

June 20, 2006

IA-05-051

Mr. Foster V. Zeh
HOME ADDRESS DELETED
UNDER 10 CFR 2.390

SUBJECT: CONFIRMATORY ORDER FOLLOWING ADR SESSION
(NRC Office Of Investigation Report No. 1-2003-037)

Dear Mr. Zeh:

In a letter dated September 29, 2005, the NRC provided you with the results of an investigation initiated by the NRC Office of Investigations (OI), Region I, on July 2, 2003, at Entergy Nuclear Operation's Indian Point Nuclear Generating Units 2 and 3 (Indian Point). This investigation was initiated, in part, to determine whether you disclosed safeguards information (SGI) to an unauthorized individual (a freelance journalist), which was subsequently disclosed to the public via an article in a national magazine. Our letter noted that, based on the evidence developed during the OI investigation, the NRC concluded that you deliberately disclosed SGI to an unauthorized individual, which caused an NRC licensee (Indian Point) to violate 10 CFR 73.21(a). 10 CFR 73.21(a) requires, in part, that each licensee and person who produces, receives or acquires SGI, shall ensure that SGI is protected against unauthorized disclosure. Our September 29, 2005 letter also informed you that we were considering escalated enforcement against you for an apparent violation of 10 CFR 50.5, "Deliberate Misconduct," as a result of NRC's conclusion. As discussed at an alternative dispute resolution (ADR) conference held on January 31, 2006, the NRC acknowledges that you maintain that you did not release SGI to the freelance reporter, deliberately or otherwise, and as such, you deny that you violated 10 CFR 50.5. Consequently, the NRC and you agree to disagree regarding whether you violated 10 CFR 50.5. A factual summary of OI Investigation 1-2003-037 was enclosed with our September 29, 2005 letter.

Our letter of September 29, 2005, offered you a choice to attend a Predecisional Enforcement Conference, or to provide a written response, or to request ADR with the NRC in an attempt to resolve any disagreement on whether a violation occurred and the appropriate enforcement action. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program, which is now in effect, is mediation.

At your request, an ADR mediation session was held between you and the NRC in King of Prussia, PA on January 31, 2006. Based on that session, as well as subsequent discussions between your attorney, Mr. Thomas Rosenthal, and the NRC, Region I Regional Counsel, Mr. Karl L. Farrar, between February 6, 2006 and March 29, 2006, a settlement agreement was reached regarding your role in this matter. The elements of the settlement agreement are as follows:

1. In the September 29, 2005 letter to you, which provided notice of an apparent violation, the NRC concluded that you deliberately caused a violation of NRC requirements by releasing SGI regarding Indian Point to a freelance journalist (an unauthorized individual). In the September 29, 2005 letter, the NRC concluded that you released the information prior to your departure from employment with Entergy Nuclear Operations (Entergy) in March 2003. The freelance journalist's article was published in the May 2003 edition of a national magazine. 10 CFR 73.21(a) requires, in part, that each licensee and person who produces, receives or acquires SGI, shall ensure that SGI is protected against unauthorized disclosure. 10 CFR 50.5(a)(1), in part, prohibits any licensee, licensee employee, or contractor employee, from engaging in deliberate misconduct that causes a licensee to violate any rule or regulation issued by the Commission.
2. You agree that you provided some of the information contained in the aforementioned magazine article to the freelance reporter, and that some of the information in the article was considered by the NRC (but not you) to be SGI at the time of the release. However, you maintain that you did not release SGI to the freelance reporter, deliberately or otherwise, and as such, you deny that you violated 10 CFR 50.5(a)(1). Consequently, the NRC and you agree to disagree regarding whether you violated 10 CFR 50.5(a)(1).
3. You indicate that at this time, you have no intention of working or seeking employment in any activities or at any facility that is subject to NRC regulations, and that you are willing to not engage in future NRC licensed activities for a period of three years from the date of an NRC Confirmatory Order confirming this Agreement.
4. You also agree that you will not disclose SGI information regarding the Indian Point security program to any unauthorized individuals, consistent with the Wackenhut non-disclosure agreement that you signed on May 9, 1997.
5. The NRC acknowledges that you have reported public health and safety concerns in the past. Reporting of concerns, either internally or to the NRC, contributes to the NRC mission of protecting public health and safety.
6. In consideration of your obligations and commitments as set forth above, the NRC agrees to not take any action against you regarding this matter other than issuance of a Confirmatory Order confirming the commitments set forth herein. This Confirmatory Order will only be made publicly available in ADAMS, and will appear in the "Current Issues and Actions Section" on the NRC website for a period of one year from the date of the Confirmatory Order. The NRC agrees that if it publicly references the underlying facts that resulted in this Confirmatory Order in a manner other than as stated above, the NRC will not disclose your name or the facility where you were previously employed. This does not preclude the NRC from responding to inquiries that might result from the placing of the document into ADAMS or on the "Current Issues and Actions Section" of the NRC website, relating to this matter. Responses provided by the NRC will be comprised of information that is part of the NRC public record. Except as set forth in

