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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

DOCKETED
USNRC

August 3, 1999

'99 AUG -4 A8:34

Mr. David A. Lochbaum
Union of Concerned Scientists
1616 P. Street, NW, Suite 310
Washington, DC 20036-1495

OFFICE OF THE
GENERAL COUNSEL
ADJUTANT GENERAL

Dear Mr. Lochbaum:

This letter is in response to your request for action under 10 CFR 2.206, which you sent to Dr. William Travers, Executive Director for Operations, U.S. Nuclear Regulatory Commission (NRC) on March 31, 1999. In your letter, you requested three specific actions pursuant to the 'other actions' provision of 10 CFR 2.206: (1) you requested that the individuals responsible for discrimination against a contract electrician at the Seabrook Nuclear Generating Station as identified in NRC Office of Investigations (OI) Report No. 1-98-005 be banned by the NRC from participation in licensed activities at and for any nuclear power plant for a period of at least five years; (2) you requested that the individuals responsible for creating a false record to cover up the concern raised by the contract electrician as identified in the cited OI report also be banned by the NRC from participation in licensed activities at and for any nuclear power plant for a period of at least five years; and (3) you requested that you be permitted to attend the upcoming pre-decisional enforcement conference on this matter.

Regarding items one and two above, Mr. Lieberman, the former Office of Enforcement Director informed you in an April 20, 1999, letter that these requests were being treated as proper requests for action under 10 CFR 2.206 and that actions would be taken on these requests within a reasonable time. Regarding item three, you were informed that this request was being denied for the reasons stated in the April 20, 1999, letter.

As stated in the enclosed Director's Decision (DD-99-10), your request that the NRC ban the individual alleged to have unlawfully discriminated against a contract electrician in violation of 10 CFR 50.7 from participating in licensed activities for a period of at least five-years is denied. The NRC has, however, issued a Notice of Violation to the Individual. Since the NRC has concluded that no false records were created in violation of 10 CFR 50.9, enforcement action for creating a false record is not appropriate as you requested in item two above.

A copy of the Decision will be referred to the Secretary of the Commission for the Commission's review in accordance with Section 2.206(c). As provided by this regulation, the Decision will constitute the final action of the Commission twenty-five days after the date of its issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

20708

Mr. David A. Lochbaum

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Also enclosed is a copy of the Notice of the Director's Decision that has been filed with the Office of the Federal Register for publication.

Sincerely,



R. W. Borchardt, Director
Office of Enforcement

Enclosures:

1. Director's Decision
2. Federal Register Notice

cc: SECY

OGC

PDR

DCS

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USNRC DD-99-10

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '99 AUG -4 A8:34

OFFICE OF ENFORCEMENT
R. W. Borchardt, Director

OFFICE OF
RULE
ADJUTANT

In the Matter of)
)
SEABROOK NUCLEAR POWER STATION) (10 CFR 2.206)
)
)

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. INTRODUCTION

On March 31, 1999, David A. Lochbaum (Petitioner) filed a petition pursuant to 10 CFR 2.206 requesting that the U.S. Nuclear Regulatory Commission (NRC) take enforcement action against unspecified individuals working at the Seabrook Nuclear Power Station (Seabrook Station) who allegedly: (1) discriminated against a contract electrician in violation of 10 CFR 50.7; and (2) created a false record in violation of 10 CFR 50.9. More specifically, the Petitioner requested that the NRC ban these unspecified individuals from participating in licensed activities for a period of at least five years. The Petitioner also requested (3) permission to attend an upcoming predecisional enforcement conference between the NRC and the licensee on this matter.

As the basis for his request, the Petitioner cited a March 16, 1999, letter from the NRC to the North Atlantic Energy Service Corporation (NAESCO), the owner of the Seabrook Station. This letter informed NAESCO that an investigation conducted by the Office of Investigations (OI) had concluded that a Williams Power Corporation foreman had discriminated against an electrician, in violation of 10 CFR 50.7, for raising a safety concern and that this same Williams

Power Corporation foreman had deliberately caused an inaccurate record to be created, in violation of 10 CFR 50.9.

By a letter dated April 20, 1999, the Petitioner was informed that his requests for enforcement action had been referred to the Office of Enforcement and that pursuant to 10 CFR 2.206, action on his requests would be taken within a reasonable time.

