

Excerpts from 2ND CI Investigation

~~R. Cook~~ J. Kane
Rec'd 9/19/83
from N. Wright



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

REPORT OF INVESTIGATION

Office of
Investigations

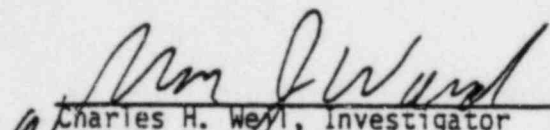
TITLE: Midland Nuclear Power Plant
Alleged Violation of Atomic Safety
and Licensing Board Order

CASE NUMBER: 3-82-061

SUPPLEMENTAL: DN 50-329; 50-330 DATE: SEP 12 1983

CONTROL OFFICE: Chicago STATUS: SUPPLEMENTAL

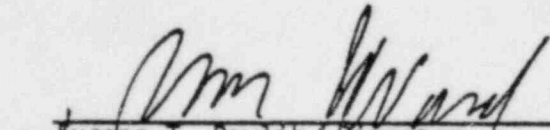
PERIOD OF INVESTIGATION: July 11-August 8, 1983

REPORTING INVESTIGATOR: 
Charles H. Weil, Investigator
Office of Investigations Field Office,
Region III

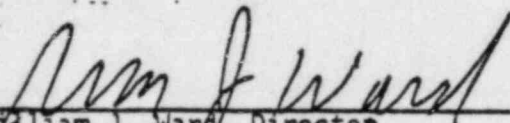
PARTICIPATING PERSONNEL: David M. Galanti, Investigator
Office of Investigations Field Office
Region III

James N. Kalkman, Investigator
Office of Investigations Field Office
Region III


Harold G. Walker, Investigator
Office of Investigations Field Office
Region III

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

REVIEWED BY:

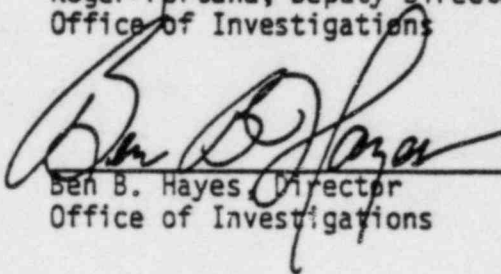


William J. Ward, Director
Division of Field Operations
Office of Investigations



Roger Fortuna, Deputy Director
Office of Investigations

APPROVED BY:



Ben B. Hayes, Director
Office of Investigations

SUMMARY

This investigation was reopened at the request of the Regional Administrator, NRC Region III, to conduct additional interviews in determining the circumstances surrounding the alleged violation of the April 30, 1982, ASLB Order requiring Consumers Power Company (CPCo) to obtain prior NRC approval before excavating in the remedial soils program at the Midland Nuclear Power Plant. Two Region III inspectors stated a former CPCo Soils Remedial Quality Assurance (QA) Supervisor alleged that his employment with CPCo was terminated when he raised the issue of CPCo possibly violating a prohibition against digging beneath the deep Q duct bank. The former QA supervisor when interviewed, however, stated he was laid off, not terminated when the remedial soils group was reorganized. The former supervisor advised though, that it was common knowledge at the Midland facility that the NRC Soils Inspector had prohibited the excavation beneath the deep Q duct bank. The Bechtel Underpinning Contracts Manager's notes of a meeting with the inspector on May 20, 1982 stated in part, "cannot proceed with excavating the pit below deep Q until NRC approval." The Underpinning Contracts Manager stated he did not remember any details of the discussion upon which those notes were based.

The signer of a memorandum recounting the events of a May 21, 1982, exit meeting with the inspector stated he was not present at the meeting and the memorandum was prepared for his signature by one of his employees. The author of the minutes of the May 21, 1982 NRC exit meeting stated the memorandum was accurate and dealt with utility protection during freezewayl activation and not the depth of utility monitoring pits. The CPCo Vice President stated he did not recall having read that memorandum. The Vice President stated he did not become distinctly aware of the memorandum until preparing for a conference concerning the alleged violation of the ASLB Order with NRC Region III in August 1982. The CPCo Executive Manager stated he attended both meetings in May 1982 and he did not recall the inspector making a statement prohibiting the excavation beneath the deep Q duct bank. The Executive Manager stated although he was a recipient of the memorandum of the May 21, 1982 meeting he did not specifically recall reading those minutes.

The CPCo Midland Construction Manager advised he was not responsible for the soils remedial work and only had a general knowledge of the soils remedial work including the freezewayl crossing of the deep Q duct bank. The Site Construction Manager did not recall the memorandum of the May 21, 1982, meeting with the inspector. The Superintendent of the Plant Assurance Division stated he did not recall attending the May 21, 1982 meeting. The Superintendent stated he was listed to receive a copy of the memorandum of the meeting, but soils remedial work was outside his area of responsibility and he discarded the memorandum. The CPCo Midland Project Office Engineer recalled attending the May 1982 meetings and recalled receiving a copy of the memorandum of the May 21, 1982 meeting. He recalled he read the minutes of the meeting, approximately one week after issuance, but the minutes did not mean anything to him.

