



Midland Section of the NRC Region III Office of Special Cases.<sup>2/</sup> The Commission has referred the petitioners' letter of February 10, 1984 to the staff for treatment as a request for action pursuant to section 2.206 of the Commission's regulations.

The petitioners' present request is similar to relief they sought in a petition submitted on June 13, 1983. I issued two Director's decisions with respect to that petition which granted in part and denied in part the requested relief. See DD-83-16, 18 NRC 1123 (1983), supplemented in DD-84-2, 19 NRC 478 (1984). Issued concurrently with each decision was a confirmatory order, the first permitting the licensee to continue construction only in accordance with its construction completion program, see 48 Fed. Reg. 46673

<sup>2/</sup> The petitioners initially requested that the staff of the Midland Section of the Office of Special Cases be increased in a petition filed with the Commission on June 13, 1983. In my decision on that petition, DD-83-16, 18 NRC 1123 (1983), I noted that the petitioners' request to increase the number of NRC personnel assigned to the Midland Section did not fall within the scope of requests contemplated by 10 CFR 2.206, as the request related to a matter of internal Commission organization and staffing. Likewise, I will not consider the renewed request in this decision. Section 2.206 of the Commission's regulations permits any member of the public to petition directly to the Directors of Nuclear Reactor Regulation, Nuclear Material Safety and Safeguards, or Inspection and Enforcement, as appropriate, to institute a proceeding "to modify, revoke or suspend a license, or for such other action as may be proper." In essence, section 2.206 permits interested members of the public to request initiation of a proceeding, as contemplated by 10 CFR 2.206(a). Requests to augment regional inspection personnel, however meritorious, do not fall within that class of requests for relief provided for under section 2.206(a). In any event, I am satisfied that, given agency resources, sufficient inspection effort is being expended on the Midland project. It should be noted that the Office of Special Cases was dissolved by Region III in March 1984. The Midland Section was transferred intact to the Division of Projects and Resident Programs and reports to the Construction Branch Chief in that division. The Midland Section consists of a Section Chief, a project inspector, a soils inspector, a resident site supervisor, a senior resident inspector and a resident inspector. In addition, other Region based inspectors and consultants from national laboratories provide technical assistance to the Midland section as necessary.

(October 13, 1983), and the second requiring the licensee to obtain an independent evaluation of its management of the Midland project. See 49 Fed. Reg. 2562 (January 20, 1984). To support their present request, the petitioners have "updated" the factual bases of their previous petition. The petitioners point to "a series of financial, construction, legal and regulatory setbacks" at Midland in recent months which are offered in support of the requested relief. These setbacks include (1) litigation brought against Consumers Power related to the cancellation by Dow Chemical Company (Dow) of a contract to provide steam; (2) stockholder suits against the licensee; (3) slippage of the scheduled completion date for Midland; (4) results of a Brookhaven National Laboratory study of the Midland diesel generator building; (5) failure of the licensee to "map" all cracks in the Midland Auxiliary Building; and (6) the licensee's violation of the Midland construction permits in excavating soil from a deep-Q duct bank without prior NRC authorization. Although this new information appears to have little bearing on the relief requested in the petition, the staff has nevertheless carefully considered the information in the course of its review. However, the information, which is well known to the staff, is not of sufficient weight to persuade me to grant the requested relief.

The first and second developments cited by petitioners relate to allegations made by various parties in litigation against the licensee. Among these allegations is the assertion that Consumers Power representatives "made fraudulent misrepresentations and nondisclosures" to Dow, made false statements, and omitted and concealed information regarding the cost and completion schedule of the Midland plant which deceived potential investors about the stability of the project. See Petition at 2-3. As acknowledged by petitioners, these

allegations are the subject of ongoing litigation to which the licensee is a party. It would be inappropriate at this time for the staff to take action on the basis of allegations raised but as yet unproven with respect to the licensee's representations to Dow. It should also be noted that the Midland Atomic Safety and Licensing Board has admitted two contentions based on Dow's complaint into its proceeding. The first contention concerns whether the licensee misrepresented its time schedule for completion of Midland to the NRC, including the NRC staff and the Licensing Board. The second contention goes to whether the licensee relied on test results it knew to be invalid to fulfill NRC regulatory requirements. The Board also denied a motion without prejudice by one of the intervenors to hold open the record pending completion of the Dow lawsuit to enable renewal of the motion to supplement or reopen the record should the Dow lawsuit uncover information of significance to that proceeding not otherwise developed in the record. See Consumers Power Company (Midland Plant, Units 1 and 2), LBP-84-20, 19 NRC \_\_\_\_ (May 7, 1984). Likewise, should information be developed in the course of the Dow litigation which might bear on the licensee's ability to construct a nuclear facility in accordance with NRC regulations, the NRC staff would evaluate such information and take appropriate enforcement action at that time.

