



Nuclear Division
P.O. Box 4
Shippingport, PA 15077-0004

Telephone (412) 456-6000

October 15, 1982

United States Nuclear Regulatory Commission
Office of Inspection and Enforcement
Attn: R. W. Starostecki, Director
Division of Project and Resident Programs
Region I
631 Park Avenue
King of Prussia, Pennsylvania 19406

Reference: Beaver Valley Power Station, Unit No. 1
Docket No. 50-334, License No. DPR-66
IE Inspection Report No. 82-19

Gentlemen:

In response to your letter of September 16, 1982, and in accordance with 10 CFR 2.201, the attached reply addresses the Notice of Violation which was included as Appendix A with the referenced Inspection Report. The Notice of Violation identified three items considered to be in noncompliance.

We respectfully request that the Commission re-evaluate the items noted as Violations B and C in the Notice of Violation to determine their applicability for our facility. We have carefully reviewed 10 CFR 71 as well as its legislative history and it is our opinion that the interpretations implied by the Notice of Violation for Items B and C are incorrect. Because of this, we do not intend to take specific corrective actions nor actions to prevent recurrence, other than as stated in our Reply to Notice of Violation, until the Commission's review is complete. If the re-evaluation deems these findings to be appropriate, your guidance as to how this interpretation should be applied to our operation would be appreciated. At that time, we will inform you of any corrective actions or actions to prevent recurrence which we will take.

If you have any questions concerning this response, please contact my office.

Very truly yours,

J. J. Carey
Vice President, Nuclear

Beaver Valley Power Station, Unit No. 1
Docket No. 50-334, License No. DPR-66
IE Inspection Report No. 82-19
Page 2

cc: Mr. W. M. Troskoski, Resident Inspector
U. S. Nuclear Regulatory Commission
Beaver Valley Power Station
Shippingport, PA 15077

U. S. Nuclear Regulatory Commission
c/o Document Management Branch
Washington, DC 20555

Mr. P. Cam, Project Manager
U. S. Nuclear Regulatory Commission
Operating Reactors Branch No. 1
Division of Licensing
Washington, DC 20555

DUQUESNE LIGHT COMPANY
Beaver Valley Power Station
Unit No. 1

Reply to Notice of Violation
Inspection 82-19
Letter dated September 16, 1982

VIOLATION A (Severity Level IV; Supplement V.D)

Description of Violation (82-19-01)

10 CFR 71.12(b)(1) specifies that packages used to transport licensed material shall comply with the terms and conditions of the Certificate of Compliance for the package. Certificate of Compliance No. 9108, issued for package Model No. AL-33-90, requires secondary containers to meet the requirements for Type A packaging.

Contrary to the above, on June 29, 1982, the licensee transported 11.2 Curies of licensed material, in package Model No. AL-33-90, to a burial site in Barnwell, South Carolina. The secondary container used did not meet the requirements for Type A packaging.

Corrective Action

No immediate corrective action was possible since the shipment was complete.

Action Taken To Prevent Recurrence

Use of this package or any other package specifying the use of a secondary container meeting the requirements for Type A packaging will not be requisitioned unless the specified Type A packaging is available. Appropriate supervision has been apprised of this restriction as stated above.

Date On Which Full Compliance Will Be Achieved

Full compliance has been achieved at this time.

VIOLATION B (Severity Level IV; Supplement V.D)

Description of Violation (82-19-02)

10 CFR 71.53(c) states "Packaging shall be conspicuously and durably marked with its model number. Prior to applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the Commission."

Contrary to the above, on June 29, 1982, the licensee used package Model No. AL-33- for the shipment of 11.2 Curies of licensed material, and the licensee did not determine that the package had been fabricated in accordance with the design approved by the Commission.

Admission or Denial of Violation

Duquesne Light Company denies that 10 CFR 71.53(c) applies to activities which it conducts as a shipper pursuant to the requirements of Section 71.12.

