

Georgia Power Company
333 Piedmont Avenue
Atlanta, Georgia 30308
Telephone 404 526-6526

Mailing Address:
Post Office Box 4545
Atlanta, Georgia 30302

USNRC REGION II
ATLANTA, GEORGIA



Georgia Power
the southern electric system

83 AUG 17 49:14

Power Generation Department

August 12, 1983

NED-83-404

U. S. Nuclear Regulatory Commission
Office of Inspection and Enforcement
Region II - Suite 2900
101 Marietta Street, NW
Atlanta, Georgia 30303

REFERENCE:
RII: JPO
50-321/50-366
Inspection Report
83-17

ATTENTION: Mr. James P. O'Reilly

GENTLEMEN:

The following information is submitted in response to Inspection Report 83-17 concerning the inspection conducted by Mr. J. B. Kahle of the NRC office on May 23-27, 1983. One apparent violation was identified.

VIOLATION

10 CFR 20.301 specifies authorized methods for disposal of licensed material and prohibits disposal by other means. One authorized method is by transfer to an authorized recipient pursuant to the specific license requirements of the recipient.

Contrary to the above, on March 22, 1983, the licensee disposed of nine, ninety-six cubic foot metal boxes of compacted radioactive waste, by transfer for land burial to Chem-Nuclear Systems, Inc., whose South Carolina License (No. 097) does not authorize receipt of liquid waste for land burial. One box (HNP-83-321) contained approximately five quarts of free standing liquid.

This is a Severity Level IV Violation (Supplement IV).

RESPONSE

Admission or denial of alleged violation: GPC does not believe the particular events described above violate NRC regulations.

Discussion: Georgia Power Company (GPC) admits the particular events occurred as described in the Notice of Violation and Inspection Report. However, we do not agree that these events constitute a violation of NRC requirements. As referenced in your transmittal letter, GPC discussed its concerns with Region II staff on several occasions and delivered formal legal briefs for your staff's review. The arguments which lead us to the conclusion that the specific problem is not within the NRC's jurisdiction is summarized below.

8310040366 830919
PDR ADOCK 05000321
Q PDR

U. S. Nuclear Regulatory Commission
Office of Inspection and Enforcement
Region II - Suite 2900
August 12, 1983
Page Two

The NRC bases jurisdiction upon two regulations: 10 CFR 20.301 as specified in the Notice of Violation, and 10 CFR 150.15(a)(1) to exclude waste disposal activities from Agreement State exemptions (10 CFR 150). Use of 10 CFR 150.15(a)(1), however, is not appropriate in that it does not authorize the NRC to regulate disposal of by-product material at a site which is in an Agreement State but is not an NRC-licensed production or utilization facility. 10 CFR 150.15(a) specifies only a limited number of exceptions to the general Agreement State exemptions granted by the Atomic Energy Act from licensing requirements and from NRC regulations imposing requirements upon persons receiving, possessing, using, or transferring by-product material. Although the NRC does retain authority under 10 CFR 150.15(a)(1) to regulate the "operation" of production and utilization facilities, even where a state agreement exists, rules of statutory construction provide that "operation" be given its ordinary, contemporary, and common meaning because it is not defined by the Act and is only narrowly defined by 10 CFR 150.15(a)(1) itself. Moreover, by specifically and specially defining the term to include storage and handling of wastes at the site, the NRC arguably recognized that "operation" would not ordinarily include disposal activities. Furthermore, rules of statutory construction preclude defining operation to include disposal activities away from the site because subsequent provisions of the Act and NRC regulations specifically address disposal activities. Thus, 10 CFR 150.15(a)(1) is not a proper basis for regulating activities at disposal sites which are in Agreement States but which are not production or utilization facilities.