The petitioners call attention to an incident they term as "the Caseload Forecast Panel Controversy" as further support for their request. Of concern to the petitioners was the timing of the staff's release in December 1983 of its estimate of September 1986 as the planning date for completion of the Midland Unit 2 licensing review process. In addition to accusing the staff of "impropriety . . . in withholding significant information regarding the incredulity of CPCo's completion schedule estimates. . .," petitioners argue

that, had the staff's Caseload Forecast Panel disclosed its estimate earlier, particularly in May 1983, the licensee would not have been able to "portray false and misleading information to potential investors." Petitioners also allege that the licensee had knowledge of the Caseload Forecast Panel's May estimate and "successfully managed to get NRC release of the information quashed." See Petition at 3-4.

Preparation of forecasts by the Caseload Forecast Panel are used by the NRC as a method of internal resource allocation. The Midland Licensing Board has stated that: "Scheduling per se is not an issue in the [Midland] proceeding. Nor, standing alone, would it properly be an issue. It has neither safety nor environmental significance." Unpublished Memorandum and Order, Consumers Power Company (Midland Plant, Units 1 and 2) (May 25, 1984). The staff takes a similar view with respect to this issue in considering whether to grant the requested relief. Scheduling, in and of itself, has no safety or environmental significance, and petitioners have not set forth any facts which would indicate that scheduling has safety or environmental significance such that the requested relief should be granted.

The petitioners also point out that, subsequent to the submission of their June petition, a Brookhaven National Laboratory study, conducted at the request of the NRC concerning the structural integrity of the Midland diesel generator building, concluded that "the DGB could not meet federal regulatory standards for the Midland project, but it would probably be acceptable." Petition at 4. The petitioners also note that there appears to be a "seemingly unresolvable controversy between numerous professionals" as to the conclusion of the Brookhaven study. Id.

The structural integrity of the Midland diesel generator building has been the subject of extensive litigation before the Atomic Safety and Licensing Board. Currently pending before the Licensing Board is a motion to reopen the record based upon the results of the Brookhaven review. Consumers Power Company, No. 50-329/50-330 OM/OL, Transcript at 22679 (December 3, 1983). The adequacy of the diesel generator building is a matter which bears on the decision to grant an operating license for the Midland facility. Accordingly, the issue is more appropriately addressed in the ongoing operating license proceeding and not as a request for enforcement action under 10 CFR 2.206. Pacific Gas and Electric Co., (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-6, 13 NRC 443, 446 (1981). Cf. Rockford League of Women Voters v. NRC, 679 F.2d 1218, 1222 (7th Cir. 1982). It should be noted that while the Board does not have the authority to take enforcement action against the licensee, it does have the ability to deny Consumers Power an operating license for the Midland plant.<sup>3/</sup> Should testimony be developed which would indicate that enforcement action might be appropriate, the staff would consider such action at that time.

The petitioners call the staff's attention to the licensee's failure to "map" all of the cracks in the Auxiliary Building as new information which would support petitioners' present request. See Petition at 5. Inadequate compaction of soil at the Midland site has caused a problem with the settlement of soil, and cracks have been observed in several buildings onsite, including the Auxiliary Building. The licensee became aware of the cracking several years ago, and undertook a program to chart or "map" those cracks in order to evaluate

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<sup>3/</sup> See Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-674, 15 NRC 1101, 1102-03 (1982).

the condition of, among other things, the Auxiliary Building. Accordingly, the licensee committed to develop a monitoring plan to detect differential settlement of the structure and the propagation and enlargement of new and existing cracks, along with an independent evaluation of conditions exceeding predetermined limits as set by the staff and a crack monitoring program acceptable to the staff. See Safety Evaluation Report, Midland Plant, Units 1 and 2, NUREG-0793, Supplement No. 2 (October 1982) at ¶ 3.8.3.5.

