.

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Regarding the Bechtel Employee Inventions and Secrecy Agreement, form 3002, we view this document as a standard form used by companies to protect the company's proprietary information and inventions. I have no knowledge of anyone being fired for talking to the NRC, with this document used as a basis for dismissal.

Effective later this month, new regulations will be in effect requiring licensees, including nuclear construction sites, to post notices informing employees of their protection against discrimination for providing information to the NRC. We will review the Bechtel form and its use further to determine if the workers' perception is that it prohibits discussions with NRC personnel. Certainly, the new posting requirement may help alleviate any perceived intimidation for workers desiring to provide information to the NRC. A copy of the required posting, NRC Form 3, is enclosed.

In closing, I want to personally assure you that the NRC is diligently working on the allegations that have been presented to us by GAP. I am sure that GAP wants our office to do a complete and thorough investigation and that is exactly our intent, but this is time consuming. We must assign our priorities to the most safety significant issues and I consider the Midland Remedial Soils Effort the most safety significant issue at the site. As priorities dictate, all relevant safety issues will be investigated.

Further, we sincerely do perceive our role as representatives of the public interest and certainly do not feel constrained by the utilities' timetables. Similarly, we should not feel bound by timetables called for by other interested individuals or organizations. This region has taken and will continue to take, appropriate and decisive action when problems are identified at nuclear plants.

Sincerely,

James G. Keppler
Regional Administrator

Enclosure: As stated

bcc w/enclosure:

- H. R. Denton
- D. G. Eisenhut
- W. D. Paton
- R. C. DeYoung
- RIII Midland Files

OFFICE	RIII	RRW	J	JK	OI, RIII	
NAME	Shaffer	Warnick	Davis	Keppler	FOSTER	STRASSER
DATE	10/6/82	10/6/82	10/8/82	10/12/82	10/7/82	10/7/82

NOTICE TO EMPLOYEES

STANDARDS FOR PROTECTION AGAINST RADIATION (PART 20); NOTICES, INSTRUCTION REPORTS TO WORKERS; INSPECTIONS (PART 19); EMPLOYEE PROTECTION

The Nuclear Regulatory Commission (NRC) in its Rules and Regulations: Part 20 has established standards for your protection against radiation hazards from radioactive material under license issued by the Part 19 has established certain provisions for the options of workers engaged in NRC licensed activities. Part 30, 40, 50, and other parts containing provisions related to employee protection.

POSTING REQUIREMENTS Copies of this notice must be posted in a sufficient number of places at every establishment where activities licensed by the NRC are conducted, to permit employees to obtain a copy on the way to or from their place of employment.

OUR EMPLOYER'S RESPONSIBILITY

Your employer is required to—
Apply these NRC regulations and the conditions of his NRC license to all work under the license.
Post or otherwise make available to you a copy of the NRC regulations, rules, and operating procedures which apply to work you are engaged in, and explain their provisions to you.
Post Notices of Violation involving radiological working conditions, proposed imposition of civil penalties and orders.
Refrain from discriminatory acts against employees who provide information to NRC.

YOUR RESPONSIBILITY AS A WORKER

You should familiarize yourself with those provisions of the NRC regulations, and the operating procedures which apply to the work you are engaged in. You should observe their provisions for your own protection and protection of your co-workers.

WHAT IS COVERED BY THESE NRC REGULATIONS

- Limits on exposure to radiation and radioactive material in restricted and unrestricted areas;
- Measures to be taken after accidental exposure;
- Personal monitoring, surveys and equipment;
- Caution signs, labels, and safety interlock equipment;
- Exposure records and reports;
- Options for workers regarding NRC inspections;
- Identifies "protected activities" that employees may engage in; Prohibits discrimination against employees who engage in these protected activities;
- Identifies the Department of Labor as a source of relief in the event of discrimination; and
- Related matters.

REPORTS ON YOUR RADIATION EXPOSURE HISTORY

- The NRC regulations require that your employer give you a written

report if you receive an exposure in excess of any applicable limit as set forth in the regulations or in the license. The basic limits for exposure to employees are set forth in Section 20.101, 20.103, and 20.104 of the Part 20 regulations.

- These Sections specify limits on exposure to radiation and exposure to concentrations of radioactive material in air.
- If you work where personnel monitoring is required pursuant to Section 20.202, your employer must give you a written report of your radiation exposure upon the termination of your employment, if you request it, and your employer must advise you annually of your exposure to radiation, if you request it.

