

DUKE POWER COMPANY

P.O. BOX 33189

CHARLOTTE, N.C. 28242

HAL B. TUCKER

VICE PRESIDENT
NUCLEAR PRODUCTION

June 7, 1985

TELEPHONE
(704) 373-4531

Dr. J. Nelson Grace, Regional Administrator
U. S. Nuclear Regulatory Commission
Region II
101 Marietta Street, NW, Suite 2900
Atlanta, Georgia 30323

Subject: Oconee Nuclear Station
IE Inspection Report
50-269/84-33
50-270/84-30
50-287/84-34

05 JUN 14 P 3:06

Dear Sir:

By a letter dated May 17, 1985, Duke Power submitted the supplemental response for the second violation cited in the January 23, 1985 Inspection Report. Please find attached the supplemental response to the first violation cited in the same report; the delay of this response was addressed by the May 17th letter.

Duke Power is aware that the issue of the State versus Federal jurisdiction concerning the disposal of radioactive material is currently under discussion between NRC/ONRR, NRC Region II, and the South Carolina Department of Health and Environmental Control, on the basis of this issue of the oil burning at Lee Steam Station. Duke realizes that further correspondence may be necessary following the resolution of this issue by the state and federal agencies involved.

Very truly yours,

H. B. Tucker / BT

Hal B. Tucker

RFH:slb

Attachment

cc: Mr. J. C. Bryant
NRC Senior Resident Inspector
Oconee Nuclear Station

Ms. Helen Nicolaras
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. Heyward G. Shealy, Chief
Bureau of Radiological Health
S. C. Department of Health and
Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

8507090493 850607
PDR ADOCK 05000269
Q PDR

1/1
IEOI

Violation 1

10 CFR 20.301 forbids a licensee to dispose of licensed material as waste except (a) by transfer to an authorized recipient as provided in the regulations in Parts 30, 40, 60, 61, 70 or 72 of this chapter, whichever may be applicable, (b) as authorized pursuant to 10 CFR 20.302 or 10 CFR 61, or, (c) as provided in 10 CFR 20.303, applicable to the disposal of licensed material by release into sanitary sewage systems, or in 10 CFR 20.306 for disposal of specific wastes, or in 10 CFR 20.106 (Radioactivity in effluents to unrestricted areas).

Contrary to the above, from September 1981 to June 1984, 18,635 gallons of slightly contaminated waste oil containing approximately 13.5 microcuries of Cs-137 and 1.18 microcuries of Cr-51 was disposed of by transfer to a fossil fueled power plant to be burned.

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

Supplemental Response

1) Admission or denial of the alleged violation:

This violation is denied by Duke Power Company for the reasons given below.

2) Reasons for the denial of the alleged violations:

By letters dated July 19, 1984, November 2, 1984, and April 22, 1985, the NRC granted conditional approval of Duke's 10 CFR 20.302 applications for 1) disposal of slightly contaminated sewage sludge at Oconee Nuclear Station, 2) disposal of slightly contaminated sewage sludge at McGuire Nuclear Station, and 3) the disposal of slightly contaminated feedwater heaters at Oconee Nuclear Station, respectively. In each of the letters of conditional approval, the NRC states that pertinent aspects of offsite disposal are subject to the jurisdiction of the state involved (North Carolina or South Carolina) since both are agreement states as defined by Section 274b of the Atomic Energy Act of 1954 (the Act), as amended, and 10 CFR 150.

In order for South Carolina to have qualified as an agreement state, formal reviews of the state's statutes and regulatory processes were performed by the NRC in order to assure that issues involving possible radiological hazard would be handled in a manner essentially similar to that which NRC would use in the case of a non-agreement state. By its approval of the South Carolina Department of Radiological Health's (SCDHEC) program, the NRC granted agreement state status to South Carolina and transferred the authority for regulation of radiological hazards within the confines of that state. Although a one-to-one correspondence between the Federal and State regulations may not exist, the State laws parallel the Federal, and were approved by NRC. In particular, RHA 2.18 of the South Carolina Rules and Regulations for Radioactive Control apply in this case.

10 CFR 30.11 states that the NRC may grant exemptions to requirements contained in Part 30. The State of South Carolina, being an agreement state, has been granted this same authority to permit exemptions in cases where, for example, it is clear that no radiological health problem is involved. SCDHEC's formal approval of the Oconee Spent Oil Management Program, and their permission which was granted to Duke Power to dispose of the waste oil by burning at Lee Steam Station, therefore constituted a valid regulatory action under the law, and further did not exceed the authority granted South Carolina as an agreement state, per South Carolina regulations RHA 2.18, 2.20, and 3.15. Furthermore, in accordance with RHA 3.15, South Carolina is in fact authorized to license incinerator facilities within its borders.

Duke acknowledges that the March 20, 1984 clarification by NRC Region II of the 10 CFR 30.18 definition of exempt quantity would effectively limit the "exempt quantity" concept to the transfer of laboratory samples, and that it purports to restate that NRC has never allowed the disposal of exempt quantities, other than for laboratory samples.

Based upon a detailed examination of Part 30, in particular §30.18, Duke contends that the purpose of this part of the regulations is to prescribe the rules governing the domestic licensing of byproduct material and the exemptions permitted from the domestic licensing requirements. Specifically, Duke understands that §30.18 states that any person (i.e., Lee Steam Station) is exempt from the requirements for a license set forth in parts 30 through 34 to the extent that such person receives, possesses, uses, transfers, owns or acquires byproduct material in individual quantities each of which does not exceed the applicable quantity set forth in §30.71 Schedule B. Duke respectfully points out that nowhere is it stated that such quantities are limited to samples for laboratory analysis, etc. Duke Power, therefore, maintains that the transfer of the waste oil containing only exempt quantities of byproduct material was within the regulatory requirements and that the clarification stated in the March 20, 1984 letter is not supported by a careful examination of 30.18, which describes the concept of exempt quantity. Again, Duke maintains that no violation occurred on this basis.

As stated above, Duke maintains that SCDHEC, in its overseeing and approval of the oil burning at Lee, acted within the authority granted it as an NRC authorized agreement state, and that SCDHEC approval of the disposal of exempt quantities of radioactive material via incineration was therefore according to the law, specifically according to 10 CFR 20.301(a) and RHA 2.18.