Discussions between the staff and licensee in late 1983 and earlier this year indicated that the licensee had not undertaken the extensive crack mapping that NRC staff members had understood would occur for the Auxiliary Building. Instead, the licensee had only mapped cracks located in the calculated high stress areas of the Auxiliary Building. An agreement was reached between the staff and licensee wherein the licensee would expand its crack mapping program based upon a survey of the entire Auxiliary Building. See Letter to J.J. Harrison, NRC Region III from J.A. Mooney, Consumers Power Co. (February 8, 1984). Unlike petitioners, who characterize the licensee's failure as demonstrating a lack of regulatory responsibility, the NRC staff considers the crack mapping episode to be the result of a miscommunication between the staff and licensee as to a difficult technical issue for which enforcement action would be inappropriate.

The sixth development the petitioners view as supporting their request concerns the enforcement action taken against the licensee for violating its construction permits by allowing excavation of a deep-Q duct bank without prior approval from the staff. Petition at 5-6. Rather than imposing a civil penalty for the violation, as petitioners would have preferred, the licensee was ordered to obtain an independent appraisal of its site and corporate management organizations for the Midland project. See 49 Fed. Reg. 2562 (January 20, 1984). The

choice of a remedy for a violation is "within the sound judgment of the Commission, and not foreordained." See Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406 (1978). The NRC Enforcement Policy describes the enforcement sanctions available to the Commission and specifies the conditions under which each may be used. Among the available sanctions are both civil penalties and orders. See 49 Fed. Reg. 8583 (March 8, 1984). To have imposed a civil penalty for the construction permit violation at Midland may have avoided a possible underlying problem involving the adequacy of the project's management. By requiring an independent management appraisal, the licensee is subjected to a critical evaluation of its project and may, depending on the findings, be required to implement appropriate changes to its management system. It is to be noted that although the staff considered the possibility of a civil penalty, I determined, on balance, that a management appraisal would more readily address the root causes of the violation and achieve the corrective action needed to prevent similar violations at Midland in the future. This decision certainly did not undermine NRC Region III, as petitioners infer, and the Regional Administrator for Region III concurred fully in the management appraisal order. Although petitioners may not agree with my judgment in this regard, no factual basis has been provided for concluding that I abused my discretion in issuing the order requiring the licensee to conduct an independent management appraisal.<sup>4/</sup>

<sup>4/</sup> Nor are petitioners aggrieved by the decision against issuance of a civil penalty. In fact, the petitioners' representative has encouraged the staff to identify the underlying causes of the problems at the Midland project. See e.g., Statement of Billie Pirner Garde (submitted at NRC Commission Meeting, Washington, D.C., April 25, 1984) at 4.



Beyond these six factual developments, the petitioners also set forth additional information in support of their specific requests for relief. In this regard, petitioners contend that occurrences at the Midland site subsequent to issuance of the October 1983 Director's decision demonstrate that the position taken by the staff in the decision with respect to the CCP was premature and that the scope of the CCP should include "all ongoing activity" at the Midland site. Petition at 6-7. The petitioners also contend that the results of two NRC investigations completed subsequent to the submittal of their June petition provide justification for removal of the licensee from managerial responsibility for quality assurance activities at Midland. See id. at 7-8. However, none of the information cited by the petitioners in support of their present request provides the staff with substantially new information such that institution of the relief is warranted. Accordingly, for the reasons set forth below, the petitioners' specific requests are denied.

Inclusion of All Ongoing Activity At Midland Under Construction Completion Program

On October 6, 1983, a Confirmatory Order for Modification of Construction Permits was issued for the Midland Plant which required the licensee to complete construction of the Midland facility in accordance with its Construction Completion Program (CCP), dated August 26, 1983. See 48 Fed. Reg. 46673 (October 13, 1983). The CCP was prompted by the discovery of construction deficiencies in equipment and components within the Midland diesel generator building in conjunction with earlier quality implementation problems in which corrective actions had raised expectations of performance improvements. Accordingly, the

CCP was developed to address the deficiencies in those areas of the Midland facility for which the Bechtel Power Corporation, the Midland architect-engineer and constructor, exercised quality control and quality assurance responsibility. See DD-83-16, 18 NRC 1123, 1127 (1983). The CCP requires, with the exception of four principal areas, reinspection and necessary work or rework of the Midland facility. Id. at 1126-28. Petitioners now request that "all ongoing activity" at Midland, including the remedial "soils work", be included in the CCP. See Petition at 6.