INSPECTIONS

All activities under the license are subject to inspection by representatives of the NRC. In addition, any worker or representative of workers who believes that there is a violation of the Atomic Energy Act of 1954, the regula-

tions issued thereunder, or the terms of the employer's license with regard to radiological working conditions in which the worker is engaged, may request an inspection by sending a notice of the alleged violation to the appropriate United States Nuclear Regulatory Commission Regional Office (shown on map below). The request must set forth the specific grounds for the notice, and must be signed by the worker or the representative of the workers. During inspections, NRC inspectors may confer privately with workers, and any worker may bring to the attention of the inspectors any past or present condition which he believes contributed to or caused any violation as described above.

EMPLOYEE PROTECTION

If an employee believes that discrimination has occurred due to engaging in the "protected activities" said employees may, within 30 days of the discriminatory act, file a complaint with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor shall conduct an investigation

and shall, where discrimination has occurred, issue an order providing relief to the employee if relief is not provided by other means of settlement.

PROTECTION OF INSPECTORS

The amended Atomic Energy Act, section 236, provides criminal penalties against any individual who harasses, impedes, intimidates or interferes with any person who performs any inspections which (1) are related to any activity or facility licensed by the Commission, and (2) are carried out to satisfy requirements under the Atomic Energy Act or under any other Federal law covering the safety of licensed facilities or the safety of radioactive materials. The acts described above are criminal not only if taken against inspection personnel who are engaged in the performance of such inspection duties, but also if taken against inspection personnel on account of such duties.

SABOTAGE OF NUCLEAR FACILITIES OR FUEL

The amended Atomic Energy Act, section 238, provides criminal penalties against any individual who incites and willfully destroys or causes physical damage, or attempts to do so, to any production, utilization, or storage facility licensed under the Atomic Energy Act or any nuclear fuel or spent fuel regardless of location.

UNITED STATES NUCLEAR REGULATORY COMMISSION REGIONAL OFFICE LOCATIONS

A representative of the Nuclear Regulatory Commission can be contacted at the following addresses and telephone numbers. The Regional Office will accept collect telephone calls from employees who wish to register complaints or concerns about radiological working conditions or other matters regarding compliance with Commission rules and regulations.



Regional Offices

REGION	ADDRESS	TELEPHONE
I	U.S. Nuclear Regulatory Commission Region I 821 Park Avenue King of Prussia, PA 19406	215 337-60
II	U.S. Nuclear Regulatory Commission Region II 161 Marietta St., N.W., Suite 2100 Atlanta, GA 30303	404 221-46
III	U.S. Nuclear Regulatory Commission Region III 100 Independence Road Green Springs, N.C. 27527	312 832-26
IV	U.S. Nuclear Regulatory Commission Region IV 811 Ryan Plaza Drive, Suite 1000 Arlington, TX 76012	817 486-81
V	U.S. Nuclear Regulatory Commission Region V 1000 Marine Lane, Suite 210 Walpole Creek, CA 94088	415 943-32

GOVERNMENT ACCOUNTABILITY PROJECT

Institute for Policy Studies
1900 Que Street, N.W., Washington, D.C. 20009

(202) 234-9382

September 6, 1982.

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Mr. James Keppler
Director, Region III
U. S. Nuclear Regulatory Commission
799 Roosevelt Road
Glen Ellyn, Illinois 60137

Dear Mr. Keppler:

As you know, the Citizens Clinic for Accountable Government of the Government Accountability Project ("GAP"), the Institute for Policy Studies, has adopted the Midland case. GAP investigators have completed an intensive two-part investigation into worker allegations on the Midland site. Further, Citizens Clinic staff have worked closely with citizens, local and state leaders, and organizations to determine the level of anxiety and public opinion about the Midland plant. Our findings have confirmed that the plant qualifies for its position as one of the five worst in the nation.

In June of this year I was impressed by your announcement of plans to begin a special investigation team to deal with Midland's intense problems. In a conversation with Mr. Norelius in May, 1982 concerning our Midland investigation I requested the opportunity to provide input into the planning of that special investigation team. Much has happened since June 29 when GAP submitted the original set of six allegations to your office. Unfortunately, the arrival of the promised special investigation team has not been one of those happenings.

