

June 8, 2007

The Honorable Anthony W. Sutton
Commissioner
Department of Emergency Services
Westchester County
4 Dana Road
Valhalla, NY 10656

Dear Mr. Sutton:

I am responding to your letter, dated May 14, 2007, to Mr. Samuel Collins, U.S. Nuclear Regulatory Commission's (NRC) Region I, Regional Administrator. Your letter related to the NRC's April 23, 2007, Notice of Violation and Proposed Imposition of a Civil Penalty issued to Entergy Nuclear Operations, Inc. (Entergy). The civil penalty was issued in the amount of \$130,000 for a violation at the Indian Point Nuclear Generating Station (Indian Point Plant). The NRC issued the civil penalty for Entergy's failure to install, by April 15, 2007, an operational backup power supply for the Emergency Notification System for the Indian Point Plant. The backup power requirements were mandated by the Energy Policy Act of 2005, and were implemented through an NRC January 31, 2006, Confirmatory Order to Entergy.

In your letter, Westchester County requested that the NRC redirect the funds from the proposed civil penalty to the four counties in the 10-mile radius of the Indian Point Plant. These counties are tasked with maintaining radiological emergency preparedness plans. Your letter indicated that the funds would be useful to the counties for their emergency planning and possibly for enhancement of their public emergency notification capabilities.

The NRC shares your goal to ensure the health and safety of the Westchester County's residents and the residents of the other counties in the vicinity of the Indian Point Plant. The NRC works diligently to achieve that goal. However, Entergy has already paid the \$130,000 civil penalty, and as such, the NRC is required to deposit the funds to the U. S. Treasury pursuant to the Miscellaneous Receipts Act. The relevant portion of the Act, which is codified at 31 U.S.C. 3302(b), states that "an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim." The NRC does not have the authority to redirect such funds for non-appropriated programs. See Nuclear Regulatory Commission's Authority to Mitigate Civil Penalties, B-238419, 70 Comp. Gen. 17 (1990). Once these funds were sent to the NRC, we were mandated to deposit the funds in the Treasury. As such, the NRC is unable to honor your request.

As for your reference to the U.S. Environmental Protection Agency (EPA), we understand that the EPA has adopted a policy and established well-defined procedures for using so-called supplemental environmental projects (SEP) that may be considered if proposed by violators who may be otherwise subject to civil monetary penalties. Guided by the referenced Comptroller General decision directly applicable to the NRC's statutory civil penalty authority and other policy considerations, the NRC has not established procedures that would allow the

A. W. Sutton

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diversion of NRC civil penalty funds to other projects. The U.S. Government Accountability Office decisions have identified significant statutory impediments to the granting of proposals to direct expenditures for projects carried out by a third party in lieu of payment of a civil penalty.

We will continue to closely monitor Entergy's progress to comply with the new emergency notification requirements and will take appropriate action as deemed necessary.

Sincerely,

/RA/

Cynthia A. Carpenter, Director
Office of Enforcement

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Cynthia A. Carpenter, Director
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