

EDO Principal Correspondence Control

FROM: DUE: 08/27/07

EDO CONTROL: G20070536

DOC DT: 07/31/07

FINAL REPLY:

David Lochbaum
Union of Concerned Scientists

TO:

Reyes, EDO

FOR SIGNATURE OF :

** GRN **

CRC NO:

Carpenter, OE

DESC:

Enforcement Options - Emergency Sirens Around
Indian Point (EDATS: OEDO-2007-0448)

ROUTING:

Reyes
Virgilio
Kane
Ash
Ordaz
Cyr/Burns
Collins, RI
Dyer, NRR
Cyr, OGC

DATE: 08/02/07

ASSIGNED TO:

CONTACT:

OE

Carpenter

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate with OGC.

Template: EDO-001

E-RIDS: EDO-01



EDATS Number: OEDO-2007-0448

Initiating Office: OEDO

General Information

Assigned To: OE

OEDO Due Date: 8/27/2007 5:00 PM

Other Assignees:

SECY Due Date: NONE

Subject: Enforcement Options - Emergency Sirens Around Indian Point

Description:

CC Routing: Region I; NRR; OGC

ADAMS Accession Numbers - Incoming: NONE

Response/Package: NONE

Other Information

Cross Reference Number: G20070536

Staff Initiated: NO

Related Task:

Recurring Item: NO

File Routing: EDATS

Agency Lesson Learned: NO

Process Information

Action Type: Letter

Priority: Medium

Signature Level: OE

Sensitivity: None

Urgency: NO

OEDO Concurrence: NO

OCM Concurrence: NO

OCA Concurrence: NO

Special Instructions: Coordinate with OGC.

Document Information

Originator Name: David Lochbaum

Date of Incoming: 7/31/2007

Originating Organization: Union of Concerned Scientists

Document Received by OEDO Date: 8/1/2007

Addressee: L. Reyes, EDO

Date Response Requested by Originator: NONE

Incoming Task Received: Letter



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

July 31, 2007

Luis A. Reyes, Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: ENFORCEMENT OPTIONS

Dear Mr. Reyes:

Following the recent imposition of a \$130,000 civil penalty on Entergy for its failure to comply with the NRC's order to provide back-up power for the emergency sirens around the Indian Point Energy Center, Tom Gurdzeil, a resident of New York, recently asked me if a better outcome involved that amount going to local governments to fund better emergency response capabilities. Tom's inquiry reminded me of an enforcement option used by the NRC some years ago that might have been viable in this case.

On June 9, 1998, the NRC issued a Confirmatory Order to the licensee for the South Texas Project. The NRC exercised enforcement discretion in not issuing a notice of violation and not proposing a civil penalty after determining that four workers at South Texas Project had been retaliated against after raising safety concerns. Via the order, the company and the NRC agreed to three measures: (1) safety culture surveys of the work force by an independent consultant every 18 to 24 months, (2) annual evaluations of leadership capabilities of supervisors and managers by workers, and (3) mandatory continuing training program for all supervisors and managers.

South Texas Project had previously received enforcement action from NRC due to worker discrimination problems. On October 18, 1995, the NRC proposed a \$160,000 civil penalty after determining that two security guards had been fired after raising safety concerns. On September 19, 1996, the NRC proposed a \$200,000 civil penalty after determining that another two workers had been fired after raising safety concerns.

The six-figure civil penalties issued by NRC in 1995 and then again in 1996 did not have the deterrent effect – the problem recurred resulting in the 1998 order for the same worker discrimination problem. The corrective measures taken under the order appear to have been a more effective remedy – there hasn't been another worker discrimination violation at South Texas Project in the near-decade since the order.

One might argue that the company had an obligation under Appendix B to 10 CFR Part 50 to take the corrective measures under the order after the 1995 and 1996 violations. Perhaps, but UCS thought at the time of the NRC's 1998 order and continues to believe today that such cases are candidates for creative NRC enforcement options. There can be no argument that the order produced a better outcome for all parties than either of two prior six-figure civil penalties.

By federal regulation, the NRC could not have imposed a civil penalty on South Texas Project in 1998 and then used the collected monies to fund an independent consultant for the safety culture surveys. By regulation, the civil penalties paid by NRC's power reactor licensees must go to the US Treasury. But the

Washington Office: 1707 H Street NW Suite 600 • Washington DC 20006-3919 • 202-223-6133 • FAX: 202-223-6162
Cambridge Headquarters: Two Brattle Square • Cambridge MA 02238-9105 • 617-547-5552 • FAX: 617-864-9405
California Office: 2397 Shattuck Avenue Suite 203 • Berkeley CA 94704-1567 • 510-843-1872 • FAX: 510-843-3785

EDO --G20070536

1998 order illustrates a legal means for NRC and its licensees to pursue creative enforcement options to the traditional civil penalties. Not every potential civil penalty case is a candidate for such options, but the Indian Point emergency siren case might be such a candidate.