II. DISCUSSION

On May 29, 1998, OI issued Report 1-1998-005 which concluded that a Williams Power Corporation foreman had discriminated against an electrician for raising a safety concern, in violation of 10 CFR 50.7, and that this same Williams Power Corporation foreman had deliberately caused an inaccurate record to be created, in violation of 10 CFR 50.9. On March 16, 1999, the NRC sent a letter to NAESCO which summarized the findings of the OI report and invited NAESCO's representatives to meet with the NRC and present their views on the apparent violations identified in the report. As is customary, a copy of the NRC's March 16, 1999, letter to NAESCO was placed in the Public Document Room and made available for public inspection.

The Petitioner obtained a copy of the NRC's March 16, 1999, letter to NAESCO and used the summary of the OI findings contained in the letter as a basis for requesting enforcement action under 10 CFR 2.206. A member of the NRC enforcement staff contacted the Petitioner on April 15, 1999, to determine whether the petitioner had any information regarding his March 31, 1999, request for action under 10 CFR 2.206 that was not contained in his petition or the NRC's March 16, 1999, letter to NAESCO. The Petitioner informed the NRC enforcement staff member that he had no knowledge of the apparent violations for which he was

requesting enforcement action other than that information summarized in the NRC's March 16, 1999, letter.

A closed predecisional enforcement conference was held on June 2, 1999, between the NRC and NAESCO, Williams Power Corporation, and the Williams Power Corporation foreman whose actions allegedly caused NAESCO to violate 10 CFR 50.7 and 50.9. This conference was closed to the public because it is the Commission's policy to normally close conferences to public observation when the enforcement action being contemplated by the NRC staff is based on the findings of an OI investigation report that has not been publically disclosed or when the enforcement action being contemplated may be taken against an individual. The Petitioner was informed that the fact that a 2.206 petition has been filed does not provide a basis for permitting public observation. During this conference, the participants discussed the circumstances that led to the foreman's decision to layoff the electrician who had raised a safety concern and the circumstances surrounding the creation of the document which OI concluded was inaccurate. The electrician who had raised the safety concern and was subsequently selected for layoff by Williams Power Corporation also attended the conference, and he met with the NRC participants following the conference to present his views on the matters discussed during the conference and to answer NRC questions.

Based on the information contained in OI Report 1-1998-005 and the information developed during the June 2, 1999, predecisional enforcement conference, the NRC staff concluded that a violation of 10 CFR 50.7 had occurred as stated in the OI report but that no violation of 10 CFR 50.9 had occurred because the allegedly inaccurate document was in fact complete and accurate in all material respects.

III. ANALYSIS

Based on the information contained in OI Report 1-1998-005 and the information developed during the June 2, 1999, predecisional enforcement conference, the NRC staff has concluded that enforcement action is warranted against NAESCO, the Williams Power Corporation, and the Williams Power foreman for discriminating against a contract electrician in violation of 10 CFR 50.7. After carefully weighing all the circumstances of the case, the NRC staff has concluded that it is appropriate to issue NAESCO a Severity Level III Notice of Violation and Proposed Civil Penalty in the amount of \$55,000 (EA 98-165), and to issue the Williams Power Corporation (EA 98-338) and the Williams Power Corporation foreman (IA 99-003) each Severity Level III Notices of Violation.

In reaching this enforcement decision against the foreman, the NRC staff weighed such factors as the past performance of the foreman and the electrician, the fact that the Williams Power Corporation foreman was only an acting first-line supervisor, and the severity of the adverse action including the fact that Williams Power Corporation, at the request of NAESCO, promptly rehired the electrician to reduce the probability that there would be a chilling effect on other employees for raising safety concerns. Consideration was also given to evidence presented at the predecisional enforcement conference which indicated that the foreman had encouraged his employees to raise their safety concerns with him and which indicated that the foreman had been receptive to safety concerns raised by employees in the past. The violation in this case is based on the NRC staff's conclusion that although the foreman might have encouraged his employees in the past to raise safety concerns, the foreman expected that his employees would bring all their concerns to him rather than raise their concerns directly with

representatives of NAESCO. The NRC staff concluded in this case that the foreman selected the electrician for layoff because the electrician raised a safety concern with a NAESCO QC inspector.

Given all the circumstances of this case, the NRC staff concluded that issuing the foreman a Severity Level III Notice of Violation was an appropriate enforcement action to put the foreman on notice that discriminating against employees who take their safety concerns directly to representatives of NAESCO is unacceptable. After meeting with the foreman, the NRC staff is satisfied that the foreman understands that employees are permitted by NRC regulations to raise their safety concerns with whomever they choose and that he cannot retaliate against individuals who choose to raise their concerns directly with NAESCO or the NRC. After meeting with the foreman, the NRC staff is also confident that the foreman will comply with NRC regulatory requirements in the future. Therefore, while the NRC staff considered issuing the foreman an order banning him from licensed activities, as requested by the Petitioner, the NRC staff does not believe that an order is warranted in this case or necessary to protect public health and safety.

