



Dow File

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS FIELD OFFICE, REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

September 14, 1983

MEMORANDUM FOR: James G. Keppler, Regional Administrator, Region III

FROM: Eugene T. Pawlik, Director, Office of Investigations Field Office, Region III

SUBJECT: REVIEW OF DOW CHEMICAL COMPANY'S TERMINATION AND COMPLAINT FOR DECLARATORY JUDGMENT - MIDLAND (AITS F03033383)

By memorandum, dated August 2, 1983, R. F. Warnick requested the Office of Investigations review the Dow Chemical Company complaint against Consumers Power Company and its Midland Nuclear Power Plant. Three areas of potential interest to the NRC were contained in the complaint. They were:

1. Alleged material false statements in PSAR/FSAR submissions.
2. Consumers Power Company allegedly withheld information from the NRC that fill material was "inadequate and potentially unsafe."
3. Consumers Power Company allegedly fabricated "an artificial schedule purporting to show that it could complete the project before December 1984."

Region III conducted an investigation (Report No. 50-329/78-20; 50-330/78-20) of diesel generator building settlement at the Midland facility. Five potential material false statements were identified in enforcement correspondence (Attachment 1) relating to that investigation. The NRC subsequently issued an Order Modifying Construction Permits (Attachment 2) in which a material false statement involving FSAR Table 2.5-9, Controlled Compacted Cohesive Fill, was identified. The other potential material false statements were included in the Notice of Violation (Appendix A, paragraph 1a-1d) appended to the Order.

Consumers Power Company has made a series of stipulations (Attachment 3) before the Atomic Safety and Licensing Board concerning the adequacy of fill material information provided to the NRC. These stipulations include, "the NRC Staff had insufficient information to evaluate the Service Water Pump Structure... the BWSTs and underground piping" and "there were quality assurance deficiencies related to soil construction activities under and around safety-related structures and systems at the Consumers Power Midland Plant..."

Only the third issue, whether an artificial construction schedule was fabricated, appears to be new information. It does not on its face pose a health or safety concern. Also, in assessing this allegation, it would appear that the only impact upon the NRC of an artificial construction schedule would be the allocation of NRC resources (e.g. inspector assignments, hearing schedules, etc.)

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James G. Keppler

-2-

September 14, 1983

An investigation of any of these issues does not appear to be warranted at this time by the Office of Investigations because these issues were either previously identified, previously litigated, or do not pose a health and safety concern.



Eugene T. Pawlik, Director
Office of Investigations Field Office
Region III

Attachments:

1. 4/3/79 Memo, Keppler to Thornburg
2. 12/6/79 NRC ltr to Consumers Power
3. Series of Stipulations

cc w/Attachments:

P. E. Baci, OI:HQ
W. J. Ward, OI:HQ