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STATEMENT OF BILLIE PIRNER GARDE
GOVERNMENT ACCOUNTABILITY PROJECT

ON THE

MIDLAND NUCLEAR POWER PLANT

WASHINGTON, D.C.

April 25, 1984

Citizens Clinic for Accountable Government
Government Accountability Project
1901 Que Street, Northwest
Washington, D.C. 20009
Telephone: 202/232-8550

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PDR FOIA
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My name is Billie Pirner Garde. I am the Citizens Clinic Director of the Government Accountability Project.

I appreciate this opportunity to speak to you today about the Midland Nuclear Power Plant--a project which I have monitored for over the past two years.

I. BACKGROUND

GAP is a public interest investigative law firm in Washington, D.C. The purpose of its program is to broaden the understanding of the vital role of the public employee in preventing waste and corruption, to offer legal and strategic counsel to whistleblowers, to provide a unique legal education for law students, to bring meaningful and significant reform to the government workplace, and to expose government actions that are repressive, wasteful, or illegal and that pose a threat to the health and safety of the American public

Presently the Project provides a program of multi-level assistance for government employees who report illegal, wasteful or improper actions by their agencies. GAP regularly monitors governmental reforms, offers expertise to Executive Branch offices and agencies, and responds to requests by Congress and state legislatures for analysis of legislation to make government more accountable to the public.

GAP also includes a Citizens Clinic for Accountable Government. The clinical program, modeled after GAP's successful Legal Clinic, assists and instructs citizens groups and individuals who seek to uncover government misconduct, monitor government investigations or force regulatory agencies to

recognize significant public health and safety dangers. It is the Citizens Clinic, with GAP investigators, that has adopted the Midland case.

Since its inception, GAP has seen the adverse effect of misdirected government investigations on whistleblowers and communities. Large institutions that are the focus of investigations--whether they be a public utility ignoring safety issues, government contractors bilking the taxpayers, a factory polluting a neighborhood, or a government agency controlled by corrupt private interest--will "clobber" the community or public interest groups with the conclusions of any official probe that does not clearly prove wrongdoing. An inconclusive result gets translated by public relations departments of the institution that is the subject of the probe into "total exoneration." In the wake, are often left cynical, intimidated, harassed, and sometimes broken victims who had the audacity to challenge a local power structure.

Public interest or community groups can sometimes reverse the result, but it is an incredible uphill struggle. As word of its accomplishments has gotten out, individuals and citizen-oriented groups have sought GAP consultation. Often those requests focus on how to force local and state governments to confront major community problems, how to monitor government efforts once initiated, how to encourage agencies to take effective and appropriate action, and how to turn white-washes into exposes. It is this skill that GAP and the Clinic was asked to bring to Midland.

Since 1975, GAP has provided legal and other assistance to those who blow the whistle on fraud, waste, mismanagement and health and safety hazards. In fact, since 1979, we have legally represented nearly 130 such individuals.

II. FEBRUARY 10, 1984 10 CFR 2.206 SUPPLEMENTAL PETITION

Pending before this Commission is a February 10, 1984 supplemental petition, filed pursuant to 10 CFR 2.206. Our supplemental petition requested that the Commission itself take review of the Director's Decisions which have been issued by Mr. Richard C. De Young regarding the Midland nuclear power plant.¹ We request in that petition that the Commission:

- (1) Require that all ongoing activity, including the "soils work" be included under the Order of Modification of Consumer's Power Company's (CPCo) construction permit for the Midland Plant. (Petition, page 13-15.)
- (2) Remove CPCo from managerial responsibility of the QA/QC function at the Midland plant, replacing them with an independent third-party with the responsibility to report simultaneously to both the NRC and CPCo. (Petition, page 20-22.)

In support of those requests we highlighted some of the more recent problems which have plagued the Midland project and the Midland regulatory program.

The reason that we made the supplementary request is because we have no confidence in the ability or willingness of Consumers' Power Company to heal itself.

More importantly, we have lost faith in the key NRC decisionmakers' judgment to discern critical points in the inspection and enforcement process of this plant.

¹ Director's Decisions 83-16 and 84-02 issued in response to the June 13, 1983 Petition ("Petition") to the Commission on behalf of the Lone Tree Council and other concerned citizens.