this Paragraph 6, the NRC agrees not to cause publication of this Agreement, the Confirmatory Order, or the underlying facts identifying you that resulted in this Confirmatory Order unless required by law, rule, regulation, or competent Administrative, Congressional or Judicial Authority.

7. You agree to issuance of a Confirmatory Order confirming this Agreement, and also agree to waive the right to request a hearing regarding all or any part of this Confirmatory Order.

We have enclosed a Confirmatory Order (Effective Immediately) to confirm the commitments made as part of the settlement agreement. As evidenced by your signed "Consent and Hearing Waiver Form (copy enclosed) dated June 15, 2006, you agreed to issuance of this letter and Confirmatory Order.

You are not required to respond to this letter. However, if you choose to provide a response, please provide it to me within 30 days at U.S. Nuclear Regulatory Commission, Office of Enforcement, Washington, D.C. 20555.

In accordance with the agreement reached at the ADR session as noted in Item 6 above, a copy of this letter will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also include this letter on its Web site for a period of 1 year at www.nrc.gov; select **What We Do, Enforcement, Significant Enforcement Actions**, then **Individuals**. Your response, if you choose to provide one, with your address removed, will also be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). This letter will be maintained by the Office of Enforcement (OE) in a NRC Privacy Act system of records, NRC-3, "Enforcement Actions Against Individuals." The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from our Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

If you have any questions or comments, please contact Mr. Karl Farrar, Region I Counsel, at 610-337-5301.

Sincerely,

/RA/

Michael Johnson, Director
Office of Enforcement

Enclosures: As Stated

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OFFICE	RI/ORA		HQ/OGC		HQ/NSIR		RI/ORA		HQ/OE	
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*See previous concurrences

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
Foster V. Zeh

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IA-05-051

CONFIRMATORY ORDER
(EFFECTIVE IMMEDIATELY)

I

Foster V. Zeh (Mr. Zeh) is a former employee (a security officer) of The Wackenhut Corporation and Entergy at the Indian Point Nuclear Power Station (Indian Point). The facility is located on an Entergy Nuclear Operations, Inc. site in Buchanan, NY.

II

An investigation was initiated by the NRC Office of Investigations (OI) on July 2, 2003, at Indian Point. This investigation was initiated, in part, to determine if Mr. Zeh disclosed Safeguards Information (SGI) to an unauthorized individual (a freelance journalist), and whether the SGI was subsequently disclosed to the public via an article in a national magazine. In addition, 10 C.F.R. § 73.21(a) requires, in part, that each licensee and person who produces, receives or acquires SGI, shall ensure that SGI is protected against unauthorized disclosure. Based on the evidence developed during its investigation, OI concluded that Mr. Zeh deliberately disclosed SGI to an unauthorized individual. 10 C.F.R. § 50.5(a)(1) provides, in part, that employees of licensees may

not engage in deliberate misconduct that causes a licensee to violate any rule, regulation, order or license issued by the Commission.

III

In a letter dated September 29, 2005, the NRC offered Mr. Zeh a choice to attend a Predecisional Enforcement Conference, or to provide a written response, or to request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve any disagreement on whether a violation occurred and the appropriate enforcement action.

In response to the September 29, 2005 letter, Mr. Zeh requested the use of ADR to resolve this matter with the NRC. ADR is a process in which a neutral mediator with no decision-making authority assists the NRC and Mr. Zeh in reaching an agreement on resolving any differences regarding the matter. An ADR session was held between Mr. Zeh and the NRC in King of Prussia, Pennsylvania on January 31, 2006, and was mediated by a professional mediator, arranged through Cornell University's Institute of Conflict Management. Based on that ADR session, as well as subsequent discussions between Mr. Thomas Rosenthal, Mr. Zeh's attorney, and Mr. Karl Farrar, the NRC, Region I Regional Counsel, between February 6, 2006 and March 29, 2006, a settlement agreement was reached. The elements of the settlement agreement consisted of the following:

