



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

September 21, 1983

MEMORANDUM FOR: Chairman Palladino
Commissioner Gilinsky
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal

FROM: James G. Keppler, Regional Administrator, Region III

SUBJECT: COMMENTS ON THE TRANSCRIPT OF INTERVIEW OF JAMES B. MCCARTEN
CONDUCTED BY ADMINISTRATIVE JUDGE HELEN F. HOYT AND
C. SEBASTIAN ALOOT, ESQ.; ZIMMER INVESTIGATION 81-13

The July 12 Report to the Chairman on Allegations of Thomas Applegate Concerning Conduct of the Office of Inspector and Auditor by Helen F. Hoyt and C. Sebastian Aloat contains as Exhibit H, the transcript of an interview with James B. McCarten, a former Region III Investigator. As stated in my memorandum to you of September 7, 1983, regarding the Hoyt/Aloat report, we believe many of Mr. McCarten's statements are irresponsible, and that we have conducted our evaluations and investigations openly and responsibly. We further stated that we would provide the Commission with our written rebuttal of Mr. McCarten's interview by September 23, 1983. This is that rebuttal.

At the request of John F. Streeter, who was Acting Director, Investigation and Enforcement Staff, Region III at the time of Zimmer Investigation 81-13, this rebuttal does not cover Mr. McCarten's accusations solely related to him. Mr. Streeter prefers to correspond with you personally regarding this matter; however, Region III believes Mr. McCarten's criticism is without merit.

We have not addressed separately each of the scores of allegations and implications contained in Mr. McCarten's statement. Rather, we have addressed in the enclosure to this memorandum the most significant issues alleged or implied. We believe that these issues cover the allegations directed at Region III.

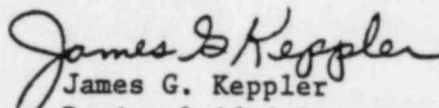
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The review performed by certain members of my staff and me in addressing these four issues has reconfirmed in our minds that Region III Investigation 81-13 was performed competently and fairly, with appropriate regard to health and safety and potential criminal considerations, and consistent with Commission investigatory practice at that time. We would be pleased to meet with you to discuss this matter if you conclude that it merits further consideration.


James G. Keppler
Regional Administrator

Enclosure: As stated

cc w/enclosure:
W. J. Dircks, EDO

REGION III COMMENTS ON THE TRANSCRIPT OF INTERVIEW OF JAMES B. MC CARTEN,
EXHIBIT H OF REPORT TO THE CHAIRMAN ON ALLEGATIONS OF THOMAS APPLGATE
CONCERNING CONDUCT OF THE OFFICE OF INSPECTOR AND AUDITOR

IT IS ALLEGED THAT REGION III DELIBERATELY INTENDED TO PERFORM AN INVESTIGATION IN A MANNER WHICH WOULD HIDE THE FACT THAT ITS PAST INSPECTIONS AND INVESTIGATIONS FAILED TO IDENTIFY SIGNIFICANT PROBLEMS AT ZIMMER (INTERVIEW AT 133, 136, 149, 155).

This allegation is clearly false for the reasons given below.

In my January 12, 1981 memorandum to Victor Stello, Jr. (Exhibit 1), I made the following recommendation:

"Because Region III's handling of the earlier investigation is the focal point of the requested investigation by MSPB and these new allegations are intertwined with the previous investigation, we recommend that pursuit of these allegations be performed independently by another Region."

Although Mr. Stello decided not to accept this recommendation and instructed me to conduct this investigation, the fact the recommendation was made should clearly demonstrate there was no intent to conduct a poor investigation or hide the fact that Region III's past inspections and investigations failed to identify significant problems at Zimmer.

An October 30, 1981 memorandum from me to Region III Division Directors (Exhibit 2) describes a program to evaluate the implementation of the reactor construction inspection program at Zimmer. The attachment to that memorandum is an October 27, 1981 memorandum from James H. Snizek to E. B. Blackwood establishing the program and its methodology. As stated in the October 30 memorandum, this program was requested by me. I believed it was important to determine the root causes for the failure of the construction inspection program to identify quality assurance and hardware problems at Zimmer. I believed this was important since it could have implications at other facilities under construction in Region III as well as facilities in other Regions. Subsequent to the establishment of this evaluation program, Region III was informed by Mr. Snizek that the program was being cancelled. Mr. Snizek believed that the reasons for the inspection program not identifying the problems at Zimmer were sufficiently understood and that further manpower expenditure would not increase this understanding sufficiently to justify the expenditure. In spite of this cancellation, my request for this evaluation program clearly indicates there was no intent by Region III to hide the fact that past inspections and investigations failed to identify significant problems at Zimmer.