In support of their request that the CCP be expanded to include all ongoing activity at the site, petitioners point to the following factors:

- "recent disclosures and identified problems (such as the identification of cracks in the Aux[iliary] Building)" which allegedly indicate that the licensee cannot be taken at its word;
- information supplied to GAP [the Government Accountability Project] but not yet provided to the NRC, which allegedly indicates that the licensee actively "covered up" problems with installation of the HVAC system instead of repairing the items; and
- failure of the pipe hanger and electrical inspections to disclose information given to the NRC by other sources including several GAP witnesses.

Id. at 7.

From the examples cited in support of their request, it appears that petitioners view the CCP as a defect reporting program. While some of the deficiencies discovered at Midland may indeed be reportable to the NRC under 10 CFR 50.55(e) or other applicable reporting requirements, the primary purpose of the CCP is to ensure the licensee applies sufficient attention to the quality of past and future construction at the Midland site. The Commission requires all licensees to develop and implement a quality assurance program to

be applied to the design, fabrication, construction and testing of the structures, systems and components of its facility. See 10 CFR Part 50, Appendix B. The Commission defines quality assurance as:

all those planned and systematic actions necessary to provide adequate confidence that a structure, system, or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to the physical characteristics of a material, structure, component or system which provide a means to control the quality of the material, structure, component, or system to predetermined requirements.

10 CFR Part 50, Appendix B, Introduction.

The requirements imposed on licensees by Appendix B, together with the licensee's own quality assurance program, are usually sufficient to ensure that a power reactor is constructed in accordance with NRC requirements. However, in certain cases, construction quality weaknesses have been of such magnitude that the NRC has found it needs to impose additional controls to ensure that the facility is being constructed in a quality manner. Under such circumstances, the NRC has required licensees to undertake a remedial program to ensure that construction of the facility is in accordance with NRC requirements. See, e.g., Cincinnati Gas & Electric Co., (William H. Zimmer Nuclear Power Station), CLI-82-33, 16 NRC 1490 (1982); Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2); CLI-80-10, 11 NRC 438, 442-43 (1980).

Because the problems discovered with the Midland diesel generator building indicated a significant breakdown in the quality assurance programs of Consumers Power Company and Bechtel, the NRC strongly suggested that the licensee develop a remedial program to verify the adequacy of Bechtel's past work, and ensure that any necessary rework, as well as new work, meets the

Commission's quality assurance standards. The licensee agreed to develop such a program. The CCP is an extraordinary remedy meant to give the NRC additional assurance that adequate remedial action is being taken to identify existing problems in past construction and to ensure that future construction conforms to Commission requirements. The CCP does not relieve the licensee from responsibility for implementing the quality assurance program the licensee was required to develop in accordance with Appendix B. The licensee's approved quality assurance program remains in effect for all work, including Bechtel activities,<sup>5/</sup> undertaken at Midland.

Of the work presently in progress at Midland, four principal areas are unaffected in whole or in part by the CCP: (1) installation of the nuclear steam supply system (NSSS), (2) installation of the heating, ventilation and air conditioning (HVAC) system, (3) performance of the remedial soils work, and (4) reinspections of pipe hangers and electrical cable. As explained in my earlier decision, separate remedial programs had been developed for the soils work and reinspections of pipe hangers and electrical cable. See DD-83-16, 18 NRC at 1127. The diesel generator building inspection findings, which prompted development of the CCP, were not applicable to other principal areas of ongoing activity at Midland, such as the installation of the NSSS and HVAC systems. See id. at 1127-28. The petitioners have not provided additional information which would persuade me to broaden the CCP beyond its present scope as a program to remedy the quality assurance deficiencies of the licensee and Bechtel. Each of the excluded systems, and the reasons for this determination, are more fully described below.

