

April 11, 2003

MEMORANDUM TO: William D. Travers  
Executive Director for Operations

FROM: Brian W. Sheron, Associate Director */RA/*  
for Project Licensing and Technical Analysis  
Office of Nuclear Reactor Regulation

SUBJECT: MARCH 2003 REPORT ON THE STATUS OF PUBLIC PETITIONS  
UNDER TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*,  
SECTION 2.206

The attached reports give the status of petitions submitted under Title 10 of the *Code of Federal Regulations*, Section 2.206. As of March 31, 2003, there were three open petitions, which were accepted for review under the 2.206 process: two in the Office of Nuclear Materials Safety and Safeguards and one in the Office of Nuclear Reactor Regulation.

Attachment 1 provides a detailed status of the open petitions.

Attachment 2 provides the status of incoming letters that the staff has been reviewing to determine if they meet the criteria for review under the 2.206 process.

Attachment 3 shows the age statistics for the open 2.206 petitions as of March 31, 2003.

Attachment 4 shows the age trend of closed petitions for the last 3 years.

This report, Director's Decisions, and other 2.206-related documents are placed in the Agencywide Documents Access and Management System. In making these readily accessible to the public, the staff has identified another vehicle to address one of our performance goals, i.e., to enhance public confidence.

Attachments: As stated

CONTACT: Robert Clark, NRR  
(301) 415-2297

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\*See previous concurrence

\*\*Concurred by email

OFFICE	PM:PDI-1	LA:PDI-1**	D:PDII*	D:DLPM	NMSS*	ADPT:NRR
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DATE	4/09/03	4/08/03	04/08/03	4/09/03	4/08/03	4/10/03

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DISTRIBUTION FOR MARCH 2003 REPORT ON THE STATUS OF PUBLIC PETITIONS  
UNDER TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*, SECTION 2.206

Dated: April 11, 2003

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# Attachment 1

## Status of Open Petitions

<u>Facility</u>	<u>Petitioner/EDO No.</u>	<u>Page No.</u>
Oyster Creek Generating Station	Edith Gbur for Jersey Shore Nuclear Watch/ G20020385.....	1
Waltz Mill Pennsylvania Site	Viacom, Inc. G20020629.....	3
Davis-Besse Nuclear Power Station	Congressman Dennis Kucinich G20030048.....	5

# Attachment 1

## Report on Status of Public Petitions Under 10 CFR 2.206

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Facility:	<u>Oyster Creek Generating Station</u>
Petitioner:	Jersey Shore Nuclear Watch
Date of Letter:	June 21, 2002, as supplemented on July 18, 2002
Director's Decision to Be Issued by:	NMSS
EDO Number:	G20020385
Proposed DD issuance:	12/10/2002
Last Contact with Petitioner:	02/24/03
Petition Manager:	Steve O'Connor
Case Attorney:	Jack Goldberg

### Issues/Actions requested:

The petitioner requests that the NRC issue an order to the licensee, suspending the dry cask storage program at Oyster Creek Generating Station (Oyster Creek).

### Background:

As a basis for the above requests, the petitioner raised concerns with: the location of the Oyster Creek independent spent fuel storage installation (ISFSI) relative to local roads and communities; the ability of the NUHOMS dry spent fuel storage system to survive a sabotage attack; the adequacy of Oyster Creek security measures for fuel handling activities; the adequacy of the Oyster Creek emergency evacuation plan; and the quality of the NUHOMS systems planned for use at Oyster Creek.

The petitioner participated in a telephone call with the Petition Review Board (PRB) on July 18, 2002. In response to the PRB discussion, the petitioner provided additional information on July 18, 2002, to supplement the petition request. This information is also being considered in the review of the petition.

The petitioner's request for the U.S. Nuclear Regulatory Commission (NRC) to immediately suspend the license for the NUHOMS dry spent fuel storage system and halt transfer of spent fuel from wet pool storage to dry storage modules at Oyster Creek was denied because the safety concerns were reviewed and determined not to pose an undue risk to public health and safety. The Commission does not believe that immediate action is required because the licensee for Oyster Creek is not planning to load additional fuel canisters until 2003.

An acknowledgment letter and *Federal Register* notice were issued on August 7, 2002. On October 30, 2002, a teleconference was held with the petitioner and her counsel regarding the status of the proposed Director's Decision (DD). The petitioner asked that we specifically address certain accident scenarios discussed in the petition in our response. She also asked if there was any way that the petitioners could get a hearing for the Oyster Creek ISFSI issues. An additional teleconference with the petitioner was held with a staff member of the Office of General Counsel present on November 4, 2002, to further discuss the issue of a hearing. The

staff prepared a proposed DD that was sent to the petitioners and the licensee for comment on December 10, 2002. Since the petitioner did not receive the proposed DD, it was re-sent on January 7, 2003, and the comment period was extended to February 6, 2003. The petitioner did not meet the February 6, 2003, date to respond to the proposed DD. The staff called the petitioner on February 6, 2003, to determine when to expect comments to proposed DD. The petitioner stated that they were still working on the response. The petitioner was contacted again on February 24, 2003, to check on status of their response. Petitioner agreed to provide comments by February 28, 2003.