III. MANAGEMENT BREAKDOWN

Those problems represent a continuation of a managerial attitude that simply cannot be accepted by this Commission if voluntary disclosure of problems is to be a cornerstone of safe nuclear power.

Consumers' Power Company, its Midland project, and its regulatory history should be an embarrassment to this Commission.

This is a multi-billion dollar nuclear plant that no one wants or needs. It is an engineering nightmare, a financial disaster, and a construction boondoggle. It is a political headache, and a regulatory muddle.

The NRC staff would like you and the public to believe that the cause of Midland's problems are a mystery. Both the staff and the utility would like you to believe that regardless of the cause of the problems -- as yet undetermined, or the extent of the problems -- as yet unknown, everything is under control at the Midland project.

Only a fool would believe that. The project is out of financial, regulatory and construction control.

It is CPCo's regulatory manipulation that GAP wishes to insure the Commissioners are aware of. I understand that the Commission resists interfering in the day-to-day operations of the staff. However, when the actions of certain factions of the staff have the effect of erasing a several hundred thousand dollar regulatory effort, it is incumbent upon you to demand some accountability of your staff.²

² The increased regulatory effort, the inspection of the Diesel Generator Building, the requirement for a management audit, the modification of the Construction Permit -- all are positive efforts. I commend both Mr. Keppler and Mr. Eisenhut
(continued on next page)

It is for this reason that we urge you to review the basis for the following staff actions:

a. Repeated reprieves by the NRC Regional Administrator

Since 1974 Mr. Keppler has given CPCo the benefit of the doubt by withdrawing or modifying his position regarding CPCo's failures in construction QA. For example, at the end of the cad welding show cause hearing (LBP73-74), Mr. Keppler stated that he had "put aside" his "serious reservations" about their past performances because he noted "a very discernible change over the past several months." He specifically referenced their commitments, discussions, QA reorganization, and their changes in attitude.

Less than a year later the soils compaction problems began to occur. The new QA reorganization neither detected nor prevented the fatal soils problems.

In 1981, as part of a stipulation between Consumers and the NRC, Mr. Keppler gave his "reasonable assurance" that the soils work would be completed all right.

But by 1982, Mr. Keppler was faced with the results of the first systematic licensing appraisal (SALP) team report -- a resounding below average. He also received devastating critiques of CPCo's attitude -- argumentative, non-responsive, and devious -- from his staff.

for those efforts undertaken to discern and control the Midland problems. Further, I have nothing but respect for regional inspectors on this plant that I have worked with for the past two years. In fact, this Commission would see and hear far less of GAP and the whistleblowers if it had more inspectors of the integrity, and caliber, of Jay Harrison and Ross Landsman and the rest of the Office of Special Cases Team.

His response to the SALP report was the formation of the Office of Special Cases Team and the DGB inspection. The results of the team's inspection concluded that the QA/QC problems on site were far worse than he had thought.

However, in December 1982, he allowed the soils underpinning effort to get underway. The month after his OSC Team was recommending a shutdown of the plant because of major QA/QC problems.

In March 1983 Mr. Keppler conditioned his "reasonable assurance" on third-party overviews and extra NRC inspection efforts. Mr. Keppler told the ASLB board that he would report back on the program after it was in operation for six months. Given the setbacks in the CCP, we don't expect that to be before July 1984.

b. Continued efforts on the part of the staff to undermine the significance of the DGB problems

As mentioned in the February 10 Petition (page 3), two "final" versions of the Brookhaven report on the DGB appear. The first, Attachment A, was sent by cover letter on October 17, 1983, to the Structural Engineering Branch of the NRC. It contained five conclusions. However, by October 21, 1983 -- the date the report was publicly issued by NRR -- it contained a "sixth" conclusion. (See Attachment B.)

We acknowledge that the staff has left the record in the OM proceedings open on the DGB issue, however, work continues as if all is well with the building.

c. Continued decline in the implementation of corrective action program

Historically, Consumers' has not been able to implement any program adequately.