Admittedly, both GAP and Region III have had an intense workload in the past two months. However, a number of developments recently are of great concern to our clients and the Project. I am taking the liberty of addressing these in this letter, as well as a number of administrative matters. I look forward to your clarification and/or response.

I. The Zack Corporation as regards the Midland Nuclear Power Station

Although your office has expended a great deal of time on the problems identified in the Heating, Ventilating and Air Conditioning ("HVAC") system at the LaSalle plant, I am not aware of any ongoing efforts at the Midland site. I am aware that Commonwealth Edison's situation at LaSalle has been a priority item in the three-plant examination. It is, however, no longer justifiable to delay an investigation into the actions by Consumers Power Company's Midland Project Quality Assurance Department ("MPQAD").

The facts in the Midland case reiterate the lessons of our experiences at Zimmer and LaSalle. MPQAD is not an effective substitute for a strong NRC inspection program; instead, as Mr. Terry Howard and the Zack QA Department

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discovered, MPQAD is worthless in protecting workers.

If there had ever been a second thought in your mind as to the Consumers Power Company drive to have Midland meet its Dow Chemical deadline, regardless of the bigger price tag it may have for public health and safety, the Zack incident should have sealed your conclusions. Not only was Consumers Power painfully aware of the Zack QA breakdown after Mr. Dean Dartey exposed the Zack deficiencies in 1980, they were the first utility of the three affected to be contacted, having an entire month longer than Commonwealth Edison and Illinois Power and Light.

Consumers Power also participated directly in the manipulation of the QA breakdown by supplying an employee, Mr. Howard McGrane, to perform an intensive audit. This is a sickening example of manipulating the regulatory process to serve the utility. I am deeply disappointed that you have not taken the initiative to take appropriate action at the Midland site.

At a recent meeting with Commonwealth Edison over their future handling of the Zack allegations, you imposed a third-party audit because you indicated that the public has lost confidence in ComEd's ability to give open unbiased information to either the NRC or the public about problems. Consumers Power's credibility was destroyed long before the latest Zack incident. This latest event only confirms the public's mistrust of a utility caught in a "Catch 22" contract. (Attachment 1, at 9.) If the situation at Midland was historical in nature, I would defer this letter to a later date. Unfortunately, the luxury of extra time at Midland has run out. According to our sources, conditions at Midland deteriorate daily.

II. The Systematic Appraisal of Licensee Performance ("SALP") rating debate

Consumers Power Company has been quite demonstrative toward your office in regards to the 1981 SALP ratings they received. It appears that Consumers' intent is to keep both regulators and public interest groups as busy as possible in defensive positions. Although I have a deep appreciation for their need to do so, nevertheless it does nothing toward either improving or guaranteeing the construction quality at Midland.

The recent meeting held on the SALP rating debate certainly did nothing to improve the construction quality at Midland, nor encourage utility spokespersons to cease their bantering about the deserved low SALP ratings. Even the local paper took exception to the NRC's focus on the SALP debate. (Attachment 2.) It is our position that the SALP rating in support systems, VI, was totally inaccurate and far too generous. Zack never improved their QA program. They merely agreed to transfer the paperwork responsibility to the utility, which has an even greater vested interest in the outcome of the monitoring of Zack's work. In fact, the bottomline in the Zack incident on the Midland site comes down to questions that Region III has not yet asked:

- 1) Why didn't Consumers Power report the Zack QA breakdown to the NRC in the fall of 1981?
- 2) When did the Zack problems become apparent to the NRC (Regional or on-site) following the Dartey investigations? Under what circumstances?
- 3) Will the independent audit apply to Midland also? If not, why? If it does, under what arrangements?

III. The recent meeting between Mr. Earl Kent, former Midland worker, and Mr. James Foster, NRC Investigator

Mr. Earl Kent recently contacted me with concerns about the status of the investigation into his allegations about the Midland Nuclear Power Station. His concerns are well founded and I have agreed to contact you directly concerning the Midland investigation. This letter represents the joint comments of Mr. Kent and myself.

Mr. Kent has an impressive and credible background. He has been a welder for almost two decades, rising to a position of respect and confidence among his professional peers. His information is iron-clad. Two months ago, he and three other workers submitted affidavits on Midland. Last week Mr. Kent made a personal trip to the Glen Ellyn office to check on the status of the investigation into his allegations. What he discovered shocked him. It does not shock me -- I wish it did.