Current Status:

The staff received petitioners' comments on the proposed DD on March 5, 10, and 19, 2003. The staff is currently reviewing petitioner's comments. The DD is scheduled to be issued April 18, 2003.

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Facility:	<u>Waltz Mill Pennsylvania Site</u>
Petitioner:	Viacom, Inc.
Date of Letter:	October 30, 2002
Director's Decision to be Issued by:	NMSS
EDO Number:	G20020629
Proposed DD issuance:	TBD
Last Contact with Petitioner:	02/20/03
Petition Manager:	Patrick Isaac (NRR) / Derek Widmayer (NMSS)
Case Attorney:	Jack Goldberg

Issues/Actions requested:

That the NRC issue an order to Westinghouse Electric Company LLC (Westinghouse), the holder of license SNM-770 on the Waltz Mill, Pennsylvania Site, which would require Westinghouse's cooperation in the decommissioning of the Westinghouse Test Reactor (WTR) license TR-2. In particular, the order would require Westinghouse to:

(1) provide certain radiological survey data to NRC which NRC has requested. The survey data in question determines what residual radioactivity remains in-situ.

(2) accept under SNM-770 certain residual byproduct materials now held under Viacom license TR-2 and located at the WTR.

Background:

Viacom is the current holder of NRC facility license TR-2 which authorizes possession, but not operation, of the WTR. To complete the Final Decommissioning Plan, two provisions still need to be accomplished. These are determining the residual radioactivity remaining in-situ and preparing the necessary amendments for and requesting the transfer of the remaining residual radioactivity and WTR facilities to the SNM-770 license.

At the time the decommissioning plan was approved, Westinghouse was the NRC licensee under both TR-2 and SNM-770, and so the transfer of the residual radioactive material from one materials license to another, held by the same licensee on the same site, was straightforward. Viacom now holds the TR-2 license while Westinghouse holds the SNM-770 license. Westinghouse's and Viacom's decommissioning responsibilities to each other at the Waltz Mill Site are set forth in an Asset Purchase Agreement. By refusing to accept the transfer to the SNM-770 license, Viacom alleges that Westinghouse is in violation of Section 50.5 of Title 10 of the *Code of Federal Regulations* (10 CFR).

Westinghouse submitted a response to the petition on December 20, 2002. Viacom has indicated that they will not respond to the Westinghouse response at this time.

On February 20, 2003, a public PRB meeting was held in Rockville, Maryland with the petitioner and both licensees (Viacom and Westinghouse). At the meeting, lawyers and staff personnel from both companies provided additional information to support their position.

At the March 6, 2003, closed PRB meeting, the staff agreed to accept the petition for review under 10 CFR 2.206.

There are several reasons why it took the staff 4 months to determine whether this petition met the criteria for review under 10 CFR 2.206. First, the petition involves complex legal and contractual issues. Second, the staff had to await both parties' responses to the petition, which took the parties several months, and then had to review and evaluate the responses prior to engaging in the public PRB meeting. The petitioners were not available to meet with the PRB until February 20, 2003. Following the public PRB meeting, there was still some uncertainty among the cognizant staff groups and management regarding acceptance of these issues as a petition. Finally, at the March 6, 2003, closed PRB meeting, agreement was reached to accept the petition for review under 10 CFR 2.206.

#### Current Status:

On March 13, 2003, a letter was sent to the petitioner and both licensees (Viacom and Westinghouse) informing them that the petition met the acceptance criteria for review under 10 CFR 2.206 and would be reviewed in accordance with Management Directive 8.11. A *Federal Register* notice was published on March 27, 2003.

Westinghouse sent a letter to the NRC on March 26, 2003, indicating their intent to file a supplement to their December 20, 2002, response to the Viacom petition. Westinghouse stated in the letter that the supplement will be provided by May 5, 2003. Viacom sent a letter to the NRC on March 28, 2003, objecting to NRC consideration of this Westinghouse supplement.

A proposed DD is being developed. The schedule for issuance of the proposed DD may be impacted by NRC's decision on whether to accept the Westinghouse supplemental filing.