1. In a September 29, 2005 letter to Mr. Zeh, which provided notice of an apparent violation, the NRC concluded that Mr. Zeh had deliberately caused a violation of NRC requirements by releasing SGI regarding Indian Point to a freelance journalist (an unauthorized individual). In the September 29, 2005 letter, the NRC concluded that Mr. Zeh released

the information prior to his departure from employment with Entergy Nuclear Operations (Entergy) in March 2003. The freelance journalist's article was published in the May 2003 edition of a national magazine. 10 C.F.R. § 73.21(a) requires, in part, that each licensee and person who produces, receives or acquires SGI, shall ensure that SGI is protected against unauthorized disclosure. 10 C.F.R. § 50.5(a)(1), in part, prohibits any licensee, licensee employee, or contractor employee, from engaging in deliberate misconduct that causes a licensee to violate any rule or regulation issued by the Commission.

2. Mr. Zeh agrees that he provided some of the information contained in the aforementioned magazine article to the freelance reporter, and that some of the information in the article was considered by the NRC (but not Mr. Zeh) to be SGI at the time of the release. However, Mr. Zeh maintains that he did not release SGI to the freelance reporter, deliberately or otherwise, and as such, Mr. Zeh denies that he violated 10 CFR 50.5(a)(1). Consequently, the NRC and Mr. Zeh agree to disagree regarding whether Mr. Zeh violated 10 CFR 50.5(a)(1).
3. Mr. Zeh indicates that at this time, he has no intention of working or seeking employment in any activities or at any facility that is subject to NRC regulations, and that he is willing to not engage in future NRC licensed activities for a period of three years from the date of an NRC Confirmatory Order confirming this Agreement.
4. Mr. Zeh also agrees that he will not disclose SGI information regarding the Indian Point security program to any unauthorized individuals, consistent with the Wackenhut non-disclosure agreement that he signed on May 9, 1997.

5. The NRC acknowledges that Mr. Zeh has reported public health and safety concerns in the past. Reporting of concerns, either internally or to the NRC, contributes to the NRC mission of protecting public health and safety.

6. In consideration of Mr. Zeh's obligations and commitments as set forth above, the NRC agrees to not take any action against Mr. Zeh regarding this matter other than issuance of a Confirmatory Order confirming the commitments set forth herein. This Confirmatory Order will only be made publicly available in ADAMS, and will appear in the "Current Issues and Actions Section" on the NRC website for a period of one year from the date of the Confirmatory Order. The NRC agrees that if it publicly references the underlying facts that resulted in this Confirmatory Order in a manner other than as stated above, the NRC will not disclose Mr. Zeh's name or the facility where Mr. Zeh was previously employed. This does not preclude the NRC from responding to inquiries that might result from the placing of the document into ADAMS or on the "Current Issues and Actions Section" of the NRC website, relating to this matter. Responses provided by the NRC will be comprised of information that is part of the NRC public record. Except as set forth in this Paragraph 6, the NRC agrees not to cause publication of this Agreement, the Confirmatory Order, or the underlying facts identifying Mr. Zeh that resulted in this Confirmatory Order unless required by law, rule, regulation, or competent Administrative, Congressional or Judicial Authority.

7. Mr. Zeh agrees to issuance of a Confirmatory Order confirming this Agreement, and also agrees to waive the right to request a hearing regarding all or any part of this Confirmatory Order.

Implementation of these commitments will provide enhanced assurance that safeguards

information will be appropriately protected and will resolve NRC's concerns. I find that Mr. Zeh's commitments as set forth in Section IV are acceptable and necessary, and conclude that with these commitments, the protection of public health and safety is reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Mr. Zeh's commitments be confirmed by this Order. Based on the above and Mr. Zeh's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to Sections 103, 147, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. §2.202 and 10 C.F.R. Parts 50 and 73, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY THAT:

1. Mr. Zeh will not engage in future NRC licensed activities for a period of three years from the date of this NRC Confirmatory Order confirming this Agreement.
2. Mr. Zeh also agrees that he will not disclose SGI information regarding the Indian Point security program to any unauthorized individuals, consistent with the Wackenhut non-disclosure agreement that he signed on May 9, 1997.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Zeh of good cause.

Any person adversely affected by this Confirmatory Order, other than Mr. Zeh, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and must include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, to the Director of the Division of Regulatory Improvement Programs at the same address, and to Entergy Nuclear Operations, Inc. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel by means of facsimile transmission to 301-415-3725 or e-mail to OGCMailCenter@nrc.gov. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 C.F.R. § 2.309 (d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE EFFECTIVENESS
DATE OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Michael Johnson, Director

Office of Enforcement

Dated this 20th day of June 2006