As far back as 1973, the original Midland licensing appeal board members felt so strongly about QA violations that the Director of Regulations pointed out that even though the Appeals Board could not take action on the IF findings --

Had the construction permit proceeding still been before our Board at the time that the results of the November 6-8 inspection were announced, it is a virtual certainty that we would have ordered forthwith a cessation of all construction activities . . . 3

CPCo's attitude has never changed. In the summer of 1982, the resident inspector wrote the following about a statement made by CPCo to the NRC regarding the insignificance of several SALP findings:

The [CPCO] statement would support removal of the license until such time as a complete purge of CPCo management has transpired and an attitude realignment has occurred to the extent that CPCo enjoys a tolerance for mediocrity commensurate with the NRC.

In the September 16, 1983 letter from Mr. Keppler to Mr. Cook transmitting the third SALP report, the following statements were made:

From my perspective your efforts to implement your Quality Control program at the Midland nuclear plant clearly were ineffective -- this was exemplified by our rating the soils and foundation functional areas as category 3 and by our identification during the DGB inspection of numerous weaknesses in the implementation of your QA program.

As recently as last month at the monthly public meeting on the Construction Completion Program and soils overview program, Stone & Webster reported that an additional 25 NCR's about inadequate crack mapping had to be issued. Jay Harrison summed up the problem with the statement:

The program is not being properly implemented -- that's the bottom line.

³ November 26, 1973 Letter from L. Manning Muntzing, Director of Regulations, re: Quality Assurance Deficiencies Encountered at Midland Facility, p. 2.

d. Staff efforts to intervene with the Public Service Commission on behalf of CPCo.

It has recently come to our attention that Mr. Keppler has planned a meeting, at the request of Consumers', with the state Public Service Commission. We do not think such a meeting is appropriate given the desperate financial straits of the Company. Essentially we would view such a meeting as stepping totally outside of the scope of the regulatory function and into the role of project advocate.

e. The Caseload Forecast Panel Exceptions (CLFP) for CPCo

As stated in the February 10, 1984 letter, the activities for last year raised serious questions as to the reliability and credibility of that function of the NRC.

We strongly urge the Commission to review the basis and explanations for last year's CLFP projections, and to convene immediately the CLFP for this year.

Finally,

f. The staff withdrawal of the recommended civil penalty

On October 19, 1983 a civil penalty Enforcement Notice 83-69 of \$100,000.00 was proposed for the '82 excavation of soil material from below the deep "Q" duct bank and subsequent fireline relocation activities in "Q" soils area. (See Attachment C.)

That action was withdrawn on October 31, 1983 and a meeting scheduled with a CPCo attorney. (See Attachment D.) The civil penalty was subsequently completely dropped -- and a management appraisal agreed to.⁴

⁴ That management audit proposal will be the subject of a public meeting May 4, 1984 regarding the inadequacy of its methodology, scope, and the lack of independence of one of the proposed auditors.

The decision violates all enforcement policies of the agency.

IV. CONCLUSION

The cumulative effect of this situation is exactly what one would expect. CPCo has been richly rewarded for learning how to thwart the commission's regulations. It has avoided civil penalties, waylaid completion forecast disclosures, circumvented NRC-issued stop-work orders, undermined regional inspectors, and used the NRC as a shield against its nervous investors.

At the same time it continues to have to be dragged kicking and screaming to an adequate independent management appraisal, and to take the highest advantage of the loophole in the reinspection program which allows CPCo to reinspect itself.

This company and its Midland plant have lost credibility on every front. Investors laugh at it, the public despises it. Editorials in all the major Michigan papers have called for abandonment. There is no money to finish it, there is no need for the electricity after it's finished, there is no customer for the steam it was built to produce. The ratepayers don't want it, the Attorney General has vowed he'll fight every penny of its inclusion in the rate base. Yet the plant inches along at a price for interest alone of over a million dollars a day.

At some point this Commission must accept part of the responsibility for this plant. We have asked you to hold your staff accountable, to close the loopholes in the Construction Completion Program, to take Consumers' Power Company out of the position of being responsible for guaranteeing the quality of the plant, of discovering its own problems, and finally to subject the soils work to the same construction permit modification as the rest of the plant.

This Commission has recently taken an expanded interest in the troubled nuclear construction projects in this country. Midland is at the head of the list. We do not believe you can adequately review this complex project with its mammoth problems without probing the root causes of those problems within the Commission itself.

