

September 20, 2001
NL-01-114

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Mail Stop O-P1-17
Washington, DC 20555-0001

SUBJECT: **Indian Point Nuclear Generating Unit 1**
 Docket No. 50-003
 License No. DPR-5
 Indian Point Nuclear Generating Unit 2
 Docket No. 50-247
 License No. DPR-26
 Request for a Letter of Concurrence from the NRC to the NYSDEC
 regarding compliance with 40 CFR 761.65(a)(1)

REFERENCE: 1. USNRC letter, P. Milano to A. Blind/M. Kansler, dated August 27, 2001, regarding "Indian Point Nuclear Generating Unit Nos. 1 and 2 – Order Approving Transfer of Licenses from the Consolidated Edison Company of New York, Inc., to Entergy Nuclear Indian Point 2, LLC, and Entergy Nuclear Operations, Inc. and Approving Conforming Amendments (TAC. Nos. MB0743 and MB0744)"

 2. Consolidated Edison Company of New York, Inc., Indian Point Nuclear Generating Station, 6 NYRCC Part 373 Permit Modification, Volumes I and II, dated March 1, 2001

 3. Order of Consent between New York State Department of Environmental Conservation and Consolidated Edison Company of New York, Inc., Index No. CO3-20010905-2574, dated and executed September 5, 2001.

 4. Goodwin Procter, LLP Letter, Elise N. Zoli to Mitchell Khosrova, dated September 6, 2001, "Entergy Nuclear Indian Point 2, LLC."

Dear Sir:

As you are aware, the Nuclear Regulatory Commission (NRC) recently issued an order transferring the licenses, effective September 6, 2001, for Indian Point Nuclear Generating Stations, Units 1 and 2 (Stations) from the Consolidated Edison Company of New York, Inc. (Con Edison) to Entergy Nuclear Indian Point 2, LLC (ENIP2) as the owner of, and to Entergy Nuclear Operations, Inc. (ENO) as the operating entity for, the Stations (Reference 1).

A001

Con Edison stored certain quantities of "mixed waste" (as defined in 40 CFR §225.210) at the Stations, including pursuant to permits issued by the United States Environmental Protection Agency (USEPA) and the New York State Department of Environmental Conservation (NYSDEC). Con Edison also stored PCB-contaminated mixed waste, for which it sought authorization from NYSDEC in a permit-modification request dated March 2001 (Reference 2). However, Con Edison did not receive the authorization from NYSDEC. Rather, NYSDEC has indicated that it may not issue any authorization, pending New York State's decision on whether to adopt the recently promulgated USEPA exemption (effective November 13, 2001) from applicable permit requirements for storage of mixed waste subject to regulation by NRC. NYSDEC has indicated that it may take two (2) years to make this decision.

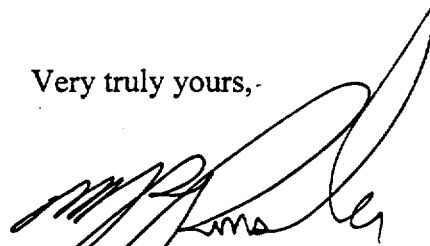
Therefore, on September 5, 2001, an Administrative Order on Consent between NYSDEC and Con Edison was executed (Reference 3), to address Con Edison's storage of PCB-contaminated mixed waste, and ENIP2's continued storage of the material, pending issuance of the NYSDEC authorizations or otherwise. The Order on Consent expressly authorizes storage of and related activities associated the PCB-contaminated mixed waste for which Con Edison had indicated no treatment/disposal facility currently is available. *See Order, ¶ II.*

Certain terms of the Order on Consent are expressly binding on Con Edison's successors and assigns, as ENIP2's counsel confirmed to NYSDEC on September 6, 2001 (Reference 4). Therefore, ENIP2 will implement certain of Con Edison's obligations in the Order on Consent. In particular, the Order on Consent requires Con Edison (or ENIP2) to request from the NRC a written concurrence that such material is stored in accordance with applicable NRC requirements. *See Order, ¶ IV.*

In satisfaction of the Order on Consent, ¶ 5, ENIP2 hereby requests that the NRC provide to ENIP2 and the NYSDEC with a written concurrence that the PCB-contaminated mixed waste at the Station is being stored in compliance with the applicable NRC requirements. The details of the storage are outlined in the enclosed request for permit modification (again, Reference 2). This written concurrence must be submitted to NYSDEC by November 6, 2001. We, therefore, appreciate NRC's prompt response to this request, and gladly will work with you to address this matter.