Nor does the NRC have jurisdiction under 10 CFR 20.301 to issue a notice of violation for activities which are lawfully regulated by an Agreement State. Although the NRC has general authority to regulate radiological hazards associated with by-product material, it has lawfully relinquished its authority to do so in South Carolina by an agreement with that State. Pursuant to the agreement, South Carolina has enacted and is enforcing comprehensive laws and regulations for the transportation, storage and disposal of by-product material, including shipments by out-of-state shippers. Moreover, it has done so with NRC recognition and approval. Because Congress expressed a clear intention that either a state or the NRC, but not both, regulate radiological hazards associated with nuclear material, the agreement with South Carolina and that State's enforcement program effectively preclude NRC jurisdiction.

U. S. Nuclear Regulatory Commission
Office of Inspection and Enforcement
Region II - Suite 2900
August 12, 1983
Page Three

GPC has responded to the South Carolina enforcement actions per the agreement requirements. GPC has implemented a number of corrective measures, as documented in that response. The reason for the occurrence and corrective measures are summarized below:

Reason for the occurrence: Our investigation found that box number HNP-83-123 was processed at our WS-TST facility on March 14, 1983. While a full drum of used laundry bags (returned from a contractor) was being placed into the box, water started pouring out of the drum into the box. The drum was quickly uprighted but not before an estimated one gallon of water had been transferred into the box.

The single drain plug on the bottom of the box was pulled to allow drainage, and dry-up towels were used to collect free standing water observed in the box. The container was then filled and the lid sealed. The box was again inspected by pulling the single drain plug to check for liquids on a pre-shipment inspection. No liquids were observed on the pre-shipment inspection, thus the drain plug was reinstalled and sealed.

Our investigation has found that after compacting, there can be a bulge in the bottom of these type boxes which is below the drain plug. This low point would allow liquid to be present but not detectable by opening the drain plug. It has been concluded that this was the cause of the violation noted on March 22, 1983.

Corrective Steps Which Have Been Taken to Avoid Future Occurrences: Boxes being prepared for shipment are now being elevated on one end, with the drain plug removed for 24 hours to allow for liquid drainage from the low point after compacting before they are released for shipment. If any liquid is observed, the box is rejected for shipment. Drums are prepared for shipment in the same manner as boxes. To preclude the inclusion of liquid in shipments, damp waste such as mop heads and laundry bags are being placed in a drying room for at least 24 hours before being placed in shipment containers.

Corrective Steps Which Will Be Taken To Avoid Future Occurrences: Our B-25V type shipment boxes have been redesigned to include 3 drains. These drains will be located on the bottom centerline of the box, near each end and in the center. All 3 drain plugs will be removed for 24 hours after compacting; observed leakage will reject the box for shipment. These boxes with the newly designed drains will replace existing inventory as it is used.

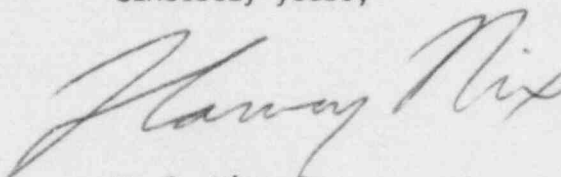
U. S. Nuclear Regulatory Commission
Office of Inspection and Enforcement
Region II - Suite 2900
August 12, 1983
Page Four

Status of Compliance: All shipments made after March 23, 1983, have included the actions listed above for the checking of liquid content in drums and boxes released for shipment. Based upon these actions, full compliance with disposal requirements have been met and assured since March 23, 1983.

Conclusion: In light of the legal arguments presented above and the differing positions taken by the Region II enforcement staff, we believe this difference of interpretation cannot be resolved at the Regional Level. Since the contention revolves around the line of jurisdiction between NRC and delegated Agreement State authority, we respectfully request that the NRC, Office of Inspection and Enforcement, refer the disagreement to the General Counsel for an official interpretation.

As always, we are prepared to discuss this item at any time with you and your staff.

Sincerely yours,



H. C. Nix, Jr.
General Manager

SCE

xc: J. T. Beckham, Jr.
T. V. Greene
Senior Resident Inspector