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Facility:	<u>Davis-Besse Nuclear Power Station</u>
Petitioner:	Congressman Dennis Kucinich
Date of Letter:	February 3, 2003
Director's Decision to be Issued by:	NRR
EDO Number:	G20030048
Proposed DD issuance:	TBD
Last Contact with Petitioner:	2/14/03
Petition Manager:	Dan Collins (NRR)
Case Attorney:	Jack Goldberg

Issues/Actions requested:

That the NRC immediately revoke FirstEnergy Nuclear Operating Company's (FirstEnergy) license to operate the Davis-Besse Nuclear Power Station (DBNPS) for the reasons given in the background.

Background:

On March 5, 2002, during a refueling outage, FirstEnergy performed inspection of the DBNPS reactor pressure vessel head penetration (VHP) nozzles in accordance with NRC Bulletin 2001-01. During this inspection, the licensee discovered cracks in several VHP nozzles. Subsequent to the machining process to repair VHP Nozzle 3, the nozzle was observed to displace, or tip in the downhill direction as the machining apparatus was withdrawn. The displacement led DBNPS personnel to examine the region adjacent to VHP Nozzle 3. The licensee discovered a cavity with a surface area of approximately 20-30 square inches. Upon further examination, the licensee identified that the cavity extended completely through the 6.63 inch-thick carbon steel reactor pressure vessel (RPV) head down to a thin internal liner of stainless steel cladding. Although the exposed cladding withstood the primary system pressure during previous plant operation, it was not designed to be a reactor coolant system pressure boundary. Boric acid corrosion of the carbon steel RPV head was the primary contributor to the RPV head degradation.

In response to the licensee's identification of extensive damage to the pressure boundary material of the RPV head on March 5, 2002, the NRC dispatched an Augmented Inspection Team (AIT) to DBNPS on March 12, 2002, to examine conditions that led to the head degradation. The NRC also issued a Confirmatory Action Letter (CAL) to the licensee on March 13, 2002, which stated that NRC approval is required for restart DBNPS. The CAL also documented a number of actions that the licensee must implement before the NRC will approve a restart. The NRC also enhanced monitoring of corrective actions at DBNPS, as described in NRC Inspection Manual Chapter 0350, "Oversight of Operating Reactor Facilities in a Shutdown Condition with Performance Problems," to provide the required oversight throughout the plant's shutdown and restart. The AIT follow-up special inspection report (50-346/02-08) dated October 2, 2002, cited a number of violations of the DBNPS operating license and NRC regulations.

Using information from various publicly available documents (such as NRC inspection reports, newspaper articles, and reports published by the Union of Concerned Scientists) to support his case, the Petitioner offers the following five basic arguments, in various forms, on why the DBNPS operating license must be revoked:

1. NRC regulations and guidelines require revocation of the DBNPS license.
2. Revocation of the DBNPS license is necessary to hold FirstEnergy accountable for its violations of NRC regulations and its own operating license.
3. If the NRC doesn't revoke the DBNPS license, NRC isn't appropriately using the authority granted it by Congress.
4. Revocation of the DBNPS license is necessary in order to ensure that FirstEnergy is complying with all NRC regulations and guidelines.
5. Revocation of the DBNPS license is required in order for there to be consistency in the manner that the NRC enforces its regulations.

The staff issued an acknowledgment letter on February 10, 2003, to inform the Petitioner that the PRB has determined that the petition meets the acceptance criteria for review under 2.206. The acknowledgment letter also informed the Petitioner that, pending completion of the NRC's investigative process, the NRC does not have sufficient basis to immediately revoke the DBNPS operating license. Thus, the Petitioner's request for immediate revocation of the license was denied.

The staff called the Petitioner's staff on February 14, 2003, to explain the 2.206 process and to offer an opportunity to address the PRB. The Petitioner's staff indicated that they do wish to address the PRB but need more time to prepare for the presentation.

Current Status:

1. The petitioner informed the staff on March 12, 2003, that a supplement would be issued in lieu of a presentation to the PRB.
2. The petitioner submitted a supplement to the original petition on March 27, 2003, to address the following additional concerns:
  - a. boric acid dust may have corroded electrical systems & cable trays
  - b. as-built design may not conform to design or licensing bases
  - c. training of personnel may not meet licensing basis
  - d. DBNPS does not have ability to detect 1 gallon per minute leakage within 1 hour
  - e. procedures instituted by NRC may not uncover or address other systems that may be degraded i.e., reactor coolant pump seal gasket leakage
  - f. The O350 Panel will end and the plant will return to normal monitoring under the reactor oversight process (ROP) before Lessons Learned Task Force recommendations regarding the ROP are implemented
  - g. The Office of Investigations investigation must be completed before NRC allows DBNPS to restart

3. A closed PRB meeting was held on April 2, 2003, to discuss the additional information provided by the petitioner's March 27, 2003, supplement to the original petition. The staff decided that no immediate action was warranted, that the supplement should be consolidated with the existing petition, that no new allegations were presented by the petitioner, and that an acknowledgment letter was not necessary. Licensee's response to the supplement is tentatively scheduled for April 11, 2003.
4. Laura Gerke of the Office of Congressional Affairs contacted the Petitioner's staff and explained that we have received the supplement to the petition, understand the arguments being made and determined that a clarifying conference call is unnecessary. She also indicated that the proposed DD is scheduled to be issued within 120 days from the date of the original acknowledgment letter which was issued on February 10, 2003.

