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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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CONFERENCE CALL

2.206 PETITION REVIEW BOARD MEETING FOR NEPC PETITION

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WEDNESDAY

NOVEMBER 6, 2002

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TELEPHONE CONFERENCE CALL

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The Conference Call on the 2.206 Petition on Nuclear Plant Safety convened at 9:30 a.m., Margaret Federline, Deputy Director of Office of Nuclear Materials Safety and Safeguards, presiding.

PRESENT:

MARGARET FEDERLINE

DONALD COOL

JACK GOLDBERG

THOMAS ESSIG

CHARLOTTE ABRAMS

PAUL GOLDBERG

NICHOLAS REYNOLDS, Winston and Strawn, representing General Electric (by telephone)

DUDLEY ROCHELLE, Littler, Mendelson, representing Adecco (by telephone)

P R O C E E D I N G S

PAUL GOLDBERG: We have our NRC group assembled. Margaret Federline, the Deputy Director of the Office of Nuclear Materials Safety and Safeguards is going to chair our petition review board.

We also have Donald Cool, Jack Goldberg, Thomas Essig, Charlotte Abrams and Paul Goldberg.

MR. REYNOLDS: Good morning.

MS. FEDERLINE: Good morning.

MR REYNOLDS: Is the petitioner not on the call?

PAUL GOLDBERG: He's not; he decided not to participate.

MR COOL: He was given an invitation?

PAUL GOLDBERG: He was.

I think we can probably make this pretty brief, but let me turn it over to Margaret Federline.

MS. FEDERLINE: Yes, I thought it might be useful to just walk briefly through the process, if that seems useful, or we could just go to questions, whatever your preference is.

MS. ROCHELLE: Walking through the process would be useful for me.

MS. FEDERLINE: Okay, good.

Well the subject of our phone call this morning is the 2.206 petition received from Thomas Saporito (phonetic) of the National Environmental Protection Center, dated October 1, 2002. The Division of Industrial and Medical Nuclear Safety here in the Office of Nuclear Materials Safety and Safeguards is responsible for review of the petition. And Paul Goldberg, who you just heard from, is the

petition manager.

Two-two-o-six is a process mechanism in NRC's regulations so that members of the public can request NRC action when they believe that there is an issue involving safety, and we have a management directive which is Management Directive 8.11 that we follow in implementing this process.

The purpose of getting together on a phone call is generally to allow the petitioner to address the Petition Review Board. It's an opportunity for the petitioner to provide additional explanation or support the position and, since we have no petitioner participating, we can certainly, you know, answer any of your questions. But we will not discuss the merits of the petition.

Following the phone call, the PRB will discuss and determine whether the NRC accepts the petition under the 2.206 process and whether it will be dealt with under another mechanism. The PRB's meeting today will not determine whether we agree or disagree with the petition. That will be decided later.

We want to limit any questions about the petition to those of a clarifying nature. If the PRB decides today that the petition will be considered under 2.206, then what will follow is an acknowledgment letter and then, within 120 days following the acknowledgment letter, the NRC will issue a proposed Director's decision for comment.

Now if we do not accept the petition under the 2.206 process, we will document that fact in a letter to the petitioner and status reports on the progress of the petition will be updated monthly, and

those are available on the NRC home page. And the petition manager will keep the petitioners and licensee periodically informed on the progress of the petition.

Are there any questions about the process?

MR. REYOLDS: Is this conference call transcribed?

PAUL GOLDBERG: Yes, it will be.

MR. REYNOLDS: It will be?

PAUL GOLDBERG: Yes.

MR. REYNOLDS: Then it's being tape recorded?

PAUL GOLDBERG: It's being recorded and it will be transcribed.

PAUL GOLDBERG: Yes.

JACK GOLDBERG: Hi, this is Jack Goldberg.

MR. REYNOLDS: Hi, Jack.

JACK GOLDBERG: Hi. Normally, the petitioner participates in these calls. This is the first one I'm aware of, at least that I've participated in, where the petitioner is not participating. Normally, when the petitioner doesn't want to participate and make a presentation, we don't have a call.

But, normally, when the petitioner participates, the, as provided in the Management Directive, there is a transcript of the call, and that transcript is considered a supplement to the petition.

MR. REYNOLDS: I see.

JACK GOLDBERG: And the main purpose of the call is to make sure that the NRC and the licensee understand the petition, understand the issues that are being raised by the petition and can ask questions

of a clarifying nature to the petitioner, if there's something that's not clear. We want to make sure that we address the right issues, and are not misunderstanding something that the petitioner has raised.

So, but, because this is a call, notwithstanding that the petitioner is not participating, the arrangements where we have it transcribed still apply, and so there'll be a transcript that you can have a copy of.

MR. REYNOLDS: Very well.

PAUL GOLDBERG: We'll send it to you. If you're not interested, we can skip the transcription step.

MR. REYNOLDS: We have no interest in the transcription.

MS. ROCHELLE: I would agree with that.

MR. REYNOLDS: So you can skip that as far as G.E. is concerned.

MS. ROCHELLE: And also as far as Adecco is concerned.

PAUL GOLDBERG: Okay.