Others interviewed stated no one, including the former QA Supervisor, raised the issue that CPCo was in violation of the inspector's prohibition against excavating beneath the duct bank. The Superintendent of Underpinning Verification reviewed his notes of a May 20, 1982 meeting held in preparation for an NRC exit meeting the following day. These notes stated in part, "no further deepening of the deep duct bank until NRR concurrence..." The Verification Superintendent stated his notes meant that the method of accomplishing the impervious zone beneath the deep duct had not been approved.

The Planning and Scheduling Section Head produced copies of weekly Soils Schedule Status Reports addressed to the inspector with Short Term Action Plans attached. The June 23 and 26, 1982, Short Term Action Plans were marked "*Complete Deep Q Duct Bank, *Relocate Fire Protection Pipeline" with the asterisk explained on the bottom of the page by the statement, "*NRC Review Required." The Soils Remedial Section personnel responsible for approving permits for excavations stated they either did not use the Short Term Action Plans in approving permits, or they did not recall seeing the plans. The inspector stated he only used the action plans and status reports to schedule his inspections.

The Midland Project Office Engineer advised he was responsible for the Short Term Action Plans, and the NRC review required for "Complete Deep Q Duct Bank" meant to him that the backfill had not received NRC approval. The engineer further stated the asterisk denoting "NRC Review Required" did not mean the entire work activity had not been approved, rather "some element" still needed NRC approval. The engineer advised the NRC review required for "Relocate Fire Protection Pipeline" meant to him that CPCo was waiting for NRC approval. The engineer stated the asterisk for "NRC Review Required" before "Relocate Fire Protection Pipeline" had been omitted in error as "somebody screwed-up in part, myself" in preparing the July 7, 1982 Short Term Action Plan. Additionally, the Project Office Engineer stated it was the Soils Remedial Section Head's responsibility to know the status of NRC approvals before approving a construction activity.

DETAILS

Purpose of Investigation

The purpose of this investigation was to obtain additional information in determining the circumstances by which Consumers Power Company (CPCo) allegedly violated the Atomic Safety and Licensing Board (ASLB) April 30, 1982, Order amending the construction permits for the Midland Nuclear Power Plant. This Order required CPCo to receive approval from the NRC prior to beginning any excavation for soils remedial work at the Midland facility.

Background

On April 30, 1983, the Midland ASLB amended the Midland Nuclear Power Plant Construction Permits "to require that the permit holder obtain explicit prior approval from the NRC Staff (to the extent such approval has not already been obtained) before proceeding with the following soils-related activities, and that these activities with the exception of those already approved by the NRC, and those that the Staff agrees are not critical, shall be controlled by a Staff-approved Quality Assurance Plan:

- (a) Any placing, compacting, excavating or drilling soil materials around safety-related structures and systems... (c) construction work in soil materials under or around safety-related structures and systems, such as field installation, or rebedding, of conduits and piping...."

On July 28, 1982, NRC Inspector Ross B. LANDSMAN was at the Midland plant and found CPCo had excavated beneath the "deep Q duct bank" without receiving prior approval from the NRC as required by the April 30, 1982, ASLB Order. On August 4, 1982, LANDSMAN was again at the Midland site and found CPCo had excavated for the relocation of a fire protection pipeline without first receiving the required NRC approval.

The Office of Investigations was requested by the NRC Region III Administrator to determine the circumstances in which CPCo allegedly violated the April 30, 1982, ASLB Order by excavating beneath the deep Q duct bank and the fire line relocation. The investigation was conducted during the period January 3 through March 30, 1983 and reported in a Report of Investigation, dated June 2, 1983. On July 8, 1983, the Region III Regional Administrator requested the investigation be reopened to conduct additional interviews concerning meetings between the NRC Staff and CPCo at the Midland site during the period May 19 through 21, 1982. Notes and minutes of these meetings were made by CPCo or Bechtel Power Corporation (BPC) employees at the time of the meetings and were incorporated as Attachments 8 and 9 of the June 2, 1983 Report of Investigation. The Regional Administrator also requested the Office of Investigations interview John L. DONNELL, formerly a soils remedial inspector at the Midland facility, whose employment was allegedly terminated for notifying CPCo of LANDSMAN's prohibition against excavating below the deep Q duct bank.

Interview of BPC Underpinning Contracts Manager

On July 12, 1983, John F. FISHER, Bechtel Underpinning Contracts Manager, was interviewed by Investigators J. N. KALKMAN and C. H. WEIL in the presence of CPCo Attorney J. E. BRUNNER. BRUNNER was present at FISHER's request.

