

Approved:     Buc      
Benjamin Allee  
Assistant United States Attorney

COPY

Before: HONORABLE PAUL E. DAVISON  
United States Magistrate Judge  
Southern District of New York

12 MAG 1826

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UNITED STATES OF AMERICA	:	<u>COMPLAINT</u>
	:	
- v. -	:	Violations of
	:	18 U.S.C. § 1001, 42
DANIEL WILSON,	:	U.S.C. § 2273
	:	
Defendant.	:	COUNTY OF OFFENSE:
	:	WESTCHESTER
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SOUTHERN DISTRICT OF NEW YORK, ss.:

DIANE T. GALLAGHER, being duly sworn, deposes and says that she is a Senior Special Agent with the Nuclear Regulatory Commission ("NRC") Office of Investigations ("OI"), and charges as follows:

COUNT ONE

1. From in or about February 2012 through in or about April 2012, DANIEL WILSON, the defendant, in the Southern District of New York, willfully violated and attempted to violate a regulation and order prescribed and issued under 42 U.S.C. § 2201(b), (i), and (o), to wit, WILSON, the Chemistry Manager at Indian Point Energy Center, a nuclear power plant in Buchanan, New York, engaged in deliberate misconduct in that he fabricated chemical test results regarding diesel fuel used to power emergency generators at Indian Point, in an attempt to conceal material facts from the Nuclear Regulatory Commission.

(Title 42, United States Code, Section 2273.)

COUNT TWO

2. On or about February 17, 2012, DANIEL WILSON, the defendant, in the Southern District of New York, knowingly and willfully, in a matter within the jurisdiction of the executive branch of the Government of the United States, did falsify, conceal and cover up by trick, scheme, and device, material facts, and did make materially false, fictitious, and fraudulent statements and representations, and did make and use false writings and documents knowing the same to contain materially false, fictitious, and fraudulent statements and entries, to wit, WILSON, the Chemistry Manager at Indian Point Energy Center, a nuclear power plant in Buchanan, New York, wrote a report, on which others at Indian Point and employees at the NRC would ordinarily rely, in which he falsely stated, in part and in substance, that samples of diesel fuel had been tested in-house in WILSON's Chemistry department and were found to be in compliance with an applicable NRC limit, in order to conceal prior test results showing that samples of the diesel fuel exceeded the applicable NRC limit.

(Title 18, United States Code, Section 1001.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

BACKGROUND

3. I am a Senior Special Agent with the NRC OI, assigned to the Region I Field Office, covering the Northeast Region. I have participated in an investigation of falsified test results and records at the Indian Point Energy Center in Buchanan, New York (hereinafter, "Indian Point"). I am familiar with the facts and circumstances set forth below from my personal participation in the investigation, including my review of pertinent documents, my interviews of witnesses, and my conversations with fellow investigators. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

## REGULATION OF COMMERCIAL USE OF NUCLEAR MATERIALS

4. A mission of the NRC is to ensure that the commercial use of nuclear materials in the United States is safely conducted. The NRC regulates licensed commercial users of nuclear materials, including by promulgating rules and regulations, and conducting inspections, enforcement, and emergency response programs for licensees.

5. The NRC has promulgated a rule prohibiting deliberate misconduct by, among others, employees of entities licensed by NRC, codified at 10 C.F.R. § 50.5. Under the rule, an employee of a licensee "may not: (1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee . . . to be in violation of any . . . term, condition, or limitation of any license issued by the Commission; or (2) Deliberately submit to the NRC [or] a licensee . . . information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC." "Deliberate misconduct," as defined in 10 C.F.R. § 50.5, includes any "intentional act or omission that the person knows: (1) Would cause a licensee . . . to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the [NRC]; or (2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee . . . ."

6. In addition, under another regulation promulgated by the NRC, ~~10 C.F.R. § 50 Appendix B~~, a licensed facility is required to take corrective action when it fails to operate in compliance with particular technical specifications, including by, for example, making written reports documenting the technical problem (known as and hereinafter referred to as "Condition Reports"), and correcting the problem promptly.

7. The NRC, in inspecting and monitoring commercial users of nuclear material, relies significantly on Condition Reports created by the facilities to document incidents of non-compliance with technical specifications and the steps taken by the facility in question to correct the problem. The NRC also relies on documentation kept by the facilities it monitors regarding testing undertaken to maintain compliance with technical specifications.

## INDIAN POINT: LICENSED COMMERCIAL USER OF NUCLEAR MATERIALS

8. Indian Point, as referred to herein, is a nuclear power plant comprised of two nuclear power reactors located in Buchanan, New York, in Westchester County, and is licensed by the NRC as a commercial user of nuclear materials.<sup>1</sup> As part of its licensing agreement, and to protect the public, Indian Point must operate in accordance with particular technical specifications, and must take corrective action within specified time limits when it fails to meet technical specifications.