Attachment A

2 of 2

BROOKHAVEN NATIONAL LABORATORY
ASSOCIATED UNIVERSITIES, INC.

Department of Nuclear Energy
Building 129

Upton Long Island, New York 11973

(516) 282-2448
FTS 6667

October 17, 1983

Dr. P.T. Kuo
Structural Engineering Branch
Room No. 550
Phillips Bldg.
US Nuclear Regulatory Commission
7920 Norfolk Avenue
Bethesda, MD 20814

Dear Dr. Kuo:

Enclosed, please find our Final Report on the Midland Project entitled "Review of Diesel Generator Building at Midland Plant".

Please note, while Professors Miller and Costantino were assigned the authorship to the report, other staff members of the Structural Analysis Division also participated during various phases of the review.

Very truly yours,

Morris Reich
Morris Reich, Head
Structural Analysis Division

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Enclosure

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The documentation of the crack analyses used to determine stresses is not sufficient. There is no calculation on record which calculates stresses in all of the walls using this method. There is also no written justification showing that the method may be used for structures like the DGB.

Concern 4: CRACK MONITORING

This concern deals with the lack of a good crack monitoring system and specification of action to be taken if the cracks exceed certain limits. As stated in Section 3.0, it is our opinion that the planned crack monitoring system is not adequate. More reliable gauges (e.g., Whitmore Strain Gauges) should be placed in areas where cracking is now evident. These gauges can be used even after crack repairs are made.

Two limits are now defined in the current crack monitoring program. If the crack width reaches .05" (Action Limit) a meeting will be held to evaluate what steps to take when the cracks reach the next limit. The next upset limit is set at .06" (Alert Limit). It is our opinion that the form of this plan is adequate, but that the specific threshold numbers must be based on a resolution of the current settlement stresses. A safety margin must be left for the other potential loading events, such as tornado or seismic loads, with the remaining allowable stress allocated to future potential settlements.

Once this limit was reached the only solution would be to make a structural repair. The exact form of this repair would depend on the location and extent of the crack which exceeded the limit. The planned response could not specify the nature of the repair, but could indicate that an exceedance of the Alert Limit would result in a structural repair rather than performing additional analyses.

5.0 CONCLUSIONS

Based on the review of the studies performed to demonstrate the adequacy of the DGB, the following conclusions are drawn:

1. The settlement data indicates that primary consolidation of the fill is completed. However, it is recommended that the anomalies in the documentation of the settlement history be resolved. (See last paragraph of Section 2.2).
2. It is unlikely that a satisfactory stress analysis can be performed based on the measured settlement data. It is recommended that settlement stresses be estimated from the crack width data. The existing work that has been done in this area must be completely documented.
3. It appears that the number of cracks in the DGB are continuing to increase. It is essential that a better crack monitoring program be established as outlined in Section 3.0.
4. The upset crack width levels specified in the crack monitoring program should be chosen so that a sufficient stress margin is available to resist the critical load combinations.
5. If the Alert Limit (in crack width) were exceeded, specific structural repairs should be mandated.

10/21/83 - DGF

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



OCT 21 1983

MEMORANDUM FOR: James P. Knight, Assistant Director
for Components and Structures Engineering
Division of Engineering

FROM: Pao-Tsin Kuo, Section Leader
Structural Engineering Section B
Structural and Geotechnical Engineering Branch
Division of Engineering, ONRR

SUBJECT: REPORT ON THE REVIEW OF THE DIESEL GENERATOR
BUILDING AT MIDLAND

NRR Task
group
rapid

- References:
1. Memo from R. F. Wanick, Region III to D. G. Eisenhut NRR/DE, "Evaluation of Dr. Landsman's Concerns Regarding the Diesel Generator Building at Midland," dated July 21, 1983.
 2. Memo from R. H. Vollmer, DE to D. G. Eisenhut, DL "Evaluation of Dr. Landsman's Concerns Regarding Diesel Generator Building at Midland," dated July 21, 1983.

