

May 29, 2001

Mr. David A. Lochbaum
Union of Concerned Scientists
1707 H Street NW, Suite 600
Washington, DC 20006-3919

Dear Mr. Lochbaum:

Your Petition dated April 24, 2001, submitted on behalf of the Union of Concerned Scientists, addressed to Mr. William Travers, Executive Director of Operations, has been referred to me pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206).

You requested that the U.S. Nuclear Regulatory Commission (NRC) issue a Demand for Information (DFI) to the licensees listed in your petition, requiring them to provide a docketed response explaining how they comply with the requirement of 10 CFR 26.10 that licensees "provide reasonable measures for the early detection of persons who are not fit to perform activities within the scope of this part" and the requirement of 10 CFR 26.20 that "licensee policy should also address other factors that could affect fitness for duty such as mental stress, fatigue and illness."

You also requested that the DFI should require each licensee to generally describe its policy for the aforementioned factors and to explicitly describe its policy for these factors as applied to the security personnel supplied by the Wackenhut Corporation.

As a basis for your request you stated that:

An individual employed by Wackenhut Corporation and assigned duties as a security officer at Indian Point 2 was fired on June 26, 2000 The individual had worked five straight 12-hour shifts [(12 hours on shift followed by 12 hours off for 5 straight days)] and declined to report for a sixth straight 12-hour shift because he reported to his management—in writing—that it would be "physically and mentally exhausting." The individual reported to his management—in writing—that he was fully aware of his condition and "would not want to be negligent in performing [his] duties as a security officer."

The security officer had unescorted access to Indian Point 2 and thus was covered by 10 CFR Part 26 as specified in Section 26.2

You also indicated that Wackenhut employees are required by terms of their employment application, Collective Bargaining Agreement, and the Security Officer's Handbook to report to work when required.

You stated that the security officer you referred to reported to his management that he felt unfit for duty, declined to report for mandated overtime, and was terminated.

You also stated "10 CFR 26.20 requires all licensees to have [a] formal policy and written procedures for factors that could render plant workers unfit for duty. Fatigue is specifically mentioned in 10 CFR 26.20." You contended that Wackenhut's contractual right conflicts with the Federal regulations in 10 CFR 26.10 (a) and (b) and that in the subject case, the individual essentially provided "reasonable measures for early detection" of a condition rendering him unfit to perform activities within the scope of Part 26. You further stated that rather than respecting the individual's judgment or seeking another opinion by a Medical Review Officer or other health care professional, Wackenhut fired that individual.

Subsequently, you provided additional information by letter dated May 3, 2001, and addressed the Petition Review Board (PRB) in a transcribed telephone conference on May 7, 2001. Based on your information, the PRB determined that your request meets the criteria for review under 10 CFR 2.206.

As you know, the NRC staff has been addressing aspects of your concerns through the Indian Point Unit 2 issue. However, we sincerely appreciate your efforts in raising potential policy and generic implications of this matter. In accordance with 10 CFR 2.206, we will take action on your request within a reasonable time. Our actions will include requesting information from the affected licensees addressing the issues raised in your petition.

We have assigned Mr. Chandu Patel to be the Petition Manager for your request. Mr. Patel can be reached at 301-415-3025. Your Petition is being reviewed by the Division of Licensing Project Management, the Division of Inspection Program Management, and other NRC staff. Enclosed for your information is a copy of the notice that is being filed with the Office of the *Federal Register* for publication. You can find additional information about the public petition process on the Internet in Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions" (<http://www.nrc.gov/NRC/public.html>), and in the NRC brochure (NUREG/BR-0200, Revision 4, "Public Petition Process"), prepared by the NRC Office of Public Affairs, available through ADAMS (<http://www.nrc.gov/NRC/reference.html>) under Accession No. ML010600343.

Sincerely,

/RA by Jon R. Johnson for:/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Enclosure: *Federal Register* Notice

May 29, 2001

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Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

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U.S. NUCLEAR REGULATORY COMMISSION

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CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

RECEIPT OF PETITION FOR DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that by Petition dated April 24, 2001, as supplemented by letter dated May 3, 2001, Mr. David A. Lochbaum, on behalf of Union of Concerned Scientists, requested that the Nuclear Regulatory Commission (NRC) issue a Demand for Information (DFI) to licensees that use security personnel supplied by Wackenhut Corporation (Wackenhut), requiring them to provide a docketed response explaining how they comply with the requirement of Title 10 of the *Code of Federal Regulations* (10 CFR) Section 26.10 that licensees "provide reasonable measures for the early detection of persons who are not fit to perform activities within the scope of this part" and the requirement of 10 CFR 26.20 that "licensee policy should also address other factors that could affect fitness for duty such as mental stress, fatigue and illness."

The petitioner also requested that the DFI should require each licensee to generally describe its policy for the aforementioned factors and to explicitly describe its policy for these factors as applied to the security personnel supplied by Wackenhut.

As a basis for this request, the petitioner stated that:

"An individual employed by Wackenhut Corporation and assigned duties as a security officer at Indian Point 2 was fired on June 26, 2000 The individual had worked five straight 12-hour shifts [(12 hours on shift followed by 12 hours

off for 5 straight days)] and declined to report for a sixth straight 12-hour shift because he reported to his management—in writing—that it would be “physically and mentally exhausting.” The individual reported to his management—in writing—that he was fully aware of his condition and “would not want to be negligent in performing [his] duties as a security officer.”

The security officer had unescorted access to Indian Point 2 and thus was covered by 10 CFR Part 26 as specified in Section 26.2”

The petitioner also indicated that Wackenhut employees are required by terms of their employment application, Collective Bargaining Agreement, and the Security Officer’s Handbook to report to work when required.

Thus, the petitioner contends that a worker employed by Wackenhut at an NRC-licensed facility reported to his management that he felt unfit for duty, declined to report for mandated overtime, and was terminated.

The petitioner also stated that “10 CFR 26.20 requires all licensees to have formal policy and written procedures for factors that could render plant workers unfit for duty. Fatigue is specifically mentioned in 10 CFR 26.20.” The petitioner contends that the Wackenhut’s contractual right conflicts with the Federal regulations in 10 CFR 26.10 (a) and (b) and that in the subject case, the individual essentially provided “reasonable measures for early detection” of a condition rendering him unfit to perform activities within the scope of Part 26. The petitioner further stated that rather than respecting the individual’s judgment or seeking another opinion by a Medical Review Officer or other health care professional, Wackenhut fired that individual.

This Petition has been accepted for review pursuant to 10 CFR 2.206 of the NRC’s regulations, and has been referred to the Director of the Office of Nuclear Reactor Regulation for action. In accordance with Section 2.206, appropriate action will be taken on this Petition.

The Petition and the NRC's acknowledgment letter are available in ADAMS for inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, <http://www.nrc.gov> (the Public Electronic Reading Room) at Accession Nos. ML011150296 and ML011410223, respectively. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdrr@nrc.gov.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA by Jon R. Johnson for:/

Jon R. Johnson, Deputy Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland
this 29th day of May 2001