On May 20, 1982, he attended a meeting at the Midland site with the NRC and CPCo soils remedial staffs. FISHER stated he did not remember the details of the discussions; however, he did recall NRC's Joseph KANE was concerned with point loading in Monitoring Pit No. 4 (the deep Q duct bank). FISHER recalled the discussions during this meeting surrounded the type of backfill to be used in Pit 4.

FISHER reviewed his handwritten notes of the May 20, 1982 meeting (Attachment 5). Paragraph A4 of FISHER's handwritten notes stated, "Pit No. 4 backfill is questioned-material might have to come out because of concern in No. 2. (Backfill and Differential Settlement) We will proceed w/exposing utility and not proceed with excavating the pit below deep Q until NRC approval." FISHER stated he could not recall LANDSMAN making this statement; however, FISHER stated he did not dispute the statement was made since it was in his personal notes. FISHER noted portions of his notes, including a portion of paragraph A4, were written in both pen and pencil. FISHER advised he did not know whether the combination of pen and pencil indicated he was using two types of writing implements while taking the notes, or whether he added the sections of the notes in ink after the conclusion of the meeting. FISHER thought it was entirely possible the sections of his notes in ink were made after the meeting and summarized the subject matter. (FISHER's notes in Attachment 5 have been marked with brackets () to indicate the material written in ink.)

FISHER stated he attended LANDSMAN's May 21, 1982 exit meeting, but he did not recall LANDSMAN making a statement that the excavation beneath the deep Q duct bank was not approved by the NRC. FISHER advised he was not a recipient of the meeting minutes of LANDSMAN's May 21, 1982 exit meeting (Attachment 6). FISHER advised he did not recall discussing the meetings or his notes of the meetings with anyone.

FISHER stated since he did not readily recall LANDSMAN's prohibition against excavating beneath the duct bank, he did not realize the possibility of violating the ASLB Order. FISHER advised it was not his or BPC's responsibility to determine if CPCo had received prior NRC approval before starting an excavation. FISHER continued, he did not attend all meetings between CPCo and the NRC and it would be entirely possible for the NRC to approve specific soils remedial work activities at a meeting he did not attend. FISHER stated it was therefore possible for work to be approved by the NRC without his knowledge.

Additionally, FISHER provided a written statement (Attachment 7).

mtg. of NRC.

5-20-82

3:15 PM

CPCs: Schaub, Murray, Meinhart, S. Bladt, Murray, He
Bulter: Fisher, Swenberg, Parise, Affifi, Kelleher
NRC: Cain, Hood, Landman

A. Monitoring Pits.

1. Presentation by J. Schaub.
2. Questions by Cain on how we are going to backfill pits that have concrete underneath or it. Concern about differential settlement @ slab & utilities.
3. CPCs will give NRC a discussion later on how pits will be backfilled. Slab @ #1 may have to come out.
4. Pit #4 backfill is questioned [- material might have to come out because of concern in no. 2. We will proceed w/ exposing utility & not proceed with excavating the pit below deep Φ until NRC approval.]
5. R. Landman will check that utility is uncovered and monitor ^{pit is before free starts.}

B. 72" Φ PIT (Repair)

1. D. Hood questioned whether the 72" Φ repair falls in the remedial Φ soil area on Dug C-45. If it does the work will be Φ . Hood questioned how we would control dewatering and its effect on Φ soil.
2. CPCs exp some free monitoring criteria (Φ) will apply to dewatering for 72" Φ operation.
3. Stop logs. will go to NRC from CPCs

C. Slope Lay-back @ shafts.

1. Schoub said it is on hold until J. Cain commences.
2. Dug was reviewed by attendees.
3. CCO. says no safety related items in area of logback.

D. Queries on what is a significant change - They have to be or should be submitted for approval. Agreed procedure - all items will be discussed with Landonan (Region 3) if R. Landonan thinks it is significant, CCO. will submit.

E. FIVE JACKING.

1. Subtotal will be sending documents to Region 3 on change to post-training standard. (This is significant)

F. R. Landonan routes resume for Resident-Geotechnical Engineers on Central Site (5 con)

G. Permanent Dewatering Wells.

1. Why aren't alarms Φ ?
2. Cain feels all monitoring is Φ . (alarms, free etc. etc.)

Interview of CPCo Executive Manager

On July 12, 1983, James A. MOONEY, CPCo Executive Manager in the Midland Project Office was interviewed by Investigators J. N. KALKMAN and C. H. WEIL in the presence of CPCo Attorney J. E. BRUNNER; the latter was present at MOONEY's request.

MOONEY advised on April 30, 1982, the Midland ASLB issued an Order requiring prior approval from the NRC before excavating in the soils remedial program. On approximately May 5, 1982, the ASLB explained to the concerned parties that verbal acceptability, followed by written confirmation, by the NRC Staff was sufficient to constitute prior approval.