There are no new commitments made in this letter. If you have any questions, please contact Ms. Charlene Faison at 914-272-3378.

Very truly yours,



Michael R. Kansler
Senior Vice President and
Chief Operating Officer

cc: Next page

cc: Regional Administrator, Region I (w/o encl. III)
U.S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406

Senior Resident Inspector's Office (w/o encl. III)
Indian Point Unit 2
US Nuclear Regulatory Commission
P.O. Box 38
Buchanan, NY 10511

Mr. Patrick D. Milano, Senior Project Manager (w/o encl. III)
Project Directorate I
Division of Licensing Project Management
U.S. Nuclear Regulatory Commission
Mail Stop 0-8-C2
Washington, DC 20555

Mr. John L. Minnis, Project Manager (w/o encl. III)
Division of Reactor Program Management
U.S. Nuclear Regulatory Commission
Mail Stop 10-D-4
Washington, DC 20555

Connie C. Wells, Manager (w/o encl. III)
Entergy Nuclear Operations, Inc.
440 Hamilton Avenue
White Plains, NY 10603

Elise N. Zoli, Esq. (w/o encl. III)
Goodwin Procter, LLP
Exchange Place
Boston, MA 02109

Division of Environmental Enforcement (w/o encl. III)
Attn: Hazardous Waste Compliance Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-5500

- Encl.: I. Order of Consent between New York State Department of Environmental Conservation and Consolidated Edison Company of New York, Inc., Index No. CO3-20010905-2574, dated and executed September 5, 2001.
- II. Goodwin Procter, LLP Letter, Elise N. Zoli to Mitchell Khosrova, dated September 6, 2001, "Entergy Nuclear Indian Point 2, LLC."
- III. Consolidated Edison Company of New York, Inc., Indian Point Nuclear Generating Station, 6 NYRCC Part 373 Permit Modification, Volumes I and II, dated March 1, 2001

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violations of
Environmental Conservation Law ("ECL") of the
State of New York, and Title 6 of the Official
Compilation of Codes, Rules, Regulations of the
State of New York ("6 NYCRR") by:

Order on Consent

Consolidated Edison Company of New York, Inc.

Respondent

Index No. CO3-20010905-2574

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WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 9 of the Environmental Conservation Law ("ECL") and the hazardous waste management rules and regulations promulgated thereunder in 6 NYCRR Part 370 *et seq.* This Order is issued pursuant to the Department's authority under Articles 3, 27, and 71 of the ECL.
2. Consolidated Edison Company of New York, Inc. (the "Respondent") acknowledges that it owns, and conducts operations at, its facility located at Broadway and Bleakley Avenue, Buchanan, New York (the "facility"); and that those operations, and the hazardous waste—including mixed waste—generated during the course of those operations are subject to ECL Article 27, Title 9 and the hazardous waste management regulations promulgated pursuant thereto, contained in 6 NYCRR Parts 370 to 374 and 376.
3.
 - A. For purposes of this Order, "mixed waste" is as defined in 40 CFR 255.210; however, the "hazardous waste" as used in that provision shall refer to "hazardous waste" as defined in 6 NYCRR Part 371. Pursuant to 6 NYCRR 371.4(c), materials containing 50 ppm or greater of polychlorinated biphenyls ("PCBs") are regulated as a hazardous waste under New York State law.
 - B. The United States Environmental Protection Agency has afforded a regulatory exemption, effective November 13, 2001, for the storage and treatment of mixed waste subject to regulation by the Nuclear Regulatory Commission. The Department is in the process of considering a proposed rulemaking to adopt a similar provision for qualifying mixed waste.
4. A record review of Respondent's facility was conducted by an authorized representative of the Department by telephone on August 16, 2001. As a result, Respondent violated the following hazardous waste management regulations at 6 NYCRR resulting from