9. Indian Point has emergency generators (collectively, the "Emergency Generators"), each of which is powered by a designated diesel fuel tank (collectively, the "Primary Fuel Tanks"). In addition, Indian Point has one additional reserve diesel fuel tank, which may be used with any or all of the Emergency Generators (the "Reserve Fuel Tank"). As part of its licensing agreement, Indian Point must ensure that the diesel fuel maintained for purposes of powering the Emergency Generators meets particular technical specifications. One such technical specification is that, for each of the Primary Fuel Tanks and the Reserve Fuel Tank, the concentration of particulate matter in the diesel fuel must remain below a set limit (hereinafter, the "NRC Limit").

10. As part of its licensing agreement with the NRC, Indian Point is required to test the diesel fuel maintained for the Emergency Generators at regular intervals to ensure compliance with technical specifications, and to take corrective action when the diesel fuel exceeds the NRC limit. In the ordinary course, to test the diesel fuel, employees at Indian Point take samples from the fuel tanks associated with the Emergency Generators. An entry is made in a computer database (the "Database") reflecting that the sample was taken, and the sample is sent to an outside laboratory contracted to analyze the sample (the "Outside Lab"). The Outside Lab analyzes the sample and sends the results to representatives of Indian Point, who then enter the test results in the Database. The Database reflects the date of the sample, the identity of the employee who took the sample, the date the data was inputted into the Database, and the test results. When a test result fails to meet a particular technical specification, the Database

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<sup>1</sup> Indian Point Energy Center is owned and operated by Entergy, which is the entity licensed by the NRC to engage in the commercial use of nuclear materials.

automatically displays the test result in a red-colored, bold font.

11. As part of its licensing agreement, Indian Point, in the event that the particulate matter in the diesel fuel in any of the Primary Fuel Tanks exceeds the NRC Limit, must correct the problem within seven days. In the event that the particulate matter in the diesel fuel in the Reserve Fuel Tank exceeds the NRC Limit, Indian Point must correct the problem within thirty days. In the event that Indian Point fails to restore the diesel fuel to an allowable concentration of particulate matter below the NRC Limit within the specified time periods, it must declare the associated emergency generator(s) inoperable. In the event that Indian Point declares an emergency generator inoperable, Indian Point may be shut down until the emergency generator becomes operable.

12. DANIEL WILSON, the defendant, worked at Indian Point from approximately 1983 until 2012. From approximately 2007 through 2012, WILSON was Chemistry Manager, responsible for, among other things, ensuring that certain aspects of the operation at Indian Point were in compliance with the technical specifications that Indian Point was required to meet as part of its licensing agreement with the NRC. As Chemistry Manager, WILSON supervised at least approximately twelve other employees, including lower-level supervisors.

**THE DEFENDANT'S DELIBERATE MISCONDUCT AND FALSE STATEMENTS**

**2011: INDIAN POINT'S EMERGENCY GENERATORS'  
DIESEL FUEL TESTS IN EXCESS OF THE NRC LIMIT**

13. I have reviewed records from the Database regarding testing of the diesel fuel maintained for the Emergency Generators at Indian Point. According to the records, in two instances in 2011, tests of diesel fuel in the Reserve Fuel Tank revealed that particulate matter exceeded the NRC Limit, and in one instance, a test of diesel fuel in a primary fuel tank ("Primary Fuel Tank 1") exceeded the NRC Limit:

- a. on or about June 17, 2011, a sample was taken of diesel fuel from the Reserve Fuel Tank that tested in excess of the NRC Limit;
- b. on or about November 18, 2011, a sample was taken of diesel fuel from Primary Fuel Tank 1 that tested in excess of the NRC Limit; and

c. on or about December 1, 2011, another sample was taken of diesel fuel from the Reserve Fuel Tank that tested in excess of the NRC Limit.

JANUARY AND FEBRUARY 2012: INDIAN POINT REVIEWS THE EMERGENCY GENERATORS' DIESEL FUEL SYSTEM

14. I have reviewed a report summarizing an internal self-assessment review conducted within Indian Point. According to the report, in or about January and February 2012, Indian Point conducted the self-assessment in preparation for an inspection by the NRC. In connection with the self-assessment, Indian Point reviewed the processes by which diesel fuel was transferred to the Emergency Generators, including by reviewing prior diesel fuel tank tests.

15. I have interviewed an engineer who participated in the self-assessment review at Indian Point ("Employee 1"). According to Employee 1, during the course of the self-assessment, Employee 1 reviewed information in the Database, and noticed that tests for the diesel fuel in the Reserve Fuel Tank had exceeded the NRC Limit in 2011. Employee 1 further noticed that no Condition Reports had been created regarding the non-compliant test results and the steps taken, if any, to correct the problem. On or about February 2, 2012, Employee 1 contacted an employee in the Chemistry Department ("Employee 2") to ask about the tests demonstrating failure to comply with the technical specifications.

16. I have reviewed an email from Employee 1 to Employee 2 dated February 2, 2012, on which DANIEL WILSON, the defendant, was cc-ed. In the email, Employee 1, as part of Indian Point's internal self-assessment, listed questions of Employee 2 regarding prior testing of the diesel fuel in the Reserve Fuel Tank.