Pursuant to Reference 2 above, a task group, consisting of three members of the Structural Engineering staff and a consultant team of Brookhaven National Laboratory, was formed to re-evaluate the structural design and construction adequacy of the Midland Diesel Generator Building (DGB). The group, headed by P. T. Kuo, reviewed the design review documents and the construction reports; physically inspected the building; interviewed concerned individuals, including Dr. Landsman; and prepared a final report on the adequacy of the Midland NPP Diesel Generator Building. The final report on the adequacy of the Midland DGB is enclosed.

The task group's conclusions and recommendations are summarized as follows:

1. The settlement data indicate that the fill under the DGB is well into the secondary consolidation phase so that large additional settlements are not anticipated;
2. It is judged that there is reasonable assurance that the structural integrity of the DGB will be maintained and its functional requirement fulfilled. However, it is difficult to show that the stresses in the DGB can meet the criteria of the FSAR. The stresses due to settlement were either underestimated or overestimated by the Applicant's previous analyses;

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The documentation of the crack analyses used to determine stresses is not sufficient. There is no calculation on record which calculates stresses in all of the walls using this method. There is also no written justification showing that the method may be used for structures like the DGB.

Concern 4: CRACK MONITORING

This concern deals with the lack of a good crack monitoring system and specification of action to be taken if the cracks exceed certain limits. As stated in Section 3.0, it is our opinion that the planned crack monitoring system is not adequate. More reliable gages (e.g., Whitmore Strain Gages) should be placed in areas where cracking is now evident. These gages can be used even after crack repairs are made.

Two limits are now defined in the current crack monitoring program. If the crack width reaches .05" (Action Limit) a meeting will be held to evaluate what steps to take when the cracks reach the next limit. The next upset limit is set at .06" (Alert Limit). It is our opinion that the form of this plan is adequate, but that the specific threshold numbers must be based on a resolution of the current settlement stresses. A safety margin must be left for the other potential loading events, such as tornado or seismic loads, with the remaining allowable stress allocated to future potential settlements.

Once this limit was reached the only solution would be to make a structural repair. The exact form of this repair would depend on the location and extent of the crack which exceeded the limit. The planned response could not specify the nature of the repair, but could indicate that an exceedance of the Alert Limit would result in a structural repair rather than performing additional analyses.

5.0 CONCLUSIONS

Based on the review of the studies performed to demonstrate the adequacy of the DGB, the following conclusions are drawn:

1. The settlement data indicates that primary consolidation of the fill is completed. However, it is recommended that the anomalies in the documentation of the settlement history be resolved. (See last paragraph of Section 2.2).
2. It is unlikely that a satisfactory stress analysis can be performed based on the measured settlement data. It is recommended that settlement stresses be estimated from the crack width data. The existing work that has been done in this area must be completely documented.
3. It appears that the number of cracks in the DGB are continuing to increase. It is essential that a better crack monitoring program be established as outlined in Section 3.0.
4. The upset crack width levels specified in the crack monitoring program should be chosen so that a sufficient stress margin is available to resist the critical load combinations.
5. If the Alert Limit (in crack width) were exceeded, specific structural repairs should be mandated.
6. While significant cracking has occurred in the DGB, it is our opinion that the structure will continue to fulfill its functional requirement. This conclusion is based on the fact that stresses induced in the structure by all other extreme loadings are small.

October 19, 1983

MEMORANDUM FOR: Jane A. Axelrad, Director, Enforcement Staff, IE
FROM: W. H. Schultz, Enforcement Coordinator, Region III
SUBJECT: CONSUMERS POWER COMPANY - MIDLAND PROPOSED CIVIL PENALTY

The enclosed documents proposing civil penalty action under the NRC Enforcement Policy are forwarded for your review and concurrence.

On July 28, 1982, an NRC inspector determined that the licensee had excavated soil material from below the deep "Q" duct bank and initiated fireline relocation activities in "Q" soils without prior NRC authorization. Further, the excavation of soil material below the deep "Q" duct bank was contrary to previous directives of the NRC staff which instructed the licensee that such excavation was not authorized. (OI Investigation Report No. 3-82-061) These actions violated paragraph 2.G. of the Midland Construction Permits, as amended on May 26, 1982.