Respondent's improper storage of mixed waste at the facility (for purposes of this Order, "the mixed waste"):

- A. 372.2(a)(8)(ii): Acted as an illegal storage facility with respect to the storage of the mixed waste in the Unit 1 Reactor Internal Storage Pit, the Unit 1 Vapor Containment 108-foot Elevation Floor Storage Area, and the Unit 1 Vapor Containment 70-foot Elevation Floor Storage area since February 2000.
 - B. 373-3.9(e): Failed to inspect container storage areas referenced above in Subparagraph 4.A on a weekly basis.
 - C. 373-3.9(d)(3) and 376.5(a)(1)(ii): Failed to label containers stored in the Unit 1 Reactor Internals Storage Pit area with the words "Hazardous Waste" and with other words to identify the contents.
 - D. 372.2(a)(8)(ii), 373-1.1(d)(1)(iii)(c)(2), 373-1.1(d)(1)(iv)(d), and 376.5(a)(1)(ii)(b): Failed to visibly mark containers stored in the Unit 1 Reactor Internals Storage Pit area with the period of accumulation for each container.
 - E. 376.5(a)(1)(ii): Stored the mixed waste in the storage areas referenced above in Subparagraph 4.A of this Order in excess of one year, since February 2000, for the purpose of accumulation necessary to facilitate proper recovery, treatment or disposal.
5. Respondent certifies that the mixed waste is being stored at the facility in a manner protective of the public health, safety, and welfare and the environment in compliance with 40 CFR 761.65(a)(1) but that it cannot dispose of the mixed waste off-site because of the present unavailability of a mixed waste treatment/disposal facility. The Department believes that no mixed waste treatment/disposal facilities will come into existence in the near future; therefore, it recognizes the need to keep the mixed waste stored on-site provided the storage is undertaken in a manner protective of the public health, safety, and welfare and the environment and in accordance with the requirements of the Nuclear Regulatory Commission pertaining to mixed waste storage and treatment.
6. Respondent voluntarily notified the Department of the violations that are the subject of this Order.
7. In March 2001, pursuant to 6 NYCRR 621.13 and 373-1.7, Respondent submitted an application for major modification to the Part 373 Hazardous Waste Management Permit, NYD991304411, to account for the storage and associated activities of the mixed waste.
8. Respondent waives its right to a hearing or to otherwise contest the Department's allegations, consents to the issuance of this Order and agrees to be bound by its terms.

NOW, THEREFORE, HAVING CONSIDERED THIS MATTER AND BEING DULY ADVISED, IT IS ORDERED THAT:

- I. Respondent shall pay a penalty for the cited violations in the amount of \$9,000.00 to be paid withing 30 days of the effective date of this Order.
- II. Respondent is authorized to continue the on-site storage of and related activities that have been conducted to date for the mixed waste, pending the Department's action on proposed rulemaking referenced in Paragraph 3 of this Order. Respondent and its successors and assigns, including its successors in title to the facility, shall maintain the storage of the mixed waste in a manner protective of the public health, safety, and welfare and of the environment and in accordance with the requirements of the Nuclear Regulatory Commission pertaining to mixed waste storage and treatment.
- III. Respondent shall take all reasonable and diligent efforts to locate and contract with an authorized, commercially reasonable as determined by the Department in consultation with Respondent, mixed waste treatment/disposal facility that will accept the mixed waste and to treat or dispose of the mixed waste within 30 days after the facility's agreement to accept the mixed waste for treatment/disposal; or with such further time as the Department determines is appropriate under the circumstances. Such efforts shall include, but will not be limited to, quarterly searches. Until such a facility becomes available, Respondent shall, beginning December 1, 2001 and on the first day of each three month period thereafter, provide the Department with a certification that (1) describes the efforts Respondent made to locate and contract with an authorized mixed waste treatment/disposal facility; (2) there is no mixed waste treatment/disposal facility available that can accept for treatment or disposal the mixed waste; (3) the continued storage at the facility was necessary to protect the public health, safety, welfare and environment; and (4) during the entire quarter that is the subject of the certification, Respondent complied with the container and storage requirements of the Nuclear Regulatory Commission relating to mixed waste.
- IV. Respondent shall commence an investigation and report to the Department within 60 days of the effective date of this Order as to the possibility of remote monitoring in lieu of weekly inspections pursuant to 6 NYCRR 373-3.9(e) and, if such remote monitoring is possible and approved by the Department, shall implement a remote monitoring system within 60 days of Department approval of the remote monitoring plan.
- V. Within 15 days after the effective date of this Order, Respondent shall make a request to the Nuclear Regulatory Commission to provide to the Department within 60 days after the effective date of this Order a written concurrence by that Commission that the mixed waste is being stored in compliance with its requirements. Failure to secure an adequate response from Nuclear Regulatory Commission within 60 days of the effective date of his Order shall not constitute a violation of this Paragraph.

VI. SETTLEMENT AND RESERVATION OF RIGHTS

- A. Except for Respondent's obligations as provided in Paragraph I and as otherwise provided in Paragraph IX of this Order, Respondent's obligations under this Order shall terminate upon transfer of ownership of the facility to a transferee that agrees in writing to undertake and continue Respondent's obligations under this Order.
- B. Upon completion of all obligations in this Order, this Order settles only all claims for civil and administrative penalties concerning the violations described in Paragraph 4 of this Order against Respondent and its successors and assigns (including successors in title to the facility).
- C. Except as provided in Subparagraph VI.B of this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or her designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

VII. ACCESS

For the purpose of monitoring or determining compliance with this Order, Respondent hereby provides to employees and agents of the Department access to the facility and to any site or records owned, operated, controlled or maintained by Respondent and its successor and assigns, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility. Every effort shall be made by the Department to conduct such inspections during Respondent's and its successors and assigns normal business hours.

VIII. FAILURE, DEFAULT AND VIOLATION OF ORDER

- A. Respondent's failure to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL.
- B. Respondent's failure to comply fully and in a timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL and shall constitute sufficient grounds for modification or revocation of any permit, license, certification, or approval issued to Respondent by the Department relating to the facility.
- C. Any violation of terms or conditions of this Order shall result in a penalty of TWENTY FIVE HUNDRED DOLLARS (\$2,500.00) per day, per violation.

IX. INDEMNIFICATION

Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order. Respondent's obligations under this Paragraph IX shall terminate upon the transfer of title of the facility; however, this Paragraph shall be effective against Respondent's successors or assigns, including its successors in title to the facility.

X. BINDING EFFECT

The provisions of this Order shall bind the Respondent and its successors and assigns, including its successors in title to the facility.

XI. MODIFICATION

No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

XII. COMMUNICATIONS

All written communications required by this Order to the Department shall be transmitted by United States Postal Service, by private courier service, or by hand delivery to:

Division of Environmental Enforcement

Attn: Hazardous Waste Compliance Counsel

New York State Department of Environmental Conservation

625 Broadway Albany, New York 12233-5500

All written communications required by this Order to the Respondent shall be transmitted by United States Postal Service, by private courier service, or by hand delivery to:

Jeffrey L. Riback, Esq.

Consolidated Edison Company of New York, Inc.

4 Irving Place

New York, NY 10003

XIII. ENTIRE ORDER

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified in Paragraph 4 of this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal oral or written advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, comment, or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.