## Attachment 2

### Status of Potential Petitions Under Consideration

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Facility: Maine Yankee Atomic Power Station  
Petitioner: Randall Speck, Special Counsel for the State of Maine  
Date of Letter: November 15, 2002  
Responsible Office: NMSS  
PRB meeting: To be scheduled

Issues/Actions requested:

That the NRC conduct a hearing on the efficacy of indefinite, long-term spent fuel storage at Maine Yankee Atomic Power Station.

Resolution:

The petitioner has also requested a hearing, pursuant to 10 CFR 2.202, regarding the October 16, 2002, safeguards order and interim compensatory measures. On December 10, 2002, the staff sent a letter to the petitioner stating that a decision on the acceptability of the 2.206 petition will be held in abeyance until the staff makes a determination on the hearing request.

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Facility: Palo Verde Generating Station  
Petitioner: Thomas Saporito representing the National Environmental Protection Center  
Date of Letter: January 17, 2003  
Responsible Office: NRR  
Public PRB meeting: N/A

Issues/Actions requested:

That the NRC issue a civil penalty against Arizona Public Service (APS) and against the licensee's law firm; that the NRC cause an investigation through extensive interviews to determine if employees feel free to raise environmental safety concerns to the licensee or to the NRC without fear of reprisal, harassment, or intimidation; that the NRC take actions to cause an investigation of APS to determine through extensive interviews whether employees are knowledgeable and aware of how to file a discrimination complaint under 10 CFR 50.7, and under Occupational Safety Health Administration (OSHA) and Environment Protection Agency (EPA) statutes; that the NRC investigate through extensive interviews to determine if employees are provided training by the licensee with respect to employee protection provisions under 10 CFR 50.7 and OSHA and EPA statutes.

Resolution:

By letter dated March 18, 2003, the NRR staff formally notified the petitioner that the request would not be reviewed under 2.206. The petitioner's concerns were addressed as controlled correspondence. No further action is needed.

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Facility: Indian Point Nuclear Generating Station, Unit 2  
Petitioner: Raymond Shadis representing the New England Coalition on  
Nuclear Pollution  
Date of Letter: February 17, 2003  
Responsible Office: NRR  
Public PRB meeting: To be scheduled

Issues/Actions requested:

That the NRC investigate if the Indian Point Nuclear Generating Station, Unit 2, Security Superintendent revealed Safeguards Information (SGI) to the public.

If SGI was released to the public, that the NRC take appropriate enforcement action immediately. The petitioner also requests that such enforcement action be taken not only with respect to the individual, but also with respect to the handling of SGI by the licensee and the NRC, in general, so that such revelations as may compromise adequate protection of the public health and safety, and which may be inimical to the common defense, are prevented in the future.

Resolution:

By letter dated March 26, 2003, the NRR staff notified the petitioner that the request would not be reviewed under 10 CFR 2.206 but would be processed by the Allegation Program. No further action is needed.

### Attachment 3

#### AGE STATISTICS FOR AGENCY 2.206 PETITIONS

ASSIGNED ACTION OFFICE	FACILITY	Incoming petition	PRB meeting <sup>1</sup>	Acknowledgment letter / days from incoming <sup>2</sup>	Proposed DD issuance Date/ age <sup>3</sup>	Scheduled date for final DD/ age <sup>4</sup>	Comments if not meeting the Agency's Completion Goals
NMSS	Oyster Creek	6/21/02	7/18/02	8/07/02 47	12/10/2002 120	04/18/03	
NMSS	Waltz Mill Site	10/30/02	02/20/03	02/28/03	TBD	---	
NRR	DBNPS	02/03/03	N/A	02/10/03 7	03/07/03 33	04/18/03 75	

- 1) Goal is to hold a PRB meeting, which the petitioner is invited to participate in, within 2 weeks of receipt of petition (there is often a delay of up two weeks from the date that the letter is issued until it is received by the reviewing organization).
- 2) Goal is to issue acknowledgment letter within 5 weeks of the date of incoming petition.
- 3) Goal is to issue proposed DD within 120 days of the acknowledgment letter.
- 4) Goal is to issue final DD within 45 days of the end of the comment period.

Attachment 4

Average Days to Issuance of Proposed Directors Decisions