At its core, the Indian Point emergency siren case involves an attempt to improve the reliability of the public notification system in event of an accident. When the company failed to comply with the NRC's order to upgrade the reliability by providing back-up power to the sirens, the NRC issued the \$130,000 civil penalty. The company subsequently paid the fine to the US Treasury. Today, the sirens still lack demonstrated back-up power capability.

Like in the South Texas Project case, this Indian Point case might be better served by a similar option to traditional civil penalty enforcement. An order might have had the company paying for the acquisition of reverse-911 phone systems for county and/or townships or other communications capability upgrades. Such an order would not have lessened the company's obligation to provide back-up power for the sirens any more than the South Texas Project order lessened that company's obligation to not retaliation against workers raising safety concerns. Such an order might have resulted in tangible improvements in emergency response capabilities, something that the civil penalty failed to do.

The purpose of this letter isn't to criticize the NRC for not having arranged a South Texas Project-like order in the recent Indian Point case. Until Tom Gurdziel's e-mail reminded me, I had forgotten about this precedent, even though I thought very highly of it at the time. The purpose of this letter is to hopefully put this enforcement option back onto the table for possible consideration in future cases. The NRC developed this option and it's too valuable for a one-time application.

Sincerely,

A handwritten signature in black ink, reading "David O. Lochbaum". The signature is written in a cursive, flowing style.

David Lochbaum
Director, Nuclear Safety Project

9 Twin Orchard Drive
Oswego, NY 13126
July 31, 2007

Cynthia A. Carpenter, Director
Office of Enforcement
US NRC
Washington, DC 20555-0001

Dear Director Cynthia A. Carpenter:

If Entergy/Indian Point does not have a fully operable battery backup siren system in place with fully trained county workers and FEMA approval by August 25, 2007, could I suggest the following:

Reactor Power Level

- 1- Reduction of maximum licensed power of Unit 2 to 75% at noon, August 25, 2007
- 2- Reduction of maximum licensed power of Unit 3 to 75% at noon, August 25, 2007
- 3- Reduction of maximum licensed power of Unit 2 to 50% at noon, September 1, 2007
- 4- Reduction of maximum licensed power of Unit 3 to 50% at noon, September 1, 2007
- 5- Reduction of maximum licensed power of Unit 2 to 25% at noon, October 1, 2007
- 6- Reduction of maximum licensed power of Unit 3 to 25% at noon, October 1, 2007
- 7- Reduction of maximum licensed power of Unit 2 to 2% at noon, November 1, 2007
- 8- Reduction of maximum licensed power of Unit 3 to 2% at noon, November 1, 2007

The idea here is to improve safety to the Hudson Valley public. Since a new siren system is not available to do this, an alternative way is to lower each plants power level. By lowering them in stages, more time is available to obtain replacement power.

By keeping the power level just above zero, any necessary periodic reactor testing may still be done.

Reactor Relicensing

- 9- Immediately terminate the plant license extension application for Unit 2
- 10- Immediately terminate the plant license extension application for Unit 3

With a demonstrated inability to improve public safety, why would you want these plants running for 20 more years?

Management Relocation

- 11- I can supply names.

Fines

12- Starting August 25, 2007, \$130,000 for Unit 2 (regardless of power level) EACH DAY the new siren system is not fully accepted for use (unless a voluntary daily contribution of the same amount is made to the general funds of the 4 counties)

13- Starting August 25, 2007, \$130,000 for Unit 3 (regardless of power level) EACH DAY the new siren system is not fully accepted for use (unless a voluntary daily contribution of the same amount is made to the general funds of the 4 counties)

Management Philosophy/Culture

14- NRC to hire an independent consultant group to evaluate if the current site (and above) management philosophy is appropriate to achieve Indian Point safety improvements. Specifically, should all employees be rewarded with a 10th workday off with pay when the new sirens don't work, contaminated ground water is not being treated, and contaminated ground water leaks are not being plugged? Full funding to be provided by Entergy. (This is not the worker level.)

New Siren System Design

15- The 4 counties to hire all consultants/assistance necessary to review and evaluate the new siren system design, operation, training, and maintenance. Specify the work to be done in 8 months. All direct and indirect costs, plus 15% for county overhead funded by Entergy.

Thank you,

Thomas Gurdziel