Based on the information contained in OI Report 1-1998-005 and the information developed during the June 2, 1999, predecisional enforcement conference, the NRC staff has concluded that no violation of 10 CFR 50.9, "Completeness and Accuracy of Information," occurred. Specifically, the NRC concluded that, because the wiring discrepancy was noted in the work document by the contract electrician, the documentation of the control building air conditioning (CBA) system control panel work activities was accurate. However, the failure to terminate the conductors in accordance with the applicable design document constituted a violation of requirements contained in Seabrook site procedures. This violation was of minor significance and is not subject to formal enforcement action.

IV. CONCLUSION

For the reasons set forth above, the Petition is denied. In accordance with 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. As provided by this regulation, this Decision will constitute the final action of the Commission twenty-five days after issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 3rd day of August 1999.

FOR THE NUCLEAR REGULATORY COMMISSION

R. W. Borchardt

R. W. Borchardt, Director
Office of Enforcement

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USNRC DD-99-10

SEABROOK NUCLEAR POWER STATION

UNITED STATES NUCLEAR REGULATORY COMMISSION

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ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

REC'D
ADJUT

Notice is hereby given that the Director, Office of Enforcement, has issued a Director's Decision concerning a petition dated March 31, 1999, filed by Mr. David A. Lochbaum against unspecified individuals working at the Seabrook Nuclear Power Station (Seabrook Station) pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The petition requests that the individuals responsible for discrimination against a contract electrician at the Seabrook Nuclear Generating Station as identified in NRC Office of Investigations (OI) Report No. 1-98-005 be banned by the NRC from participation in licensed activities at and for any nuclear power plant for a period of at least five (5) years; that the individuals responsible for creating a false record to cover up the concern raised by the contract electrician as identified in the cited OI report also be banned by the NRC from participation in licensed activities at and for any nuclear power plant for a period of a least five (5) years; and that the Petitioner be permitted to attend the upcoming pre-decisional enforcement conference on this matter.

The Director, Office of Enforcement, has determined that the petition should be denied for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (i.e., DD-99-10). While the NRC staff concluded that the foreman had engaged in wrongdoing, the Director, Office of Enforcement denied Mr. Lochbaum's request to ban the foreman from participating in licensed activities for a period of at least five years because the requested enforcement action is not appropriate based on the circumstances of the case. The Director's Decision and the Notices of Violation issued to the foreman, Williams Power Corporation, and NAESCO for the foreman's wrongdoing are available for public inspection and copying in the Commission's Public

Document Room, the Gelman Building, 2120 L Street NW, Washington, DC, and on the NRC's web page at <http://www.nrc.gov/NRC/PUBLIC/2206/index.html> and <http://www.nrc.gov/OE/rpr/oehome4.htm> respectively.

A copy of the Director's Decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided therein, the Director's Decision will become the final action of the Commission twenty-five days after issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 3rd day of August 1999.

FOR THE NUCLEAR REGULATORY COMMISSION



R. W. Borchardt, Director
Office of Enforcement



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 20, 1999

Mr. David A. Lochbaum
Union of Concerned Scientists
1616 P Street, NW, Suite 310
Washington, DC 20036-1495

Dear Mr. Lochbaum:

I have received your letter requesting action under 10 CFR 2.206, which you sent to Dr. William Travers, Executive Director for Operations, U.S. Nuclear Regulatory Commission (NRC) on March 31, 1999. In your letter, you requested three specific actions: (1) you requested that the NRC take enforcement action against the individuals alleged to have unlawfully discriminated against a contract electrician in violation of 10 CFR 50.7, as identified in NRC Office of Investigation (OI) Report 1-1998-005; (2) you requested that the NRC take enforcement action against the individuals alleged to have created a false record in violation of 10 CFR 50.9, as identified in OI Report 1-1998-005; and (3) you requested that you be granted permission to attend an upcoming predecisional enforcement conference between the NRC and the licensee on these matters.

Regarding items one and two above, you specifically requested that the NRC ban these individuals from participating in licensed activities for a period of at least five-years if the findings in OI Report 1-1998-005 are valid. Your requests for enforcement actions, numbers one and two above, are being treated as proper requests for action under 10 CFR 2.206.