On May 10, 1982, CPCo sent a letter to NRR listing areas in the soils remedial work that CPCo believed had been approved by the NRC prior to the issuance of the ASLB Order. MOONEY stated at that time NRR was the NRC's primary approval authority. MOONEY advised the May 10, 1982, CPCo letter to NRR described the areas in which CPCo felt prior approvals had been given and the reasons for feeling prior approvals had been granted.

MOONEY stated a meeting was held between CPCo and members of the NRC Staff on May 20, 1982, at the Midland Site during a lull in the Advisory Committee on Reactor Safeguards (ACRS) site tour. MOONEY advised the CPCo Staff presented changes in the soils remedial program to LANDSMAN, KANE, and Darl HOOD during that meeting. MOONEY stated the surcharging of Monitoring Pits 1, 2 and 3 was the topic of the meeting. MOONEY recalled the NRC Staff was surprised to learn of CPCo's proposed methodology for surcharging the bottom of the pits and was concerned with the possibility of differential settlement in the pits. MOONEY advised at the time of the May 20, 1982 meeting Monitoring Pit No. 4 was not surcharged. MOONEY further advised the NRC was quite concerned with the proposed method of backfilling the pit with concrete. MOONEY stated he did not remember anything being said about an excavation beneath the deep Q duct bank (Monitoring Pit No. 4). MOONEY stated the majority of the discussions at the meeting were with NRR's KANE. MOONEY stated he did not specifically "recall anything that Ross (LANDSMAN) communicated."

MOONEY stated he "did not have a recollection" of the May 21, 1982 meeting.

MOONEY stated the first time he became consciously aware that LANDSMAN may have made a statement prohibiting the excavation beneath the Q duct bank was after LANDSMAN had discovered that excavation. MOONEY advised at first he denied LANDSMAN had made the prohibition, but now does not dispute LANDSMAN's statement after having reviewed the minutes of the meetings. MOONEY reiterated he did not recall LANDSMAN specifically stating a prohibition against the excavation beneath the deep Q duct bank. After being shown the minutes of LANDSMAN's May 21, 1982 exit meeting (Attachment 6), MOONEY stated he felt he may have previously read the memorandum because he was on distribution for that memo. MOONEY stated he did not recall having read the memo.

MOONEY advised he did not leave the May 20, 1982 CPCo-NRC meeting with any concern over the excavation beneath the deep Q duct bank. MOONEY stated he specifically recalled the issue was backfilling that excavation. MOONEY stated

he did not recall LANDSMAN, or any one else, saying "do not proceed with excavating the monitoring pit." MOONEY stated the type of backfill had still not been decided upon as the pit cannot be backfilled until the heaving stops.

MOONEY stated neither FISHER nor HORN brought to his attention LANDSMAN's prohibition against digging beneath the deep Q Duct Bank. Additionally, MOONEY stated he did not recall anyone else bringing that issue to his attention. MOONEY further stated that NRR's May 25, 1982 letter approved the excavation beneath the deep Q duct bank.

MOONEY provided a written statement (Attachment 11). MOONEY's previously submitted testimony to the ASLB on the subject of the alleged violation of the ASLB Order is Attachment 12.

Drawing Review

On July 14, 1983, the drawings for Monitoring Pit No. 4 were reviewed by Investigator C. H. WEIL with the assistance of FISHER, MOONEY, and LANDSMAN in the presence of CPCo Attorney J. E. BRUNNER.

The first drawing in the sequence for Monitoring Pit No. 4 was Mergentine-Hanson Drawing No. FW-6, Rev. 0, dated November 25, 1981, title "Plan, Profile, Freezwall and Boring." This drawing was for borings in conjunction with the plan to freeze the soil beneath the duct bank. The second drawing in the sequence was Bechtel Drawing No. C-1316(Q), Rev. 0, dated February 1, 1982, titled "Yardwork, Freezwall, Plan and Profile." Sheet 7 of drawing C-1316(Q), Rev. 0, duplicated the profile sections of Mergentine-Hanson Drawing FW-6. This Bechtel drawing included different plan views.

FISHER stated during March 1982 soil boring began and the top of the duct bank was found at the 600' elevation, instead of the 610' elevation as shown in the drawing. Subsequently, Drawing Change Notice (DCN) No. 1-C-1316(Q) was issued "to provide cribbing utilities above freezwall." This DCN did not incorporate the change in the elevation of the top of the duct bank from 610 to 600 feet. Revision No. 1 to Bechtel Drawing C-1316(Q) was issued on April 9, 1982 to show the correct elevation of the duct bank at the 600' level. Note 3 of drawing revision No. 1 stated "cribbing No. 4 shall be excavated to impervious material and backfilled with lean concrete-no monitoring or surcharge is req'd." Note 4 to drawing revision No. 1 stated "temporary cribbing shall be designed and constructed by either subcontractor at safety-related water lines and Duct Banks shown on Table 1. Design shall be reviewed and approved by field engineering."

