

1 STATE OF NEW YORK
2 DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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4 In the Matter of:

5 Entergy Nuclear Indian Point 2, LLC,
6 and Entergy Nuclear Indian Point 3, LLC
7 DEC No.:
8 3-5522-00011/00004
9 SPDES No.:
10 NY-0004472

11 For a State Pollution Discharge
12 Elimination System Permit Renewal and Modification
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15 Entergy Nuclear Indian Point 2, LLC,
16 Entergy Nuclear Indian Point 3, LLC, and
17 Entergy Nuclear Operations, Inc.
18 DEC App. Nos.
19 3-5522-00011/00030
20 (IP2)
21 3-5522-00105/00031

22 Joint Application for CWA § 401 Water Quality
23 Certification

ADJUDICATORY HEARING BEFORE:

DANIEL P. O'CONNELL, ALJ

MARIA E. VILLA, ALJ

20 NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION
21 625 Broadway, 1st Floor
22 Albany, New York 12233

23 November 15, 2011
8:32 a.m.

M-F REPORTING, INC. (518) 478-7220

1 sub-paragraph 4.

2 Q. So, is it still your understanding of the
3 prohibition in section 0807 that section 1 prohibits the
4 discharge of all radiological materials?

5 A. No. It appears that it doesn't, on further read,
6 but -- and that's why I included the general prohibition
7 of I think it was 0501 when I took the stand.

8 Q. So, is it your testimony now that you're changing
9 your testimony with respect to whether 17-0807(1)
10 applies to Entergy's releases?

11 A. It doesn't appear to be the best fit for the
12 statement I made, correct.

13 Q. So, your understanding -- is it your
14 understanding that discharge of radiological, chemical,
15 or biological warfare agents, that means that the
16 radiological qualifies as a warfare agent?

17 A. Yes.

18 Q. And that's not what Entergy has released in this
19 case, right?

20 A. Correct.

21 Q. No radiological warfare agents?

22 A. Not that I'm aware of.

23 Q. Now, the second prohibition is 17-0807(1) is the

1 prohibition on the discharge of high-level radioactive
2 waste as such terms are defined by the act.

3 Is it your position that the materials that have
4 leaked in this case are high-level radioactive waste, as
5 those terms are defined by the act?

6 A. No.

7 JUDGE VILLA: Short break. So let's say
8 come back at 10 minutes after 10.

9 (Recess taken.)

10 JUDGE VILLA: Back on.

11 Mr. Trach, whenever you are ready.

12 MR. TRACH: Thank you, Your Honor.

13 EXAMINATION

14 BY MR. TRACH:

15 Q. Mr. Kolakowski, I would like to talk to you for a
16 bit about ECL Section 17-0807 4. We discussed your
17 current position with regard to the applicability of
18 section 1 prior to the break, and I believe you
19 testified that you still believe that section 4 applies
20 to the discharges in this case, correct?

21 A. Yes, I believe so.

22 Q. And if I am reading it correctly, actually, you
23 wouldn't have a copy of 17-0807 but it's mentioned in