Discussion

Part 71 of 10 CFR describes the responsibilities, requirements and procedures applicable to two differing classes of licensees involved in the conduct of transportation and packaging of radioactive materials. General licensees (such as nuclear power reactor licensees shipping radioactive materials in packages approved for use by another person) appear to fall under the requirements of 10 CFR 72.12. Another category of licensee, described in Subpart B of 10 CFR 71, sets forth requirements placed upon applicants for licensees to fabricate and use packages for the shipment of radioactive materials. Subpart D of 10 CFR 71 describes the operating procedures for packages, along with preliminary determinations, routine determinations, instructions, reports, records, inspections and tests. 10 CFR 71.53, Preliminary Determinations, establishes three conditions which must be met prior to the first use of the package for shipment of radioactive materials. While 10 CFR 71.53(c) does not specifically indicate that it is applicable prior to first use, its applicability prior to first use is clearly indicated from the context of the two preceding sections (a) and (b) and by the titling of Section 71.53 as "Preliminary determinations."

In this context, it is clear that the provisions of 10 CFR 71.53(c) apply to the applicant for a special license (described in Subpart B, 10 CFR 71.21). As stated in 10 CFR 71.53(c), the licensee must satisfy the requirements for determining that the packaging has been fabricated in accordance with the design approved by the Commission "...Prior to applying the model number..." Since the model number is applied before "first use", it is then clear that the determination that the package has been fabricated in accordance with the design approved by the Commission must also precede "first use". In this context, it is clear that

Beaver Valley Power Station, Unit No. 1
Reply to Notice of Violation
Inspection 82-19
Page 3

the obligation to satisfy the requirements of 10 CFR 71.53(c) rests with the holder of the specific license for the package. Duquesne Light Company is not the special license holder for the package and therefore, the provisions of 10 CFR 71.53(c) do not apply to us.

There is no added measure of safety for us, as a general license holder, to continue to reverify the identical package prior to each subsequent use.

VIOLATION C (Severity Level IV; Supplement V.D)

Description of Violation (82-19-03)

10 CFR 71.62(c) requires the licensee to maintain during the life of a package to which they pertain, quality assurance records of the monitoring, inspection and auditing of work performance during modification, maintenance, and repair of the packaging.

Contrary to the above, during 1982, the licensee has used packages, Model Nos. AL-33-90, CNS 8-120, and CNS 14-195-H, to transport licensed material, and the licensee has not maintained quality assurance records for these packages of the monitoring, inspection and auditing of work performance during modification, maintenance and repair of the packaging.

Admission or Denial of Violation

Duquesne Light Company denies that it has violated 10 CFR 71.62(c) as stated in Violation C.

Discussion

The legislative history, as described in FR, Vol. 42 at page 39364 (August 4, 1977) concerning the adoption of the Final Rule of 10 CFR 71, contains the views of the Commission as related to the responsibility for carrying out those specific aspects of quality assurance in the manufacture and use of the package.

Detailed examination of the referenced statement of the Commission reveals these facts and our comments related to these facts:

1. The licensee who is the applicant provides the descriptions of the quality assurance programs governing the manufacture and use of the cask.

Comment: Chem-Nuclear Systems, Inc. is the owner of the packages in question and this provision applies to Chem-Nuclear.

2. The NRC package approval will be issued for use by any licensee who:
 - a. possesses the applicable documents incorporated by reference into the package approval,
 - b. has his general quality assurance program approved by the Commission,
 - c. adheres to the conditions of the package approval.

Comment: Duquesne, as a licensee pursuant to 10 CFR 71.12, has and continues to maintain a file of the applicable documents incorporated by reference into the package approval. In addition, Duquesne has an approved quality assurance program and complies with the conditions of the package approval as stated in the Certificate of Compliance. This Certificate of Compliance provides assurance that the package "meets the safety standards set forth in Subpart C, 10 CFR 71".

3. Authority for use of the package by a general licensee is contained in 10 CFR 71.12 and the general licensee must comply with the provisions of 10 CFR 71.12 which requires the following of the general licensee:

- a. have an approved quality assurance program
- b. have a copy of the certificate of compliance or other equivalent approval, and all references listed in the certificate of compliance.
- c. complies with the conditions of the certificate of compliance or other equivalent approval.
- d. registers with the NRC prior to the first use of the package by us as the shipper under a general license.

Comment: Duquesne meets the requirements of 10 CFR 71.12 in that:

- a. Duquesne has an approved quality assurance program.
- b. For the packages it uses, Duquesne possesses a copy of the Certificate of Compliance and all listed references.
- c. Except as set forth in Violation A, Duquesne complied with the Certificate of Compliance.
- d. Duquesne has registered with the NRC prior to first use.