<sup>5/</sup> The Bechtel quality assurance program has been integrated into the licensee's quality assurance program.

Petitioners have not provided the staff with information which would demonstrate such serious problems in the HVAC area to require implementation of an extraordinary remedial program such as the CCP. As a result of problems found in the HVAC area in 1980, the licensee assumed the HVAC quality control inspection function from the HVAC contractor. Subsequently, the staff has generally been satisfied with the licensee's performance in this area. In addition, a special safety inspection was performed by members of the Region III staff and the NRC Office of Nuclear Reactor Regulation from May 10, 1983 through February 19, 1984, to evaluate technical allegations relating to HVAC design and construction activities at Midland. See Inspection Reports 50-329/83-08; 50-330/83-08 (March 7, 1984). Consumers Power Company provided an adequate response to the NRC on June 8, 1984. Assuming that the corrective action associated with the identified violations is effective, the NRC will be able to conclude that the installed HVAC systems and components at Midland are acceptable and that an adequate quality assurance program is being implemented with regard to ongoing HVAC activities.

Petitioners also state, without further amplification, that the pipe hanger and electrical cable inspections, currently in progress have failed to identify construction deficiencies reported to petitioners by their "sources". See Petition at 7. As explained in the previous Director's decision, reinspection of pipe hangers and electrical cable were not included in the reverification phase of the CCP because reinspection was being accomplished under a separate commitment to the NRC. DD-83-16, 18 NRC at 1127. In October 1982, the licensee began to reinspect all previously installed Class 1E cables. The electrical cable reinspections were performed by Midland quality control personnel who had completed training on all aspects of cable pulling. An anonymous allegation

made in a television interview was also taken into account in planning the reinspections. As a result, additional inspection criteria relating to cable coding were added. All personnel assigned to participate in the reinspections received training on the additional reinspection criteria relating to cable coding. On May 19, 1983, the licensee completed the reinspections of all previously installed Class 1E cables. To date, deficiencies identified as a result of the cable reinspection program have been documented and will be remedied by the licensee. Since petitioners have not identified those elements of the cable reinspection program they view as inadequate and, based upon NRC inspections, the program appears to be working, inclusion of electrical cable reinspection in the CCP is not necessary at this time.

The pipe hanger reinspections are still in progress with approximately 30 percent having undergone reinspection. The licensee has developed a special quality control instruction which is being used by quality assurance personnel who have received training pertaining to that instruction. To date, no deficiencies in the hanger reinspection program have been identified which would warrant reinspection of the hangers beyond that required by the current reinspection program, and petitioners have not identified any aspects of the reinspection that they view to be inadequate. Since the existing reinspection program appears to be accomplishing the same results as it would if included in the CCP, no benefit would be gained by including the pipe hanger reinspections in the reverification portion of the CCP. In any event, the NRC plans to perform followup inspections to assess the adequacy of the hanger, as well as cable reinspection programs. All repairs, modifications, and new work involving safety-related electrical cables and pipe hangers will, however, be accomplished in accordance with the second or construction phase of the CCP.

The remedial soils program, which prohibits the licensee from performing certain specified activities without explicit prior approval from the NRC staff, was incorporated into the Midland construction permits by amendment dated May 26, 1982 in accordance with an order of the Atomic Safety and Licensing Board. See Consumers Power Company (Midland Plant, Units 1 and 2), LBP-82-35, 15 NRC 1060, 1072-73 (1982); 47 Fed. Reg. 23999 (June 2, 1982). Successful implementation of both the CCP and the remedial soils program are conditions of the Midland license. Accordingly, enforcement action can be taken for violation of either program. The remedial soils program implements the philosophy behind quality assurance in ensuring that soils work activities are identified and well documented, that training has been provided to the personnel involved in implementing the program, that inspections of all work have been accomplished by trained personnel, and that ongoing work is controlled by written procedures and instructions. Since both the soils program and the CCP are programs closely monitored by the NRC, no substantial purpose would be served by including the remedial soils work as part of the CCP.