Based on the Enforcement Policy, we have classified this violation as a Severity Level III and have developed the enforcement package proposing a \$100,000 civil penalty. To emphasize the severity of the violation and the need for CPCo management to ensure that steps are taken to preclude future recurrence of this violation we have concluded that a \$100,000 civil penalty is appropriate. An Enforcement Conference was held on October 11, 1983, in Region III, between Consumers Power Company and the NRC Staff to discuss the violation.

In view of the history of significant problems experienced during the construction of the Midland nuclear facility and the failure of CPCo management to prevent the recurrence of such problems, Region III is considering an Order which will require the licensee to have an independent comprehensive

8404720037 10pp.

Jane A. Axelrad

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10/19/83

Management review conducted. That proposed order will follow for your review.

W. H. Schultz
Enforcement Coordinator

Attachments:

- 1. Dft ltr to licensee w/Notice of Violation and Proposed Imposition of Civil Penalty

cc w/attachments:

James Lieberman, ELD
Regional Enforcement
Coordinators, RI, RII, RIV, RV

RIII
Gardner/db
10/27/83
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RIII
Lancaster

RIII
Harrison
10/11/83

RIII
Warnick
10/11/83

RIII
Lewis
10/11/83

RIII
Schultz
10-17-83

RIII
Davis
10/17

RIII
Keppler
10/12/83

cc w/encl:

DMB/Document Control Desk (RIDS)

Resident Inspector, R111

The Honorable Charles Bechhoefer, ASLB

The Honorable Jerry Harbour, ASLB

The Honorable Frederick P. Cowan, ASLB

The Honorable Ralph S. Decker, ASLB

William Paton, ELD

Michael Miller

Ronald Callen, Michigan

Public Service Commission

Myron M. Cherry

Barbara Stamiris

Mary Sinclair

Wendell Marshall

Colonel Steve J. Gadler (P.E.)

Howard Levin (TERA)

Billie P. Garde, Government

Accountability Project

Lynne Bernabei, Government

Accountability Project

Docket No. 50-329

Docket No. 50-330

Consumers Power Company

ATTN: Mr. John D. Selby

President

212 West Michigan Avenue

Jackson, MI 49201

Gentlemen:

This refers to the investigation conducted by the Office of Investigation during the period January 3 through August 8, 1983, of activities at the Midland Nuclear Plant authorized by NRC Construction Permits No. CPPR-81 and No. CPPR-82.

This investigation revealed that Consumers Power Company (CPCo) had excavated soil material from below the deep "Q" duct bank and initiated fireline relocation activities in "Q" soils without prior NRC authorization. Further, the excavation of soil material below the deep "Q" duct bank was contrary to previous directives of the NRC staff which instructed the licensee that such excavation was not authorized. These actions violated paragraph 2.G. of the Midland Construction Permit, as amended on May 26, 1982.

After consultation with Director of the Office of Inspection and Enforcement, I have been authorized to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$100,000 to emphasize the need for you to construct your facility in accordance with the Construction Permit. The violation in the Notice has been categorized as a Severity Level III violation as described in the General Policy and Procedure for NRC Enforcement Actions (Appendix C to 10 CFR Part 2). A civil penalty of \$100,000 is being proposed because of the significance of the management breakdown discussed above.

In your response to this letter, please follow the instructions in the Notice. Your response should specifically address corrective actions you have taken or plan to take to improve management effectiveness for ensuring that Construction Permit requirements are met. Your written reply to this letter and the results of future inspections will be considered in determining whether further enforcement action is appropriate.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

The response directed by this letter and the enclosed Notice are not subject to the clearance procedure of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, PL 96-511.

Sincerely,

James G. Keppler
Regional Administrator

Enclosure:

Notice of Violation and
Proposed Imposition of Civil
Penalty

NOTICE OF VIOLATIONANDPROPOSED IMPOSITION OF CIVIL PENALTY

Consumers Power Company
Midland Energy Center
Midland, Michigan

Docket No. 50-329
Docket No. 50-330
Construction Permit No. CPPR-81
Construction Permit No. CPPR-82
EA 83-

On July 28, 1982, an NRC inspector determined that the licensee had excavated soil material from below the deep "Q" duct bank, and had initiated fireline relocation activities in "Q" soils without prior NRC authorization. These actions violated paragraph 2.G. of the Midland Construction Permits, as amended on May 26, 1982.