4. Quality Assurance requirements specific to the particular package design will be specified in the package approval.

Comment: There are no specific quality assurance requirements listed in the package approval, except for those quality assurance records which may be developed by the shipper to demonstrate compliance with the requirements of Section 5.

5. A general licensee who delivers licensed material to a carrier must be assured of the following:

- a. the package is as described in the package approval.
- b. the package is used, tested and maintained in accordance with both the general and specific portions of the approved quality assurance program.

Comment:

- a. Duquesne inspects each package upon receipt, prior to each use.
- b. Duquesne takes the following steps to assure that the package is used, tested and maintained in accordance with both the general and specific portions of the approved quality assurance program:
 1. Duquesne relies upon the NRC issued Certificate of Compliance as documentation that the package meets the requirements of Subpart C, 10 CFR 71.
 2. Duquesne Light Company Quality Assurance Department reviewed the general quality assurance program of Chem-Nuclear on June 25, 1979 to assure that that program met the requirements of 10 CFR 71, Appendix E. An on-site audit of the Chem-Nuclear Quality Assurance program was made on June 5-6, 1980. Chem-Nuclear has been identified as a "qualified supplier" under Duquesne's quality assurance program, with reevaluations conducted on October 30, 1980 and April 14, 1982 (18 month interval) as required by Duquesne's quality assurance program.
 3. Duquesne applies its quality assurance program to assembly, testing modification, maintenance or repairs to the package which it performs while in its possession and provides this information to the special License Holder to enable him to maintain his quality records.

We believe that these steps provide adequate assurance that the quality assurance program, on which the approval of the package design is based, has been followed.

General Comment

During the rulemaking process, commenters requested clarification as to who is responsible for the specific aspects of quality assurance in the manufacture and use of the package. While the Commission's comments on this subject added clarification to this subject, upon which Duquesne's practices are based, the Final Rule which was promulgated was imprecisely worded and left these questions somewhat ambiguous. The interpretations now being applied to these regulations, as reflected in the finding, goes well beyond any reasonable interpretation which can be applied to the context of 10 CFR 71.62(c), the Commission's comments during the rulemaking procedure, or by reference to approved quality assurance programs. For example, 10 CFR 71.62(c) refers to initial determinations made pursuant to 10 CFR 71.53, which are clearly the responsibility of the specific licensee.

Further, assurance of an adequate level of quality is permitted to be established by approval of the quality assurance program of a vendor or supplier without requiring that vendor or supplier to submit a copy of each and every quality related document associated with each package to all users of those packages. To adopt the interpretation of these regulations in a manner suggested by this finding would require the transfer of large volumes of documents between package owners and shippers. Our cask owner has estimated that they own approximately 50 casks and service approximately 100 users. Theoretically, if all users were to be registered for each type of cask, 5000 documentation packages would have to be sent and maintained. This would mean 10 to 12 file drawers of documentation (not counting drawings) to be maintained by each user. We do not believe that interpreting 10 CFR 71.62(c) to require each shipper to maintain and keep current this large volume of documents will have any safety benefit, but will result in a significant administrative burden.

We believe that the Final Rule published on August 12, 1982 related to the reduction of record keeping requirements related to general licensees authorized under part 71.12 was promulgated with the expressed purpose of reducing paperwork and administrative burden placed on general licensees.

Based on these arguments, we conclude that Part 71 does not require shippers, as general licensees pursuant to subpart 71.12, to maintain quality assurance records of the monitoring, inspection and auditing of work performance during modification, maintenance and repair of the packaging unless that work was performed by the shipper under the shipper's quality assurance program. To interpret the regulations to require shippers to maintain quality assurance records of such work performed by other licensees represents a substantial administrative burden without any increase in safety.

Corrective Action

We have reviewed Part 71 and determined our responsibilities as set forth in the above Discussion for this Violation.

Action Taken To Prevent Recurrence

We intend to review our procedures to assure the mechanisms are in place to adequately document the performance of our responsibilities as set forth in the Discussion for this Violation. This is expected to be complete by March 31, 1983.