It was alleged by Mr. McCarten (Interview at 148) that "Streeter was brought into Zimmer by Keppler the minute he knew he had a big problem." We read this to mean this assignment was made in an effort to assure the investigation was performed in a manner which would hide the fact that past inspections and investigations failed to identify significant problems at Zimmer.

In my January 22, 1981 memorandum to the Region III Staff (Exhibit 3), Mr. Streeter is shown as the Acting Director, Enforcement and Investigation Staff. Although this announcement (on January 22, 1981) postdates the January 5, 1981 Government Accountability Project's request to the Merit Systems Protection Board, discussions with Mr. Streeter about the proposed reassignment and decisions leading to his assignment took place prior to January 5. This reassignment was a part of a major reorganization of IE and the Regions which had been planned for some time. Thus, it is not correct that Mr. Streeter was reassigned to the position of Acting Director, Enforcement and Investigation Staff to keep any kind of a "lid" on the Zimmer investigation. In addition, Mr. Robert F. Warnick was assigned as the Zimmer Investigation Team Leader in February or March 1981. Although Mr. Streeter retained responsibility for the quality of Mr. McCarten's investigation, Mr. Warnick coordinated and was knowledgeable of all aspects of the Zimmer effort. As such, Mr. Warnick would have been aware of any attempts by Mr. Streeter to perform an improper investigation. Mr. Warnick does not believe an improper investigation occurred.

My April 29, 1981 memorandum to James H. Snizek (Exhibit 4) recommends an ASLB notification regarding the quality assurance problems identified during the ongoing Zimmer investigation. A review of this proposed notification clearly shows there was no intent to hide the problems being found in the investigation or to conduct the investigation in a manner which would hide the fact that Region III's past inspections and investigations failed to identify significant problems at Zimmer.

IT IS IMPLIED THAT RIII EMPLOYEES DELIBERATELY IMPROPERLY EDITED INVESTIGATION REPORT 81-13 SUCH THAT:

1. CONTRADICTIONS EXISTED BETWEEN THE REPORT BODY AND THE EXHIBITS (INTERVIEW AT 76).
2. THE REPORT SUMMARY AND BODY CONTAINED FALSE STATEMENTS (INTERVIEW AT 76, 79, 102, 103).
3. THE REPORT WAS TONED-DOWN, WATERED-DOWN, STERILIZED. EMPHASIS WAS REMOVED SUCH THAT PROBLEMS WERE MINIMIZED (INTERVIEW AT 76, 136).
4. SUBSTANTIVE FACTS WERE REMOVED (INTERVIEW AT 136).
5. CHANGES WERE MADE TO THE REPORT AFTER IT WAS SIGNED (INTERVIEW AT 84).
6. THE REPORT DID NOT REFLECT INFORMATION IN THE FILES WHICH SHOWED HARDWARE PROBLEMS (INTERVIEW AT 99).
7. THE REPORT WAS SIGNED (BY MCCARTEN) UNDER VERBAL PROTEST (INTERVIEW AT 77).

Neither the Hoyt/Aloot report nor the McCarten interview transcript provided us with sufficient specific information such that we could review the bases for the above comments. Even though these specifics are lacking, a response to these implications is provided below.

We are not aware of any substantive information in our files which was omitted from or contradicts statements made in Report 81-13 or the draft report submitted to the Commission for review prior to release of the final report. It should be noted that, due to comments made by the Commission, Mr. McCarten, and others, changes were made to the report prior to issuance. As indicated in the report, some issues were yet to be investigated and therefore were not included. Information which we had developed at that time reflecting hardware problems is detailed in the report, and was discussed with the Commission and the public. It is true that at that time, based on our inspection/investigation and a limited program of independent measurements, we believed the majority of problems were largely programmatic in nature.

We are unaware of any false statements made to the Commission or to the public or in Report 81-13, and believe this allegation to be without basis. During the editing process, reviews were conducted to assure that the body of the report was consistent with the exhibits. The final review was performed with Mr. McCarten's involvement.

