

50-440

**UNION OF  
CONCERNED  
SCIENTISTS**

May 25, 1999

Executive Director for Operations  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001

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

Good Day:

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 individual who was the Radiation Protection Manager at the Perry Nuclear Power Plant 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.

Background

According to NRC News Announcement RJII-99-31 dated May 24, 1999, the NRC proposed a \$110,000 fine against First Energy Nuclear Operating Company for violation of the employee protection requirements of 10 CFR Part 50.7. The announcement stated that an NRC investigation found that the Radiation Protection Manager at the Perry Nuclear Power Plant discriminated against a supervisor in 1997 for testifying in a United States Department of Labor hearing involving possible discrimination against another plant worker. The NRC has banned individuals in the recent past for five (5) years for retaliation.<sup>1</sup>

Basis for Requested Action:

UCS is an established, longstanding non-profit, public-interest organization concerned about safety at nuclear power plants in the United States.

UCS is concerned about the clear and repeated indications that nuclear plant owners are not providing an environment conducive to employees freely raising safety issues without fear of retaliation. The NRC has proposed a string of civil penalties against plant owners without apparent effect in preventing retaliation and discrimination. The requested action would hold the individual who violated 10 CFR 50.7 accountable for that illegal act. Given all the attention that employees' rights to freely raise safety

<sup>1</sup> 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 Activities." January 14, 1997.

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concerns has received since the *TIME* cover story of March 1996, it is inconceivable that this individual would be unaware of his responsibilities with respect to 10 CFR 50.7. Even if he indeed was unaware, ignorance of the law is not an excuse outside nuclear plant fences and it must not be an excuse inside the fences either. By banning this individual from licensed activities for a period of five (5) years, he will not be in a position to repeat this illegal act 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 Petitioner believes that sanctions against the responsible individual are necessary because sanctions against plant owners have not curtailed - or seemingly even reduced - the illegal retaliatory practices.

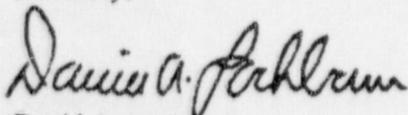
Under 10 CFR Part 26, the NRC can ban individuals from working at nuclear power plants if they violate the fitness for duty requirements. The NRC has imposed such sanctions even when the fitness for duty offenses have not been linked to actual or potential safety degradations. In order for the NRC to conclude that the supervisor at Perry was discriminated against, the agency had to determine that the individual's work was a protected activity under 10 CFR 50.7 and that the discriminatory actions were in direct response to the individual testifying about a 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 individual in this case is clearly warranted.

This requested action is based on the implicit, good faith assumption that the findings in the NRC's investigation are valid. If the NRC staff confirms these findings, then the Petitioner desires that the requested action be taken. If the NRC staff determines that these findings lack merit, then the Petitioner will withdraw the petition.

Requested Actions

The Petitioner requests that the NRC ban the individual implicated in the apparent discrimination against the supervisor at Perry from working on licensed activities at any nuclear power plant in the United States for at least five (5) years.

Sincerely,



David A. Lochbaum  
Nuclear Safety Engineer  
Union of Concerned Scientists