XIV. EFFECTIVE DATE

The effective date of this Order is the date that the Commissioner or his designee signs it. The Department will provide Respondent (or the Respondent's counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or the Commissioner's designee signs it.

Dated: 9-5-01

ERIN M. CROTTY, COMMISSIONER

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION


By: Carl Johnson, Deputy Commissioner

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of the foregoing Order, waives its right to a hearing as provided by law, and agrees to be bound by the provisions, terms and conditions herein.

By: *[Signature]*

Title: Vice President EHS

Date: Sept 5 '01

State of New York)

County of New York)

On this 5th day of Sept., in the year 2001, before me, the undersigned personally appeared H. Eric Lavabon, personally known to me or proved to be on the basis of satisfactory evidence to the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]

JAMES J. DIXON, ESQ.
Notary Public, State of New York
No. 5003440
Qualified in Westchester County
Commission Expires October 19, 2002

GOODWIN | PROCTER

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September 6 2001

BY FACSIMILE & E-MAIL

Mitchell Khosrova
Associate Counsel
New York State Department of Environmental Conservation
Division of Environmental Enforcement
625 Broadway
Albany, NY 12233-5500

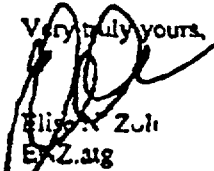
Re: Entergy Nuclear Indian Point 2, LLC.

Dear Mr. Khosrova:

As requested by your office, on behalf of our client, Entergy Nuclear Indian Point 2, LLC ("ENIP2"), this correspondence confirms that ENIP2 acknowledges that, under Paragraphs X and VI(a) of the Order on Consent between the New York State Department of Environmental Conservation and Consolidated Edison Company of New York, Inc. ("Con Edison"), Index No. CO3-20010905-2574, executed by Con Edison on September 5, 2001 and dated September 5, 2001 (the "Order on Consent"), it is the successor in title to Con Edison relative to the Indian Point, Units 1 and 2, Station with respect to the terms and conditions of the Order on Consent to the extent provided therein, and accepts the obligations thereunder.

Of course, please do not hesitate to telephone me (at 617/570-1612) with your questions, comments or concerns.

Very truly yours,


Elise N. Zoli
EZL:alg

cc. Jeffrey L. Riback, Consolidated Edison Company of New York, Inc. (via facsimile)
Connie C. Wells, Manager, Entergy Nuclear Operations, Inc. (via facsimile)
Paul R. Gauron, P.C.

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September 6 2001

BY FACSIMILE & E-MAIL

Mitchell Khosrova
Associate Counsel
New York State Department of Environmental Conservation
Division of Environmental Enforcement
625 Broadway
Albany, NY 12233-5500

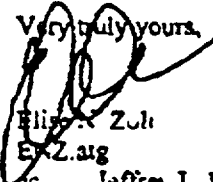
Re: Entergy Nuclear Indian Point 2, LLC.

Dear Mr. Khosrova:

As requested by your office, on behalf of our client, Entergy Nuclear Indian Point 2, LLC ("ENIP2"), this correspondence confirms that ENIP2 acknowledges that, under Paragraphs X and VI(a) of the Order on Consent between the New York State Department of Environmental Conservation and Consolidated Edison Company of New York, Inc. ("Con Edison"), Index No. CO3-20010905-2574, executed by Con Edison on September 5, 2001 and dated September 5, 2001 (the "Order on Consent"), it is the successor in title to Con Edison relative to the Indian Point, Units 1 and 2, Station with respect to the terms and conditions of the Order on Consent to the extent provided therein, and accepts the obligations thereunder.

Of course, please do not hesitate to telephone me (at 617/570-1612) with your questions, comments or concerns.

Very truly yours,


Elise N. Zoli
EZ.zig

cc. Jeffrey L. Riback, Consolidated Edison Company of New York, Inc. (via facsimile)
Connie C. Wells, Manager, Entergy Nuclear Operations, Inc. (via facsimile)
Paul R. Gauron, P.C.