To emphasize the need for the licensee to construct its facility in accordance with the Construction Permits, we propose to impose a Civil Penalty in the amount of \$100,000. In accordance with General Policy and Procedure for NRC Enforcement Actions (10 CFR Part 2, Appendix C) 47 FR 9957 (March 9, 1982), and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended ("Act"), 42 U.S.C. 2282, PL 96-295, and 10 CFR 2.205, the particular violation and the associated civil penalty is set forth below.

Construction Permits No. CPPR-81 and No. CPPR-82, paragraph 2.G.(1) and 2.G.(1)a state, in part, "The applicant shall obtain explicit prior approval from the NRC staff...before proceeding with the following soils-related activities...any placing, compacting, excavating, or drilling soil materials around safety-related structures and systems."

Contrary to the above, the licensee excavated soil material below the deep "Q" duct bank on July 23, 1982, and initiated fireline relocation activities in "Q" soils on July 27, 1982, without prior NRC authorization. Further, the excavation of soil material below the deep "Q" duct bank was contrary to previous directives of the NRC staff on May 20, 21, and 26, 1982 which instructed the licensee that such excavation was not authorized.

This is a Severity Level III violation (Supplement II) (Civil Penalty - \$100,000).

Pursuant to the provisions of 10 CFR 2.201, Consumers Power Company is hereby required to submit to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, IL 60137, within 30 days of the date of this Notice a written statement or explanation, including for the alleged violation; (1) admission or denial of the alleged violation; (2) the reasons for the violation, if admitted; (3) the corrective steps which have been taken and the results achieved; (4) the corrective steps which will be taken to avoid

further violations; and (5) the date when full compliance will be achieved. Consideration may be given to extending the response time for good cause shown. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Within the same time as provided for the response required above under 10 CFR 2.201, Consumers Power Company may pay the civil penalty in the amount of \$100,000 or may protest imposition of the civil penalty in whole or in part by a written answer. Should Consumers Power Company fail to answer within the time specified, the Director, Office of Inspection and Enforcement will issue an order imposing the civil penalty proposed above. Should Consumers Power Company elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty such answer may: (1) deny the violation listed in the Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty, in whole or in part, such answer may request remission or mitigation of the penalty. In requesting mitigation of the proposed penalty, the five factors contained in Section IV(B) of 10 CFR Part 2, Appendix C, should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate statements or explanations by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. Consumers Power Company's attention is directed to the other provisions of 10 CFR 2.205, regarding the procedures for imposing a civil penalty.

upon failure to pay any civil penalty due, which has been subsequently determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282.

FOR THE NUCLEAR REGULATORY COMMISSION

James G. Keppler

Regional Administrator

October 31, 1983
EN 83-69A

OFFICE OF INSPECTION AND ENFORCEMENT
NOTIFICATION OF SIGNIFICANT ENFORCEMENT ACTION

Licensee: Consumers Power Company
Midland Nuclear Power Plant, Units 1 and 2
Docket Nos. 50-329 and 50-330

Subject: MODIFICATION TO EN 83-69

This is to inform the Commission that the Notice of Violation and Proposed Imposition of Civil Penalty discussed in EN 83-69 was not issued on October 26, 1983. Another enforcement conference is scheduled for November 4, 1983 to discuss the excavation and fire-line relocation activities. A decision on whether to propose enforcement action will be made after that meeting.

Contact: G. Klingler, IE 24923 J. Axelrad, IE 24909

Distribution:

H St 1:20
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Comm. Roberts
Comm. Asselstine
Comm. Bernthal
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~~83-1030068~~ 831031
PDR I&E
EN-83-069A PDR 2pp

REGULATORY INFORMATION DISTRIBUTION SYSTEM (RIDS) Attachment D

ACCESSION Nbr: 831103006a DUC DATE: 83/10/31 NOTARIZED: NO DOCKET #
 FACIL: 50-329 Midland Plant, Unit 1, Consumers Power Co. 05000329
 50-330 Midland Plant, Unit 2, Consumers Power Co. 05000330
 AUTH. NAME AUTHUR AFFILIATION
 KLINGLER, G. Director's office, Office of Inspection and Enforcement
 AXELRAD, J. Director's office, Office of Inspection and Enforcement
 RECIP. NAME RECIPIENT AFFILIATION

SUBJECT: EN-83-069A: on 831020, notice of violation & proposed
 imposition of civil penalty discussed in EN-83-069 not
 issued. Enforcement conference scheduled for 831104 to
 discuss excavation & fire line relocation activities.