The next drawing in this sequence was Mergentine Drawing F7220-C195-58-2, M-2, Revision 0, for Monitoring Pit No. 4. This drawing was approved by Bechtel on April 9, 1982 and showed the top of the clay at 586' level, the bottom of the duct at the 598' level and the top of the duct at 601' elevation. Revision No. 1 to the drawing was approved by Bechtel on April 22, 1982. Revision No. 1 showed the sheet pile pit stopped at elevation 580', or 5' below the clay line. The bottom of the duct bank was listed at 598' level, the top of the clay at the 586' level and the sheet pile to be driven to the 580' level. Revision 2 of this drawing was approved by Bechtel on April 27, 1982 and refined the engineering notes. Revision No. 3 was approved by Bechtel on April 30, 1982, to show the "wale" elevation. Revision No. 4 was submitted by Mergentine on May 19, 1982 and received by Bechtel on May 20, 1982. Revision 4 was approved by Bechtel on May 21, 1982. Revision 4 divided drawing F7220-C195-58-2 into two sheets. Sheet No. 2 indicated the same depths as the previous revisions. LANDSMAN stated he may have previously seen Revision 4, Sheet No. 2; however, LANDSMAN was not certain he had seen any of the revisions prior to Revision 4. Sheet No. 2 of the drawing was revised on June 18, 1982 without changing any of the detail information pertaining to Monitoring Pit No. 4.

MOONEY stated he was aware of these changes as they were taking place. MOONEY stated KANE was shown the drawing on May 20, 1982 to explain the concept change for using lean concrete as a backfill. MOONEY advised these drawings have never been formally submitted to NRC.

Interview of MPQAD Superintendent of Underpinning Verification

On July 19, 1983, Robert E. SEVO, BPC Superintendent of Underpinning Verification-MPQAD, was interviewed by Investigator C. H. WEIL in the presence of RIII Inspector Bruce L. BURGESS and CPCo Attorneys J. E. BRUNNER and V. P. PROVENZANO.

SEVO recalled LANDSMAN had been called to the Midland facility to inspect the deep Q duct bank before CPCo could activate the freezeway. SEVO stated he did not have the responsibility for ensuring that NRC approvals had been obtained prior to beginning an excavation. SEVO advised it was SCHAUB's and MOONEY's responsibility to insure NRC approval had been obtained prior to starting an excavation.

SEVO advised he was responsible for preparing and reviewing design drawings, procedures, and inspection plans. In that position SEVO learned of the need to stop the water flow beneath the deep Q duct bank by excavating to impervious ground beneath the duct bank. SEVO advised through QA planning he was aware of the need for a "sheeted pit" down to the duct bank. He stated he was also aware of a concern with "recharging" the zone below the deep Q duct bank; however, SEVO stated he did not know the detail changes to the excavation below the duct bank. SEVO noted that during this time frame there were many changes to the design and this included many discussions with NRR.

SEVO described the deep Q duct bank excavation as opening the ground to the depth of the duct bank, driving sheet piling, and observing the soil conditions at that level. SEVO advised by exposing the duct bank CPCo could inspect and determine the solution to the problem. CPCo could then prepare a plan for submission to the NRC. SEVO continued, from the duct bank level the excavation would be deepened to impervious ground. SEVO stated he did not know when discussions occurred or when the decision was made to deepen the duct bank. Additionally, SEVO advised he did not know when the excavation beneath the duct bank to deepen the duct bank began. SEVO stated he never personally inspected any of the excavation activities for the deep Q duct bank.

SEVO stated he did not recall attending LANDSMAN's May 21, 1982 exit meeting. SEVO was shown a copy of the minutes of that meeting (Attachment 6) and SEVO noted he was not in attendance. However, he was on the distribution list for that memorandum. In reviewing the memorandum during the interview, SEVO stated he did not feel that LANDSMAN's comments concerning the deep Q duct bank implied a prohibition against further work. SEVO stated "on that day we would not go to the deepening of the deep Q duct bank." SEVO stated, the point he was making was that LANDSMAN's statement applied only to "that day." SEVO stated LANDSMAN's inspection prior to freezeway activation included the deep Q duct bank excavation and in approving the freezeway activation LANDSMAN approved the duct bank excavation.

SEVO advised he usually attended the weekly job site soils remedial meeting on Fridays. SEVO stated that from attending those meetings he was aware NRR may not have approved the additional excavation at the time of the work. SEVO stated he believed NRR, CPCo, or BPC had not finalized the plans for the deep Q duct bank at the time of the additional excavation due to design and

geotechnical considerations. With further questioning in this area, SEVO stated only construction status, schedules, and designs were discussed at the Friday meetings and not the status of NRC approvals. SEVO stated he did not know the status of NRC approvals. SEVO further stated he came to this opinion based on his conversations with job site personnel. From these conversations SEVO formed his opinion that at the time the freeze wall was activated any additional work on the duct bank pit was acceptable to the NRC. SEVO did not recall with whom he had had the conversations. SEVO also stated he had learned LANDSMAN was at odds with NRR concerning the geotechnical issues; however, SEVO could not provide any specific information on the geotechnical issues. Additionally, SEVO stated no one ever mentioned NRC hold points on the deep Q duct bank excavation at the Friday scheduling meetings. SEVO advised he did not attend any other meetings where utility protection was discussed and he never spoke to LANDSMAN about the duct bank excavation.