Your request to attend an upcoming predecisional enforcement conference with the licensee, however, is not considered to be a proper request for action under 10 CFR 2.206. As to this request, you stated in your letter that you seek to attend the upcoming predecisional enforcement conference with the licensee because it deals with issues directly relevant to your requests for enforcement action and that you would sign a non-disclosure agreement to guarantee the privacy of the electrician. This request, however, is not considered to be a proper request for action, and it is denied. As stated in Section V of the Commission's "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), predecisional enforcement conferences are a meeting between the NRC staff and the licensee. As stated in the Enforcement Policy, these meetings will normally be closed to public observation when the enforcement action being contemplated by the NRC staff is based on the findings of an OI investigation report that has not been publically disclosed or when the enforcement action being contemplated may be taken against an individual. In the staff's view, a closed conference will be more effective in achieving the purpose of the conference. (The fact that a 2.206 petition has been filed does not provide a basis for permitting public observation.) However, the contract electrician may attend the conference in accordance with the Enforcement Policy. In addition, a transcript will be kept of the meeting.

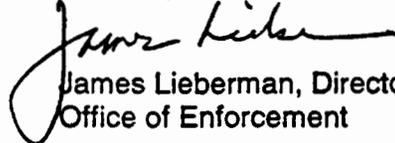
It is my understanding, based on your April 15, 1999 conversation with Mr. Virgil Beaston of my staff, that you do not have any information regarding the apparent violations other than that information which was provided to the licensee in the NRC's March 16, 1999 letter requesting the licensee to attend a predecisional enforcement conference. Therefore, I find no reason in

this case to make an exception to the Commission's stated policy of keeping these types of meetings closed to public observation. If you should obtain information relevant to this matter which you want the NRC staff to consider in making its final enforcement decision, you should provide it to me in writing as soon as possible. The NRC staff will consider any relevant information you provide to me if it is received before a final enforcement decision has been made.

As provided by Section 2.206, action will be taken on your requests, one and two above, within a reasonable time. Your request to attend an upcoming predecisional enforcement conference with the licensee, however, is denied. I have enclosed for your information a copy of the notice that is being filed with the Office of the Federal Register for publication and a letter regarding this matter which the NRC staff sent to the licensee on April 8, 1999.

If you have any questions concerning this letter, please contact Mr. Beaston at (301) 415-2989.

Sincerely,



James Lieberman, Director
Office of Enforcement

Enclosures: *Federal Register* Notice
Letter to Mr. Feigenbaum

cc: Licensee (w/copy of incoming 2.206 request) & Service List

Dr. Anderson Harrison

+0012023320905 UCS DC

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**UNION OF
CONCERNED
SCIENTISTS**

1616 P St. NW, Suite 310, Washington DC 20036 Phone: 202.332.0900 Fax: 202.332.0905

DATE: 3-31-99

TO: Dr. Travers

FROM: Dave Lockbaum

PAGES (including cover sheet): 5

FAX#: _____

COMMENTS:

**UNION OF
CONCERNED
SCIENTISTS**

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March 31, 1999

OFFICE OF
PUBLIC
AFFAIRS

Dr. William Travers
Executive Director for Operations
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

**SUBJECT: PETITION PURSUANT TO 10 CFR 2.206: ILLEGAL ACTIVITIES AT
SEABROOK**

Dear Dr. Travers:

On behalf of the Citizens Awareness Network (CAN), the Citizens Within the Ten Mile Radius Research and Education Foundation, the New England Coalition on Nuclear Pollution (NECNP), the Nuclear Information and Resource Service (NIRS), and the Seacoast Anti-Pollution League (SAPL), the Union of Concerned Scientists (UCS) submits this petition pursuant to the 'other actions' provision of 10 CFR 2.206. Specifically, we request that the individuals responsible for discrimination against a contract electrician at the Seabrook Nuclear Generating Station as identified in NRC Office of Investigations (OI) Report No. 1-98-005 be banned by the NRC from participation in licensed activities at and for any nuclear power plant for a period of at least five (5) years. In addition, we request that the individuals responsible for creating a false record to cover up the concern raised by the contract electrician as identified in the cited OI report also be banned by the NRC from participation in licensed activities at and for any nuclear power plant for a period of at least five (5) years. Finally, we request that we be permitted to attend the upcoming pre-decisional enforcement conference on this serious safety matter. We need to attend this meeting because it deals with issues directly relevant to our petition. We would be willing to sign a non-disclosure agreement to guarantee the privacy of the contract electrician.

Background

By letter dated March 16, 1999, the NRC notified the owner of the Seabrook plant that the investigation documented in OI Report No. 1-98-005 concluded the termination of the contract electrician nine (9) days after this individual raised a safety concern was "an apparent deliberate act in retaliation for the employee raising this concern." As noted in this NRC letter, retaliation is a violation of 10 CFR 50.7.