DISTRIBUTION CODE: IE355 COPIES RECEIVED: LTR 0 ENCL 1 SIZE: 1
 TITLE: Enforcement Notice (EN)

NOTES: IE/STONE, J. 1cy all Matl. 05000329
 IE/STONE, J. 1cy all Matl. 05000330

RECIPIENT ID CODE/NAME	COPIES LTR ENCL	RECIPIENT ID CODE/NAME	COPIES LTR ENCL
INTERNAL: IE/ES FILE 01	1		
EXTERNAL: LPDR NSIC	1	SRC PDR NTIS	1
NOTES:	1		

TOTAL NUMBER OF COPIES REQUIRED: LTR 0 ENCL 6

sdw Public Meeting 3-8-84

①

SOILS 72-75

~~Pete~~ ~~ETG~~ was sand at Bell elevation

1) Resident Engineering Document Control ✓ (controlled by Ann Arbor not construction)

if new

where was
MPGAD

do not talk to each other
site → Ann Arbor
what about
A.A.

2) underpinning construction

3) QA/QC performance

4) Field document control

5) U.S. Testing

6) crack monitoring - 25 NCR's "minor in nature"
sdw

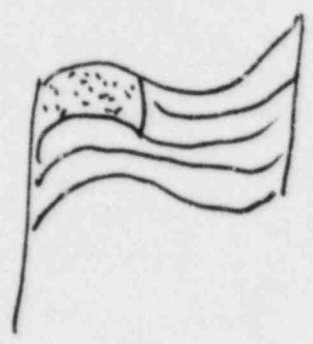
however same as before

7) welding procedures

8) work activity packages

Jim

Quality
Action
Point Program



3-5-84 CPG meeting

Stress Walkdowns → critical piping & supports

2 over 1 → see if cooling tower discharge caught
see if polar crane caught

NOTHING IN CONTAINMENT ON ROOF OF C.T.

TURNED OVER }
not closed IR → ~~QUP~~ "new" inspection status assessment → QUP
closed IR → QUP
assessment

NOT TURNED OVER }
not closed IR → status assessment → QUP
closed IR → QUP
← phase I → hold point }
Phase II

seismic Q - but not fundamentally Q

↑
Cooling tower line
should be

2/29/84

Meeting in P.D. office
on QC record function

I. QC training of cert.

II. NRS 45.2.6 Audit

18 findings

9 unresolved

findings

1. storage of records of certifications
2. LIII demonstrated PQCI planning
3. part job certifications not in files
4. LIII cert. expired - 3 wks
- * 5. LIII ^{soils} did not meet requirements # NRS-83-25-05,
6. LII did not meet certifications
7. LIII cert dates screwed up
8. P.D. questions being waived for QA personnel
9. LII cert ^{blank} form incomplete
10. Soils P.D.'s being waived - using other simulator

11. certain training not being accomplished - topical report
12. training schedule not identifying ↑
13. waiver of PQCI training not QA record
14. approval of waiver not documented
15. training records not in files
16. training references inadequate (not written yet)
17. summary at end of lesson not being done
18. NOE LIII criteria not established - how long conts good for

Unresolved

1. answers to student questions not being provided adequately
2. B3M has no provisions for recertification to PQCI's
3. LIII cert made effective 3mo. prior to certification
4. B4M allows "oral" exam for NOE
5. incorrect references in PQCI's
6. LIII ^{not required to happen} ^ QC Metrics Manual

7. ~~III~~ job limitations ~~not~~ documented on form
8. training plan for QA not adequate
9. waves of training for ^{equipment} PACE

III QC Recertifications

~~144 batched inspectors (1147 PACE) in sept 1982
 74 left
 45 recertified } 24 failed
 25 outstanding (47 PACE's left)~~

(check just the ones)

Handout 1

* inaccessible items of failed QC inspectors should be looked at

IV grinding wheel NCR

VI ten ~~thousand~~ NCR's on FCR/FCN Review