Significant editing was performed during the production of Report 81-13, especially the sections authored by Mr. McCarten. Some of this editing was necessary to assure objectivity, correct errors, correct grammatical usage, improve readability, and revise to an acceptable format. RIII took precautions to assure that any modifications to the report were reviewed by each author. Mr. McCarten had the opportunity to review the report at various stages, including prior to issuance.

During a meeting held at Headquarters on October 27, 1981 Mr. McCarten stated he felt that the latest draft of the report was deficient in that the "tone" of some interview summaries had been changed. The "tone" of an interview, as referred to by Mr. McCarten, pertained to comments made by interviewees such as "this plant is all screwed up," (as noted by McCarten on interview page 75). Such comments had been deleted from interview summaries as irrelevant to a summary. Of course, such comments in the written statements attached to the report were not deleted.

Following Mr. McCarten's comment, he was requested to again review the report and propose any changes he felt were necessary to assure the report was accurate. Mr. McCarten and his supervisor then agreed on the changes to be incorporated.

The OIA interview of William Schwiers, former Cincinnati Gas and Electric Quality Assurance and Standards Manager, was received in RIII from OIA via facsimile, and was the only OIA interview received in time for inclusion in Report 81-13. When the complete package of OIA interviews was received on November 20, 1981, the RIII Deputy Director directed that an immediate review of the package be conducted to determine if it contained any information which contradicted the findings in Report 81-13, which was ready for issuance. This review did not identify any contradictions, and the remaining interviews were not included in Report 81-13, but were to be considered during the ongoing investigation.

Investigation Report 81-13 was routed and signed by participating personnel well before issuance, in order to give office and site personnel an opportunity for review. Although Mr. McCarten did make comments on the style and format of the report, he stated that the sections with which he was involved were factually correct, and he signed the report without coercion. Mr. Streeter documented the report signature/review sequence by memo of November 23, 1981 (Exhibit 5). All substantive changes made to the report after it was signed were discussed with the inspectors or investigators to assure that they concurred.

IT IS ALLEGED THAT I OVERRULED MY INSPECTORS' RECOMMENDATIONS TO SHUT DOWN THE ZIMMER PROJECT BECAUSE IT WOULD BRING ATTENTION TO THE POOR PERFORMANCE OF REGION III IN PERMITTING SIGNIFICANT PROBLEMS AT ZIMMER TO HAVE GONE UNRECOGNIZED. IT IS ALSO ALLEGED THAT I FEARED THAT IF THE PROJECT WERE SHUT DOWN IT WOULD NEVER BE RESTARTED AND THAT A SHUTDOWN WOULD MAKE APPLGATE LOOK LIKE A HERO (INTERVIEW AT 52-55).

Near the end of March 1981, most of the RIII inspectors and investigators involved in the Zimmer investigation believed the construction work at the site should be stopped. Their concerns were discussed with the licensee on March 26, 1981 (See Investigation Report No. 50-358/81-13, Pages 155-157), and with Regional Management on March 27 and 30, 1981. My decision as stated in Report 81-13 was as follows: "Following the March 26, 1981 exit meeting, consideration was given to the need to suspend construction activities based on the investigation findings. However, in recognition of the nature of the problems (largely programmatic) and the fact that ongoing work would not compromise the ability to accurately determine the quality of completed work, it was decided at that time that stopping construction work was not required. Rather, attention was placed on establishing controls to assure the quality of ongoing and future work." (See Investigation Report No. 50-358/81-13, Page 158.) At no point in time did Region III give consideration to allowing work to continue at Zimmer because work stoppage might have brought attention to the Region's failure to identify these problems at an earlier date.

During the meetings with Regional management on March 27 and 30, 1981 some discussion did center on the difficulty of resuming construction following the loss of knowledgeable personnel and trained craftsmen that would be associated with the stoppage of construction activities. While it was recognized that this could have significant impact on the project, it was not a factor in the determination of the NRC's recommended course of action. Neither was the recognition of Applegate receiving credit for the NRC's actions a consideration in the NRC reaching its decision.