Mr. Kent met with Mr. James Foster. The meeting was taped. During the 1 1/2-hour meeting, Mr. Kent detailed the inherent welding problems at Midland. He detailed with diagrams extensive problems with fillet welds and described the inspection errors. He explained that his affidavit to GAP was only an overview of the problems at Midland and that he was anxious to give explicit details -- about Midland, Palisades and the San Onofre plants he had worked on. However, he was told that it would be months before he was recontacted, and only to answer specific questions that might arise. It is intolerable and inexcusable for Region III to continue to deal with nuclear witnesses as distant observers.

Mr. Kent volunteered to point out to the NRC on the site the areas where the welding problems were most extensive. Yet, he was told that nuclear witnesses can't go on the construction site to identify the problems! An incredulous statement in the light of the LaSalle worker tours and the involvement of Mr. Howard and Ms. Mareello in the Zack investigation. Finally he was told that Region III would get to Midland when it had time.

Mr. Keppler, if Region III doesn't have time for Midland now, it will be necessary to have enough time for another Zimmer later. I am not challenging your priorities for the past two months. But Midland's problems have to be addressed, promptly and effectively, and I was deeply distressed at the comments I learned from Mr. Kent.

I urge you to personally listen to the tapes of the conversation between Mr. Foster and Mr. Kent at your earliest convenience. It appears to both Mr. Devine and myself, as well as to Mr. Kent, that an independent audit of the welding problems will be mandatory.

Mr. Kent, as you know, has remained relatively discreet in his public allegations. He is one of those protected by your confidentiality agreement. In keeping with that, we request you consider this information under his file, or remove his name and any identifying information from it before releasing it. Further, I have included a copy of Mr. Kent's amended notarized affidavit which he said Mr. Foster did not have. (Attachment 3.)

IV. Bechtel's secrecy agreement

As I have indicated to you previously, we have encountered a larger amount of intimidation on the part of nuclear workers at the Midland site. This "intimidation," unlike that encountered at Zimmer, is apparently a result of a serious misunderstanding between Bechtel's employees and outside interests in the safety of the Midland Nuclear Power Plant.

In researching the problem of workers being fearful of talking to any outsider, whether your agency representatives, GAP, or the press, we discovered that they overwhelmingly believed they could be sued by Bechtel on "breach of contract." This situation has extreme ramifications for the premise of 10 C.F.R. 19 that guarantees protection for and, in fact, requires workers to report safety defects.

I understand that you are clarifying this situation. Please address the NRC's position on this Bechtel document. (Attachment 4.)

V. Nuclear Regulatory Commission Investigators and the Government Accountability Project

For the past two years members of the GAP staff and your own staff have worked on several nuclear cases. Recently our efforts at Zimmer and LaSalle have taken the majority of our Project's time. Understandably we are often in conflicting positions, representing those internal nuclear witnesses who did not find an effective avenue for their concerns and/or dissents. We believe this is a natural part of the "checks and balances" system of our government.

The Government Accountability Project has attempted to be cooperative and to assist your own investigators, while maintaining a commitment to the best interests of our clients. We do place the public health and safety as our highest priority. Often we must ensure confidentiality and protection for GAP's clients and other witnesses in order to convince them to deal with the government at all. I am convinced that you understand our position, and regard it professionally with the best intentions.

Mr. James Keppler

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September 6, 1982

However, it appears your best intentions may be seriously compromised if your staff fails to perceive their role as defenders of the public interest, not the utilities' timetables.

You have been anxious for us to work toward a better attitude on your efforts to improve the quality of investigations. I believe they have improved. The Zack situation was a costly, embarrassing lesson. It has placed us in a difficult position in our dealings with members of your staff. We must protect the witnesses, from poor judgments of your investigators, as well as from the utilities' vested interest. It's a position we would rather not be in.

Unfortunately, the recent reorganization of the NRC investigators has not yet been clarified. Until it has been I am unsure of where to address specific concerns raised by our clients over individual investigators.

I anticipate that the administrative reorganization will be explained shortly, and thank you ahead of time for your explanation.

* * * *

In conclusion, I reiterate both GAP's two-month old plea to get the investigative effort going on the Midland site, as well as my request for the opportunity to make input into the structure. I believe that now, more than ever, new investigators from the Office of Investigations be appointed to the Midland case.

Sincerely,



BILLIE P. GARDE
Director
Citizens Clinic for Accountable Government

BPG/mcy

Attachments - 4