FEBRUARY 2012: THE DEFENDANT FABRICATES TEST RESULTS OF PURPORTED RESAMPLES OF THE EMERGENCY GENERATORS' DIESEL FUEL

17. According to records from the Database, on Monday morning, February 6, 2012, DANIEL WILSON, the defendant, entered into the Database three purported test results, each below the NRC Limit, of purported resamples of diesel fuel (collectively, the "Purported Resamples"). Each of the Purported Resamples was purportedly taken within two weeks of the samples that had tested in excess of the NRC Limit:

- a. WILSON entered a purported test result below the NRC Limit for a purported resample of diesel fuel in the Reserve Fuel Tank on or about June 29, 2011;
- b. WILSON entered a purported test result below the NRC Limit for a purported resample of diesel fuel in Primary Fuel Tank 1 taken on December 7, 2011; and
- c. WILSON entered a purported test result below the NRC Limit for a purported resample of diesel fuel in the Reserve Fuel Tank taken on December 9, 2011.

According to the entries made by WILSON, another employee of Indian Point who worked in WILSON's department ("Employee 3") had taken each of the Purported Resamples. In part because WILSON listed Employee 3 as the individual who had resampled the diesel fuel, which required WILSON's having logged in to the Database as Employee 3, the entries appeared to have been entered by Employee 3. Deeper scrutiny of the Database's transaction logs was required to detect that WILSON, and not Employee 3, had made the entries.

18. I have interviewed Employee 3, and reviewed documents of Indian Point regarding the whereabouts of Employee 3 on the three days when the Purported Resamples were taken. According to Employee 3, Employee 3 did not take the Purported Resamples. According to the documents, including logs and badge access records, Employee 3 was elsewhere at Indian Point on the days the Purported Resamples were taken. In addition, according to Employee 3, Employee 3 did not enter data in the Database regarding the Purported Resamples. Rather, by February 2012, when DANIEL WILSON, the defendant, made the entries regarding the Purported Resamples, Employee 3, while still an employee of Indian Point, was near retirement and was no longer physically working there.

**FEBRUARY AND MARCH 2012: THE DEFENDANT ATTEMPTS TO COVER UP  
DELIBERATE MISCONDUCT**

19. According to Employee 1, in early February 2012, Employee 1 learned that DANIEL WILSON, the defendant, had made entries to the Database reflecting the Purported Resamples that purportedly were tested and found below the NRC Limit. On further review, Employee 1 found that there was no documentation regarding testing of the Purported Resamples, and that no Condition Reports had been created regarding the previous

failure to comply with the technical specifications or the testing of the Purported Resamples. Employee 1 spoke to WILSON, who replied, in part and in substance, that there was no documentation regarding testing of the Purported Resamples because, unlike testing of ordinary samples which was done by the Outside Lab, the testing of the Purported Resamples had been done in-house, in WILSON's Chemistry department at Indian Point. WILSON was instructed to write a Condition Report on the matter.

20. I have reviewed a Condition Report authored by DANIEL WILSON, the defendant, dated on or about February 17, 2012. In the Condition Report, WILSON falsely stated that the reason there was no documentation of the testing of the Purported Resamples was because the tests were done in-house: "Laboratory reports were not available for all analyses. In house analyses do not always have results documented in a laboratory report format."

21. I have reviewed documents regarding procedures at Indian Point for testing suspended solids ("Suspended Solids Documents"), and interviewed an employee in the Chemistry department at Indian Point ("Employee 4"). According to the Suspended Solids Documents, during the time period when the Purported Resamples were tested in-house for particulate matter, Indian Point did not have an in-house procedure for conducting such tests. According to Employee 4, the Chemistry department at Indian Point did not conduct in-house testing of diesel fuel for particulate matter until approximately March 2012, when such testing was initiated by DANIEL WILSON.

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**APRIL 2012: THE DEFENDANT RESIGNS AND THEREAFTER ADMITS  
DELIBERATE MISCONDUCT**

22. According to several witnesses whom I have interviewed, in or about late March 2012, investigation of the Purported Resamples intensified within Indian Point, and the NRC received reports of concerns about the Purported Resamples.

23. I have reviewed an email from DANIEL WILSON, the defendant, to an employee of Indian Point, dated April 17, 2012. In the email, WILSON abruptly resigned from his employment at Indian Point.

24. In or about December 2012, Indian Point replaced the diesel fuel in the Reserve Fuel Tank.

25. I have interviewed DANIEL WILSON, the defendant, under oath. During the interview, WILSON admitted, in part and in substance, that he had fabricated the data regarding testing of the Purported Resamples, and that the Purported Resamples were never taken in the first place. WILSON further admitted, in part and in substance, that he fabricated the test results so that Indian Point would not have to shut down.

WHEREFORE, deponent respectfully requests that a warrant be issued for the arrest of DANIEL WILSON, the defendant, and that he be imprisoned, or bailed, as the case may be.



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DIANE T. GALLAGHER  
Senior Special Agent  
Office of Investigations  
Nuclear Regulatory Commission

Sworn to before me this  
\_\_ day of \_\_\_\_\_ 2013

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HONORABLE PAUL E. DAVISON  
United States Magistrate Judge  
Southern District of New York