The shutdown of a construction site is a significant action with far-reaching effects, an action not taken unless clearly warranted. In 1979 RIII brought about the shutdown of the Marble Hill site because of our concern that concrete placements could cover plant defects. At the time of my March 1981 decision not to close Zimmer, the identified problems were largely programmatic or document-related in nature, and I felt a shutdown was not appropriate or justifiable. As the majority of site work had been completed, my concern was that any remaining work be well controlled and that defects not be covered or made inaccessible.

To control ongoing and future work at Zimmer, RIII outlined ten specific actions to correct the QA deficiencies that had been identified at that point in time. These actions were the subject of an Immediate Action Letter dated April 8, 1981 (Exhibit 6) and included: 1) increasing the size and technical expertise of the CG&E QA staff; 2) increasing independence between Kaiser construction and Kaiser QA/QC; 3) conducting 100% reinspections of QA inspections conducted by Kaiser and other contractors; 4) reviewing QC inspection procedures (Note: construction activities controlled by these procedures were stopped until after the reviews were completed); 5) retraining of QA/QC personnel; 6) reviewing procedures governing deviations from Codes and FSAR statements; 7) reviewing procedures governing nonconformance reporting; 8) changing QA/QC records control; 9) reviewing nonconformance reports, and 10) reviewing the CG&E audit program. These actions and decisions were provided to Mr. Borgmann by Mr. Warnick and me on March 31, 1981. (See Investigation Report No. 50-358/81-13, Pages 158-159.)

IT IS ALLEGED THAT RIII DID NOT PURSUE THE POTENTIAL CRIMINAL ASPECTS OF THE INVESTIGATION AND WITHHELD INFORMATION FROM THE DEPARTMENT OF JUSTICE.

Throughout his interview, Mr. McCarten expressed his disagreement with the RIII investigation approach. He asserted that RIII did not share his view that the criminal aspects of the investigation should be pursued vigorously and with the highest priority. It is true that RIII and Mr. McCarten had different views as to how far RIII should pursue criminal matters. As we stated in our September 7, 1983 response to the Hoyt/Aloot report, we intentionally did not pursue allegations once we had determined that there was potential criminality involved and that there were no immediate health and safety concerns. We were following IE policy (See Tr. of Commission meeting of October 28, 1981, page 21; 10 CFR Section 1.64) and our approach to the investigation in that respect was no different than past investigations. RIII also believed that it was following explicit instructions from OIA not to interview high-level CG&E corporate officials (required to develop a case for possible criminal referral), although Mr. Cummings disputed that such instructions had been given. (See Tr. of Commission meeting of October 27, 1981, pages 116-117; Tr. of Commission meeting of October 28, 1981, pages 14-15, 19, and memo, Keppler to Stello, dated October 28, 1981). As evidenced by the civil penalty proposed in November 1981, which included violations for false quality assurance documents and for harassment and intimidation of quality control personnel, RIII did pursue the leads of its investigation up to the point necessary to establish violations of NRC regulations.

While it was not IE policy, and therefore not RIII practice, to pursue allegations beyond the point of determining that the health and safety matter of concern to the NRC had been or would be resolved, we were and continue to be, alert to potential criminal violations. Policy had been established to assure that potential criminal violations were brought to the attention of OIA for possible referral to DOJ. Again, that policy was followed as evidenced by the numerous contacts by RIII and OIA with DOJ to assure DOJ was fully aware of potential criminal violations. It was our understanding that OIA would perform any NRC investigation of the potential criminal aspects it deemed necessary before referral to DOJ. In that regard, we maintained a close working relationship with OIA to assure they were aware of our findings. As indicated by Mr. McCarten, he was in frequent contact with his OIA counterparts. (Interview at 30, 59, 61, 131, 151.)

The attached chronology (Exhibit 7) demonstrates that early and continuing efforts were taken by RIII to actively involve DOJ and to periodically brief DOJ on the status of the investigation. We believe that we clearly identified the areas involving potential criminal aspects to DOJ in a timely and responsible manner and did not withhold any relevant information from DOJ.