MR. REYNOLDS: Can you tell us if the PRB decides not to accept the petition, how long it takeS for that process to take place and when the letter would go out to the petitioner?

PAUL GOLDBERG: We would get a letter out to the petitioner, we would expect to make the decision probably today on whether or not to accept it as a 2.206 petition. We would get a letter out to the petitioner within a week.

JACK GOLDBERG: Whether or not it's accepted under 2.206, the staff will address the

issues raised in the submission. Do either of you plan on submitting a response to this submission?

MR. REYNOLDS: G.E. Medical's position on this is that the PRB should not review the petition because it fails to provide sufficient facts to support it. There is insufficient information in the petition for G.E. Medical to frame a response.

If the PRB decides to entertain the petition and review it on the merits, at that point we would ask leave of the staff to file something, but at this time we would not propose to file anything because we don't think that the petition even overcomes the threshold that would cause the PRB to review it, as a petition under 2.206.

MS. ROCHELLE: As far is Adecco's concerned, I think we agree and adopt that same position. I would just add to that, that Adecco is a staffing company that does not manage anything or anyone inside a facility; they simply provide people to work in some G.E. facilities around the country, including this one in Jupiter, Florida, where Mr. Saporito worked.

Mr. Saporito has indicated by the array of a number of claims outstanding on various environmental and other kind of statutes and all dealing with different sorts of environmental issues, that we're trying to sort out, in the process, to address his employment claim.

In this petition, he seems to indicate in several of the requests that Adecco is a licensee. Adecco is not a licensee and the only, I'm not really convinced at all that Adeco would even meet the contractor definition.

But I, we, you know, if this goes forward, we would have to look into that more fully, but we are not, you know, we're relying on G.E., we would have to rely on G.E. to then tell us more about what's going on inside the workplace here, because that's still in the investigation stage of our cases that we're handling.

But we do not believe that, you know, that there's any real exposure to Adeco here, based on what he's alleged, and so I agree totally that the petition as alleged just doesn't meet the standard to go forward. And at this time we would not respond to it.

JACK GOLDBERG: Okay. Well, while you were making that point which we understand, we had a brief discussion and have decided that we're going to produce a transcript of this call and we will provide you copies if you want them. And we're going to provide a copy to Mr. Saporito.

MR. REYNOLDS: Yes, we would like a copy in that case.

JACK GOLDBERG: Okay.

MS. ROCHELLE: Yes, we would also.

MR. REYNOLDS: Would you kindly clarify a comment made earlier by the staff, and I don't know by whom it was made, that the staff will address the petition, even if it declines to accept it under 2.206.

JACK GOLDBERG: Yes, this is Jack Goldberg. I made that point. Our practice is that even if a submission doesn't meet the criteria for treatment under 2.206, based on the criteria in the Management Directive -- in other words, it's not going to lead to a full-blown Director's decision, the, and

there are a variety of reasons why submissions don't meet the criteria for treatment under 2.206 -- it is then typically treated as a piece of correspondence to which the submitter is entitled to a response. So we would send a letter, a response back, as if the person just wrote in a letter to the staff raising some concerns or asking some questions.

MR. REYNOLDS: I see. Thank you.

MS. FEDERLINE: Are there any more questions?

MR. REYNOLDS: I have none.

MS. ROCHELLE: Is there any appeal process on the part of Mr. Saporito that would apply in either of these situations, either if he just sent, did not move it forward and send the letter of correspondence instead?

JACK GOLDBERG: There is no formal appeal process provided, whether it's considered within the 2.206 process or not. If it were considered within the 2.206 process, the Management Directive now provides that the petitioner will be given a, and the licensee, a proposed Director's decision for comment and we will consider the comments on the proposed Director's decision before it becomes a final Director's decision.

Once it's a final Director's decision, there is no right, under the regulation, for a petitioner to petition the Commission for a review. However, there is built into the rule a *sua sponte* Commission review period, under which the Commission could, on its own motion, take up review of the Director's decision. If it's treated outside the 2.206 process, again, there's no appeal mechanism

that's provided.

Of course, any petitioner, anyone who submits something, if they're not satisfied with the response that they get, they can write additional letters to anyone here, to the responsible office director, to the EDO, to the Commission, to the IG.

In other words, we can't stop them from filing whatever they want, but there is no formal appeal process in either event.

MS. ROCHELLE: Thank you.

MS. FEDERLINE: Okay.

MR. REYNOLDS: I would make one other observation, if I may, and that is that the G.E. Medical Systems facility in issue is in Jupiter, Florida, which is an NRC agreement state. So if this facility is licensed for nuclear materials, and I don't know that it is, it would be licensed by the State of Florida, and not the NRC.

PAUL GOLDBERG: That's correct. The action that Mr. Saporito asked us to take is with respect to all G.E. Medical licensees, ones that are licensed by NRC and all facilities which Adecco manages or operates.

MR. REYNOLDS: Yes, we understand that.

MS. FEDERLINE: Okay, if there are no more questions or comments, we certainly appreciate your participation in the call today.

MR. REYNOLDS: And we appreciate your courtesy. Thank you.

MS. ROCHELLE: Thank you.

MS. FEDERLINE: Bye-bye.

(Whereupon, the proceedings went off the record at 9:50 a.m.)