SEVO provided a written statement (Attachment 16).

SEVO's personal notes and files were reviewed. One set of notes, beginning "PIPR 6A and 6B need updating for NRC review," dated May 20, 1982 stated in part, "NRC Exit Meeting 9 a.m. tomorrow...for activation next...No further deepening of the deep duct bank until NRR concurrence after...Deep duct bank opened up to allow (illegible) start (illegible)..." SEVO stated he did not remember when or where the meeting recorded in his notes took place. SEVO thought it may have occurred on the afternoon of May 30, 1982 at approximately 3 or 4 p.m.; however, SEVO thought it was possible the meeting started earlier or later. SEVO thought his notes of May 20, 1982 may have dealt with a meeting being held preliminarily to the NRC exit meeting scheduled for the next day. SEVO stated the words in his notes meant the method of accomplishing the impervious zone beneath the deep duct bank had not been approved. SEVO stated he did not know who else attended the meeting although there was a notation about SCHAUB. SEVO thought that note may have meant to talk to SCHAUB about another matter. SEVO stated that had he thought there was a problem with NRC approval not having been obtained before beginning the excavation to deepen the duct bank he would have contacted CPCo, probably SCHAUB. These notes are appended as Attachment 17.

SEVO's notes (both handwritten and typed) for "Remedial Soils Meeting of 5/21/82" were reviewed. SEVO stated that after refreshing his memory with his notes he believed the topic of discussion had been freeze wall activation. A portion of those notes states "target * freeze activation on Wednesday, May 26, 1982. * Pit 4 critical. Dr. LANDSMAN here on Wes. Clear space duct bank...Brien PALMER * have QA (Chuck and other) look at all pits for any quality concern before Dr. LANDSMAN looks at them (play LANDSMAN)..." SEVO's notes of the May 21, 1982 meeting are appended as Attachment 18.

Another document in SEVO's file was a May 11, 1982, letter from SCHAUB to Allen J. BOOS, BPC Assistant Project Manager (Attachment 19). This memorandum, titled "Soils Remedial Work-Response To ASLB Order," stated in part, "memorandum Serial 14794 dated May 11, 1982, which provides a schedule of activities which we believe are covered by the April 30, 1982 ASLB order in which we anticipate receiving authorization to proceed from the NRC in the near future is attached for your information..." Attached to this memorandum was

the referenced Serial 14794, same title, from D. F. RONK to J. R. SCHAUB and J. A. MOONEY. RONK's memorandum stated in part, "the April 30, 1982 ASLB Order requires explicit approval from the NRC staff before proceeding with certain soils related activities....We met with representatives of Bechtel and Margentime to detail the work covered by the Order intended to be initiated within the next three months. The attached schedule summarizes that work and could be used as a outline for a meeting with the NRC to obtain concurrence to proceed with the affected work...I understand that we will not be submitting this package to the NRC for several days pending receipt of the limited receipt on some work..." An attachment to RONK's memorandum stated, "Work Areas Addressed in Order Which are Proposed to Receive Explicit NRC Authorization to Proceed...2. Dewatering-auxiliary building, a. Utility Protection Pits, 1. Deep Q Duct Bank." The Remedial Soils Details Schedule dated May 11, 1982, was also attached to RONK's memorandum. Zone 51 Deep Q Duct Bank Monitoring Pit in that schedule contained detailed scheduling information pertaining to the monitoring pit.

Also found in SEVO's files were several issues of meeting notes for the Remedial Soils Weekly Schedule Review Meeting. (A full set of these meeting notes were obtained and were reviewed elsewhere in this report.) Additionally, SEVO had a file he had titled NRC Exception List. SEVO's NRC Exception List was reviewed and did not disclose any information identifiable with the deep Q duct bank excavation.

From Testimony of James A. Mooney & R.M. Wheeler Concerning
the Alleged Violation of the April 30 ASLB Order & The March, 1982 Cable-Pulling Incident

below the duct bank and installing a plug, either of clay or concrete, which would serve in place of the freezeway at that location.

At the May 20 meeting, the NRR representatives expressed concern with the manner in which the Company would permanently backfill the excavation around the duct bank, as well as excavations made to monitor the heaving of soil at other locations. NRR was concerned that concrete would be harder than the surrounding soil and therefore might cause differential settlement if left there permanently. Discussions relating to this permanent backfill question were not completed at this meeting, but to my knowledge, no one from the Company understood NRR's concern as relating to the excavation, as opposed to the permanent backfill. This point is highly relevant, since the Company would not have permitted this excavation to proceed if we believed NRR had technical problems with it.