EXHIBITS

1. Memorandum, James G. Keppler to Victor Stello, Jr. January 12, 1981
entitled: Zimmer - Government Accountability Project Request for
Investigation By Merit Systems Protection Board Concerning NRC's Handling
of Applegate Allegations.
2. Memorandum , James G. Keppler to C. E. Norelius, R. L. Spessard, and
R. F. Warnick, October 30, 1981 entitled: Zimmer - Reactor Construction
Inspection Program Evaluation.
3. Memorandum, James G. Keppler to Region III Staff, January 22, 1981
entitled: Proposed Region III Reorganization.
4. Memorandum, James G. Keppler to James H. Snizek, April 29, 1981,
entitled: Recommendation For Notification of Licensing Board -
William H. Zimmer Nuclear Power Plant.
5. Memorandum, John F. Streeter to James G. Keppler, November 23, 1981
entitled: Investigation/Inspector Signatures on Final Zimmer
Investigation Report 50-358/81-13.
6. Immediate Action Letter dated April 8, 1981.
7. Chronology of RIII/OIA/DOJ Interfaces.



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EXHIBIT 1
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January 12, 1981

MEMORANDUM FOR: Victor Stello, Jr., Director, Office of Inspection and Enforcement

FROM: James G. Keppler, Director

SUBJECT: ZIMMER - GOVERNMENT ACCOUNTABILITY PROJECT
REQUEST FOR INVESTIGATION BY MERIT SYSTEMS PROTECTION
BOARD CONCERNING NRC'S HANDLING OF APPLFGATE ALLEGATIONS

In followup to our earlier telephone conversation, Region III has reviewed the subject package to determine a recommended course of action for NRC. As we see it, three major issues need to be addressed. These involve: 1) the adequacy of Region III's earlier investigation into allegations provided by Mr. Applegate; 2) the significance of what appear to be new allegations contained in the package; and 3) the need for further inspection efforts in light of the gross lack of control alleged. Our recommendations with respect to these issues are as follows:

1. Adequacy of Region III's Earlier Investigation

OIA will be conducting an investigation, at the direction of Chairman Ahearne, into Region's handling of the original Applegate allegations. We concur with this approach and will cooperate fully with the OIA investigation (scheduled to commence January 13, 1981).

2. Significance of Apparent New Allegations

Region III has reviewed the 19 allegations contained in the package submitted by the Government Accountability Project. A summary of this review is provided as an enclosure. Overall, we believe we know the bases of some of the allegations, whereas others appear to be new allegations. In any event, the lack of specificity of the charges will require additional contact with Mr. Applegate to determine whether further NRC investigative efforts are warranted. Because Region III's handling of the earlier investigation is the focal point of the requested investigation by MSPB and these new allegations are intertwined with the previous investigation, we recommend that pursuit of these allegations be performed independently by another Region.

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Victor Stello, Jr.

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3. Need for Further Inspection Efforts

It is Region III's assessment that the construction inspection program at Zimmer has been comparable to the inspection program at other Region III construction sites and, while a fairly high noncompliance history has resulted and a number of quality assurance problems have been identified, we believe the quality of actual construction is basically sound -- with the exception of pipe support systems (a matter being pursued by Region III).

Notwithstanding, in consideration of the shabby image portrayed by the Government Accountability Project's package, the number of allegations raised during the project, and the relatively large number of quality related issues identified by our inspection program, we believe confidence would be enhanced by conducting a team inspection which would focus on evaluating the completed construction work. In this regard, we would suggest establishing a team headed up by a Region other than Region III. The Region responsible for the inspection should have access to inspectors from the remaining Regions, as needed. The team inspection should utilize an approach similar to that being developed under the direction of the Division of Program Development and Appraisal. If you approve of this approach, the timing of this inspection needs your input concerning priorities. Presently, we do not have sufficient manpower to do two team inspections simultaneously, and we are scheduled to commence a team quality assurance inspection at Clinton in early February. Mr. Taylor would prefer to have the Clinton inspection performed as scheduled with the Zimmer inspection conducted afterwards (late March or April). Since Zimmer is essentially complete, the timing of that inspection is not critical from a status of construction aspect. Furthermore, should the new investigation disclose significant problems, the Clinton inspection could be interrupted and the team inspection started at Zimmer. However, my reaction is that we should proceed with the Zimmer Team Inspection as a priority because of the visibility being given to this matter.

We will be ready to discuss our recommendations further with you at your convenience.


James G. Keppler
Director

Enclosure:
As stated

cc w/encl:
R. C. DeYoung, IE
J. H. Snizek, IE
N. C. Moseley, IE
D. Thompson, IE