Nuclear steam supply system installation was initially excluded from the CCP because there had been no indication from NRC inspections that significant quality assurance problems existed with those systems. See 18 NRC at 1127. The NSSS was designed and constructed by Babcock and Wilcox pursuant to its own quality assurance and quality control programs. NRC inspections of the NSSS have not identified problems that would indicate Babcock and Wilcox's work

should be reinspected, and petitioners have raised no facts in their present petition to support inclusion of this system in the CCP.<sup>6/</sup>

Upon a consideration of the bases stated by petitioners, I find no reason to require that the CCP be expanded to include those ongoing activities at Midland not presently encompassed within the program.

Removal of the Licensee from Managerial Responsibility for Quality Assurance and Quality Control

In response to the discovery of implementation weaknesses, the licensee has restructured its quality assurance program over the past several years. In 1980, the licensee reorganized its quality assurance department into the Midland Project Quality Assurance Department (MPQAD) and increased the involvement of

<sup>6/</sup> During the review process for my previous decision, it was noted that a QC Activities Hold was placed on the CPCo Hanger Reinspection Program on June 29, 1983, because of problems detected with the Bechtel drawing and design change control system. As a result of this problem, a nonconformance report was later issued that directly impacted Babcock and Wilcox NSSS construction activities, causing them to be stopped. Also, concurrent with issuance of my decision a similar problem was identified on October 5, 1983, and a Stop Work Order was issued by Consumers Power Company regarding Bechtel drawing and design change documents. Again the Babcock and Wilcox construction activities were affected and construction was halted. See Board Notification 83-162. Subsequent to my decision, an additional Stop Work Order was issued on October 22, 1983, that halted all site construction work because of additional problems that were found relating to the Bechtel design documentation system. As a result of the Stop Work Order Babcock and Wilcox work again had to be discontinued. See Board Notification 83-167 and 84-083. Problems were properly identified and adequate corrective actions were taken. The NRC and the independent third party over-viewer (Stone and Webster) reviewed the problem identification and corrective action. The portion of the Stop Work Order pertaining to Babcock and Wilcox construction activities was released on February 8, 1984. The Babcock and Wilcox NSSS construction work resumed shortly thereafter. This Stop Work Order was totally lifted on March 23, 1984.



high level Consumers Power Company management in onsite quality activities. MPQAD took over the quality control function for HVAC installation from the Zack Company following the identification of Zack quality problems in 1980 and NRC's issuance of a civil penalty for the Zack quality problems. In September 1982 the quality control functions of Bechtel were integrated into MPQAD at the suggestion of the NRC. More recently, the licensee has instituted the CCP, which includes an extensive reinspection of construction work to verify the quality of the work. These changes have increased the licensee's involvement in assuring the quality of plant construction.

The petitioners continue to be skeptical of the licensee's ability to manage the Midland quality assurance and quality control programs. As a result, petitioners renew a request raised in their June 1983 petition to remove the licensee from responsibility for the quality assurance program at Midland, to be replaced by an independent third party which would report simultaneously to the licensee and the NRC. In support of their present request, petitioners reference the results of two investigations. The first investigation<sup>7/</sup> concerned whether false statements were made by an employee of Bechtel to the NRC staff during a meeting and in a subsequent telephone call. See Petition at 8. A second investigation, conducted by the NRC Office of Investigations (OI) into the events surrounding digging below a deep-Q duct bank without prior NRC authorization, concluded that the licensee had violated its construction permits. The petitioners rely on these investigations, and an ongoing OI

<sup>7/</sup> Petitioners refer to the investigation as one conducted by the Office of Investigations (OI). The investigation was actually conducted by Region III's enforcement and investigation staff, since OI had not been created at the time the investigation was commenced.

investigation into an allegation that information concerning soils settlement was withheld from the NRC, as well as the licensee's lack of knowledge as to the extent of the cracks in the Auxiliary Building, and the litigation the licensee is presently involved in as further justification for removal of the licensee from quality assurance responsibilities. Id.

The first investigation "failed to provide conclusive evidence that a material false statement was made..." and no enforcement action was taken. See Letter to J. W. Cook, Consumers Power Co. from J. G. Keppler, NRC (January 18, 1983); Inspection Report 50-329/82-13; 50-330/82-13. The Regional Administrator did, however, urge the licensee to emphasize to its personnel and contractor personnel the importance of providing accurate information to the NRC and indicated that strong enforcement action would be taken should a material false statement be established. The staff has not identified any pattern of this type of conduct on the part of the licensee and does not consider this incident of such significance to warrant removal of the licensee from managerial responsibility for the Midland quality assurance program.