After this issue was raised in Dr. Landsman's memo, I was advised that Mr. John Fischer, a Bechtel employee, had personal notes of the May 20, 1982, meeting indicating that the Company would not proceed with excavating the pit below the duct bank "until NRC approval." I do not remember such a commitment being made at the meeting, nor do I recall anyone from the Staff requesting such a commitment. However, I do not dispute that the statement apparently was made at the meeting.

When I left the May 20 meeting, I understood the need for further contact from NRR on the backfill, but felt that the

Company and NRR were in agreement on the excavation itself.
However, quite apart from my understanding of the meeting, NRR
gave explicit approval for the excavation in a letter dated
May 25, 1982, four days after the meeting. The May 25 letter
states that excavations directly beneath the deep-Q duct bank had
been approved. The letter also makes a clear distinction between
excavating and backfilling, which at the time served to confirm
my understanding of NRR's concerns.

I had further discussions with representatives of NRR on this matter at a soils audit held July 27-30, 1982, at Bechtel's Ann Arbor office. As my notes and the NRC meeting summary, dated November 12, 1982, indicate, discussion at this audit once again focused on the backfill and did not relate to the excavation itself. At the audit, NRR again advised the Company that a report was necessary prior to permanently backfilling any of the excavation pits. No such condition was placed on excavating soil.

Q5. Mr. Mooney, do you have anything to add on the fireline relocation question?

A5. Mr. Wheeler explains his basis for believing this work had been approved. The fireline relocation job, while clearly falling within the scope of the April 30 Order, was only ancillary to the soils remedial work. That is not to

Interview of Midland Project Office Engineer

On July 12, 1983, John R. SCHAUB, Engineer in the Midland Project Office was interviewed by Investigators J. N. KALKMAN and C. H. WEIL in the presence of CPCo Attorney J. E. BRUNNER.

SCHAUB stated he recalled seeing the memorandum of LANDSMAN's May 21, 1982 exit meeting (Attachment 6) within approximately one week of the meeting. SCHAUB stated nothing in the memorandum was inconsistent with the meeting. SCHAUB stated he did not recall LANDSMAN making a statement at that meeting that CPCo was not authorized to excavate beneath the deep Q duct bank. SCHAUB stated he recalled the discussions surrounded the use of concrete as backfill for the monitoring pits and most of the discussion was addressed to NRR's Joe KANE. SCHAUB stated he recalled KANE was asked if CPCo could proceed with the excavation, using concrete at CPCo's risk. SCHAUB stated KANE did not approve the use of concrete but did allow CPCo to proceed at its commercial risk. SCHAUB declined to provide a written statement. Attachment 14 is the Report of Interview. 15

Report of Interview
John R. SCHAUB
July 12, 1983
Midland, Michigan

On July 12, 1983, John R. SCHAUB, Engineer in the Midland Project Office was interviewed by Investigators J. N. KALKMAN and C. H. WEIL in the presence of CPCo Attorney J. E. BRUNNER.

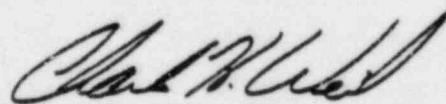
SCHAUB stated he recalled attending a meeting with the NRC Staff at the Midland facility on May 20, 1982. During this meeting the four utility monitoring pits were reviewed. The bulk of their discussions centered around Monitoring Pit No. 4 for the deep Q duct bank freewall crossing. CPCo discussed the use of concrete as backfill in this pit and this was met with objections by the NRC Staff. NRE's Joe KANE would not approve the use of concrete as a backfill material. SCHAUB recalled asking KANE if CPCo could proceed at their commercial risk and install the concrete as backfill knowing that at a later date KANE may not approve the concrete and it would have to be removed. SCHAUB recalled that LANDSMAN's participation was limited at the May 20, 1982 meeting as KANE was the principal speaker.

SCHAUB stated he also attended a May 21, 1982 meeting with LANDSMAN at the Midland site. SCHAUB advised he did not recall LANDSMAN making any statements prohibiting the excavation beneath the deep Q duct bank. SCHAUB recalled talking to LANDSMAN about freewall activation and LANDSMAN indicated he wanted to be able to see under the duct bank before approving the freewall activation.

SCHAUB stated he recalled seeing the memorandum of the May 21, 1982 meeting with LANDSMAN (Attachment 6.) SCHAUB thought he saw the memorandum approximately one week after its issuance and in reading the memorandum did not recall anything significant from the meeting.

SCHAUB stated no one at the Midland site raised a question of whether LANDSMAN had prohibited the excavation beneath the deep Q duct bank while the work was in progress.