The NRC has banned individuals in the recent past for five (5) years for retaliation.¹ Seabrook is owned and operated by the Northeast Nuclear Energy Company (NNECo), which was, until very recently, under

¹ Nuclear Regulatory Commission, Press Release No. II-97-08, "NRC Staff Proposes \$100,000 Fine Against Tennessee Valley Authority - NRC Staff Also Prohibits TVA Executive from Involvement in NRC-Licensed

March 31, 1999

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an NRC Order concerning safety culture issues at its Millstone Station. During the 1990s, managers and supervisors at NNECo have been repeatedly found by NRC to have retaliated against workers raising safety concerns – the most recent example being the proposed imposition of a \$88,000 civil penalty related to OI Report No. 1-97-039.²

This NRC letter also indicated that the OI investigation concluded that plant workers apparently created a false record to cover-up problems with wiring for the control building air conditioning system. As noted in this NRC letter, falsification of records is a violation of the plant's procedures.

The NRC has recently taken enforcement action against individuals for providing false information.³

Basis for Requested Action

The Petitioners are established, longstanding non-profit, public-interest organizations concerned about safety at nuclear power plants in New England.

The Petitioners are concerned about the clear and repeated indications that NNECo has not provided an environment conducive to employees freely raising safety issues without fear of retaliation. The NRC has proposed a string of civil penalties against NNECo without apparent effect in preventing retaliation and discrimination. The requested actions would hold individuals who have violated 10 CFR 50.7 accountable for their illegal acts. Given all the attention that employees' rights to freely raise safety concerns has received at NNECo, it is inconceivable that managers and supervisors at Seabrook would be unaware of their responsibilities with respect to 10 CFR 50.7. By banning these individuals from licensed activities for a period of five (5) years, they will not be in a position to repeat these illegal acts during that time. In addition, the requested actions would send a clear message that other persons violating 10 CFR 50.7 in the future may also be held personally accountable. The Petitioners believe that sanctions against the responsible individuals are necessary because sanctions against NNECo, the employer of these individuals, have not curtailed – or seemingly even reduced – the illegal retaliatory practices.

Under 10 CFR Part 26, the NRC can ban individuals from working at nuclear power plants if they violate the fitness for duty requirements. The NRC has imposed such sanctions even when the fitness for duty offenses have not been linked to actual or potential safety degradations. In order for the NRC to conclude that the electrical contractor at Seabrook was retaliated against, the agency had to determine that the individual's work was a protected activity under 10 CFR 50.7 and that the retaliatory actions were in direct response to the individual having raised a sincere safety concern. Thus, retaliatory actions involve a closer nexus between offending act and adequate protection of public health and safety. Hence, comparable sanctions against the offending individuals are clearly warranted.

The Petitioners are concerned about the falsification of safety records at the Seabrook station. The requested actions would hold the individuals responsible for these acts accountable for their illegal

Activities," January 14, 1997.

² Hubert J. Miller, Regional Administrator, Nuclear Regulatory Commission, to R. P. Necci, Vice President – Nuclear Oversight and Regulatory Affairs, Northeast Nuclear Energy Company, "Notice of Violation and Proposed Imposition of Civil Penalties - \$88,000 (Office of Investigations Report 1-97-039)," March 9, 1999.

³ Ellis W. Merschhoff, Regional Administrator, Nuclear Regulatory Commission, to Randall K. Edington, Vice President – Operations, River Bend Station, "Notice of Violation and Proposed Imposition of Civil Penalty - \$55,000 (NRC Investigation Report 4-97-059)," January 5, 1999.

March 31, 1999

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activities. In addition, the requested actions would send a clear message that other persons fabricating false records in the future may also be held personally accountable.

These requested actions are based on the implicit, good faith assumption that the findings in the cited Office of Investigations report are valid. If the NRC staff confirms these findings, then the Petitioners desire that these requested actions be taken. If the NRC staff determines that these OI findings lack merit, then the Petitioners will withdraw the petition. This petition is submitted prior to the predecisional enforcement conference because the Petitioners seek to attend this meeting, which will not be open to the public.

Requested Actions

The Petitioners request that the NRC ban the individuals implicated in the apparent retaliatory termination of the contract electrician and the individuals implicated in the records falsification from working on licensed activities at any nuclear power plant in the United States for at least five (5) years. In addition, the Petitioners request that they be permitted to attend the pre-decisional enforcement conference that will be held regarding this matter.

Sincerely,



David A. Lochbaum
Nuclear Safety Engineer
Union of Concerned Scientists

On behalf of:



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