In view of the history of quality assurance problems at the Midland site and the results of the the deep-Q duct bank investigation referenced by petitioners, a Confirmatory Order was issued on January 12, 1984 which found that the licensee had not met the terms of its construction permits. The order requires the licensee to obtain an independent appraisal of site and corporate management organizations and functions at Midland. The appraisal is to evaluate the licensee's current organizational responsibilities, management controls, communications systems and practices, both onsite and between the licensee's corporate offices and the site. The appraisal will also include a review of the licensee's site and corporate construction management involved

in the Midland project to determine their capability and competency for managing construction activities consistent with regulatory requirements. The appraisal is also expected to develop recommendations where necessary for improvements in management communications, controls and oversight. 49 Fed. Reg. 2562 (January 20, 1984). The licensee's appraisal plan was recently reviewed by the staff and approved by the Regional Administrator of NRC Region III.<sup>8/</sup>

The Midland management appraisal is expected to identify any organizational deficiencies which need to be corrected. Upon receipt of the results of the appraisal, the Confirmatory Order requires the licensee to consider the appraisal's recommendations, if any, and provide to the Region III Administrator an analysis of each recommendation, the action to be taken in response to each recommendation and a schedule for accomplishing such actions. The management appraisal should address the concern raised by petitioners.

At the time the petitioners' request was filed, the NRC staff had not yet completed its special inspection into allegations regarding the implementation of the quality assurance program with respect to the Zack Company's work on the Midland HVAC system. That special inspection, which involved five Region III inspectors, three representatives of the Office of Nuclear Reactor Regulation, and 1142 total inspector hours, has now been completed. Of particular concern to the petitioners was the licensee's failure to notify the NRC of deficiencies in Zack's material certification records. The NRC inspection team concluded that inadequate procedures for the identification and evaluation of deficiencies

<sup>8/</sup> See Letter to J.G. Keppler, NRC Region III from J.W. Cook, Consumers Power Co. (March 7, 1984) (enclosing Independent Management Appraisal Plan of Cresap, McCormick, and Paget and TERA); Letter from J.G. Keppler (May 11, 1984) (approving management plan of Cresap, McCormick and Paget and TERA).

to determine reportability under 10 CFR 50.55(e) very likely contributed to the licensee's failure to report the deficiencies. See Inspection Report No. 50-329/83-08 and 50-330/83-08 at 8. Enforcement action was taken against the licensee through issuance of a Notice of Violation for failure to report Zack deficiencies under 10 CFR 50.55(e). See Letter to J. W. Cook, Consumers Power Co. from J. G. Kepler, NRC Region III (March 7, 1984). The licensee has instituted corrective action. Major revisions have been made by the licensee to its program for identifying and evaluating conditions for reportability under section 50.55(e). Region III will continue to evaluate the licensee's performance to determine the adequacy of the revised procedures. In view of the licensee's actions, and the relatively less serious safety implications of the HVAC systems, the violation is not of such significance as to warrant removal of the licensee from responsibility for its quality assurance program.

Petitioners also point to the "multiple" investigations conducted into the activities of the licensee at Midland as justification for requiring the licensee to retain an outside organization to manage the quality assurance program. As precedent for their request, petitioners reference the staff's action with regard to H.J. Kaiser at the Zimmer plant. The two situations, are not however, comparable. At Zimmer, the question before the staff was whether to approve a proposed Course of Action for verification of the quality of construction and for completion of construction should Kaiser continue as constructor of the plant. Based upon investigative information, the staff advised Cincinnati Gas and Electric Company that the staff would not approve

the Course of Action should Kaiser be retained as constructor.<sup>9/</sup> In Zimmer, retention of the constructor, not the licensee, as in Midland, was at issue. At no time was serious consideration given to removing the licensee, Cincinnati Gas and Electric Company, from responsibility for the Zimmer quality assurance program. Strong action was taken at Zimmer as deemed necessary. Similarly strong action, albeit different from Zimmer, in the form of the CCP, has been taken at Midland.