SCHAUB stated he would not make a written statement. When questioned on this point SCHAUB stated "it's sound personal advice to myself."



Charles H. Weil, Investigator
Office of Investigations Field Office
Region III

OI Initial Investigation

Results of Interview with John R. SCHAUB, January 12, 1983

On January 12, 1983, John R. SCHAUB, Engineer in the Midland Project Office, provided the following information to Investigator C. H. WEIL in the presence of CPCO Attorney J. E. BRUNNER:

On May 20, 1982, a meeting was held at the Midland site with NRC's Darl HOOD, Joseph KANE and LANDSMAN. This meeting concerned the remedial soils work at the Midland Plant, including an excavation beneath the deep Q duct bank. A part of the discussion was a January 6, 1982 letter (Attachment 14 to the Report of Investigation from CPCO to the Office of Nuclear Reactor Regulation. Figure 7 of that letter indicates an excavation of one foot beneath the duct bank.)

CPCO's original plan called to dig under the duct bank and angle the freeze wall beneath. CPCO encountered a problem because the hole beneath the duct bank was not sufficient and could not freeze. The new plan was to dig approximately ten feet deeper to clay and refill beneath the duct bank with "some material." Their objective was to use a solid material to stop the water flow beneath the duct bank. They discussed the use of concrete or clay, but did not come to a final decision of the material to be used. CPCO asked KANE if CPCO could proceed with the excavation and use concrete backfill. SCHAUB understood KANE approved the use of concrete at CPCO's commercial risk.

SCHAUB did not hear again of the deep Q duct bank until July 29, 1982. On July 29, he was at Bechtel Power Company's offices in Ann Arbor, MI, for an NRC audit by KANE. While in Ann Arbor, SCHAUB received a telephone call from the Midland site. He was told LANDSMAN was objecting to the excavation beneath the duct bank and SCHAUB was questioned if the material to be used in the deep Q duct bank had changed since the May 20 discussion. SCHAUB thought LANDSMAN's objection was the backfill, not the excavation. SCHAUB talked to KANE and asked KANE if there were problems with using concrete in the duct bank excavation, recognizing this would be done at CPCO's commercial risk. A decision on the use of concrete was not made.

SCHAUB stated CPCO was not under any obligation from any source to get prior approvals for excavation before the April 30, 1982, Midland ASLB Order. With the issuance of that Order it was his understanding that when NRR gave approvals construction could proceed. SCHAUB felt the freeze wall and bridging of the utilities had been approved by NRR prior to the issuance of the Order. SCHAUB recalled the deep Q duct bank excavation had been discussed at one of LANDSMAN's exit meetings, but did not think LANDSMAN had made a point concerning the duct bank.

SCHAUB stated he did not have any involvement with the relocation of the fire line.

SCHAUB declined to provide a written statement.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Jo Kane

October 5, 1983

Charles Bechhoefer, Esq.
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. Jerry Harbour
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Frederick P. Cowan
Administrative Judge
6152 N. Verde Trail
Apt. B-125
Boca Raton, Florida 33433

In the Matter of
CONSUMERS POWER COMPANY
(Midland Plant, Units 1 and 2)
Docket Nos. 50-329 OM & OL and 50-330 OM & OL

Dear Administrative Judges:

Enclosed is a copy of a memorandum from Ben B. Hayes, Director, Office of Investigations, to James G. Keppler, Regional Administrator, Region III, dated September 12, 1983 which transmitted a copy of the supplemental Office of Investigation (OI) report concerning the alleged violation of the Board Order. The transmittal memorandum was not released at the same time as the report because OI permission was required, and their permission was only recently granted.

This letter also serves as formal notice of the delivery of copies of the supplemental OI report to the Board and the parties during the week of September 12, 1983. The other persons named on the service list shall receive a copy of this report with this letter and the transmittal memorandum discussed above.

Sincerely,

Donald F. Hassell
Donald F. Hassell
Counsel for NRC Staff

Nathene A. Wright
Nathene A. Wright
Counsel for NRC Staff

Enclosures: As stated

cc w/enclosures: See page 2

~~63-14130014~~ 2pp

cc:

Frank J. Kelley
**Ms. Mary Sinclair
Ronald G. Zamarin, Esq.
James E. Brunner, Esq.
James R. Kates
Wayne Hearn
Myron M. Cherry
T. J. Creswell
Steve J. Gadler
*Frederick C. Williams
Samuel A. Haubold, Esq.
Howard A. Levin

Steward H. Freeman
Michael I. Miller, Esq.
Alan S. Farnell, Esq.
**Ms. Barbara Stamiris
**Wendell H. Marshall
Paul C. Rau
Peter Flynn
*Atomic Safety & Licensing Board
Atomic Safety & Licensing Appeal Panel
*Lynne Bernabei
Docketing & Service Section

- * OI Supplemental Report hand-delivered
- ** OI Supplemental Report sent by express mail