The staff has observed that the licensee's performance at Midland has improved in recent months. Following the NRC's identification of problems within the diesel generator building in late 1982, the licensee took positive management action to resolve NRC concerns and to strengthen its management to improve its capability to assure the quality of construction of the Midland facility. Work was stopped in most areas, personnel changes were made, additional staff were hired, and inspectors were retrained. Through implementation of the CCP, work is being reinspected, and future construction work will be overviewed by an independent third party. Moreover, an independent party, the TERA Corporation, is conducting a design verification program. The licensee is making progress in the remedial soils area and the soils overview group has expressed satisfaction and confidence in the soils work being accomplished. Likewise, the NRC has not identified recent quality problems in the soils area. Despite this improved performance, intense overview of the soils work will continue. The staff's close inspection scrutiny will continue

<sup>9/</sup> See Letter to W. H. Dickhoner, Cincinnati Gas & Electric Co., from J. G. Keppler, NRC (November 21, 1983).

until confidence in the licensee's abilities to implement its quality assurance program are fully restored.<sup>10/</sup>

Should their request to remove the licensee from quality assurance control responsibilities be denied, petitioners argue that there is an immediate need for removal of the licensee from managerial responsibility for the quality verification portion of the CCP pending the completion of the management appraisal. See Petition at 9. The petitioners base this request on the preliminary findings of nonconformances by the Stone and Webster Engineering Company, the third party retained to overview the implementation of construction under the CCP. The staff has reviewed the Stone and Webster Nonconformance Identification Reports which document identified nonconformances in the quality verification portion of the CCP. Based on this review, the staff has concluded that the nonconformances identified to date do not support the petitioner's statements that there is an immediate need for removal of the licensee from managerial responsibility of the CCP. Indeed, a properly planned and executed

<sup>10/</sup> The following example is indicative of the licensee's improved performance in the area of quality assurance, and provides evidence that the licensee's program is working. On October 22, 1983, Consumers Power Company's audit program identified problems with the control of design changes. The licensee issued nine stop work orders halting nearly all safety-related work. The licensee's corrective actions included an in-depth review of all Field Change Requests, Field Change Notices, document control registers, and affected drawings and specifications. Controlling procedures were also revised and each control station was then updated with the most recent revision of controlled documents. The entire process was reviewed by MPQAD. Stone and Webster Engineering Company, the CCP overseer, also audited the process to assure that proper problem identification, resolution, and corrective action was taken. Although the NRC has not inspected this work, the licensee reported that the nonconformances identified during the document review have no significant impact on hardware. The stop work orders were lifted between January 19 and March 23, 1984, and work has resumed onsite.

independent third-party overview program will and should identify a certain amount of problems. In all events, a properly planned and executed quality assurance program will and should identify most, if not all, problems. See Union Electric Company (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 346 (1983). The success of a quality assurance program lies with the program's ability to promptly identify and correct conditions adverse to quality. See 10 CFR Part 50, Appendix B, Criterion XVI.

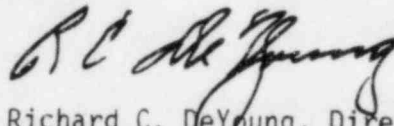
The CCP is designed to remedy the licensee's past problems with implementation of its quality assurance program. The management appraisal is designed to identify weaknesses in management. Additional actions may be taken based upon the recommendations of the independent management appraisal. The expansion of the licensee's responsibilities by MPQAD and the employment of an overviewer to monitor implementation of the CCP actions have improved the licensee's capabilities in the quality assurance area. In view of the remedial programs currently in place at the Midland Plant, removal of the licensee from quality assurance responsibilities is not necessary to ensure safe construction of the facility. Accordingly, removal of the licensee from any of its quality responsibilities is not warranted at this time.

Should Consumers Power Company fail to rehabilitate itself under the CCP and the management appraisal, it may face revocation of its construction permit and denial of an operating license.

#### Conclusion

Based upon the staff's review of the matters set forth in the Lone Tree Council's petition, I find that there is no adequate basis at this time to

expand the scope of the CCP to include all ongoing work at Midland or to remove the licensee from managerial responsibility for quality assurance activities. The petitioners' request is therefore denied. A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).



Richard C. DeYoung, Director  
Office of Inspection and Enforcement

Dated at Bethesda, Maryland,  
this 24th day of July 1984