

October 28, 2002

Mr. Tim Judson
Organizer
Citizens Awareness Network
140 Bassett St.
Syracuse, NY 13210

SUBJECT: ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

Dear Mr. Judson:

This letter responds to the Petition you filed addressed to Dr. William Travers, Executive Director for Operations at the U.S. Nuclear Regulatory Commission (NRC or Commission), pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) on February 21, 2002. In your Petition, you requested:

1. That the NRC order Entergy Nuclear Operations, Inc. (Entergy) to suspend the dry cask storage program at the James A. FitzPatrick Nuclear Power Plant (FitzPatrick).
2. That the NRC require Entergy to:
 - demonstrate that the proposed fuel storage program presents no increased risks to the national security or worker or public health and safety beyond what is contemplated in the Certificate of Compliance and General License, pursuant to § 72.212(4)-(5);
 - submit its proposed design changes for technical review in the form of a license amendment application and seek regulatory approval for them pursuant to § 72.244;
 - evaluate its use of the HI-TRAC 100 transfer cask for ALARA standards, per § 50, Appendix I;
 - provide more substantial physical and structural protection of the irradiated fuel and Interim Spent Fuel Storage Installation (ISFSI) to satisfy the requirements of §§ 73.51, 73.55, and;
 - demonstrate the use of the HI-STORM 100 can satisfy these requirements at FitzPatrick, or demonstrate countervailing and compelling reasons to utilize the HI-STORM 100 at FitzPatrick, as opposed to any other casks certified by NRC.
3. That all documents and information filed in relation to the selection of storage casks and the implementation of dry storage at FitzPatrick be put on the docket for public inspection.

4. That the Petition Review Board (PRB) submit this Petition to the NRC's Office of the Inspector General (OIG) for review of the Spent Fuel Project Office (SFPO) compliance with regard to NRC regulations in terms of design changes, licensing, amendments, exemptions and ALARA in its permitting process relating to the use of dry cask storage at FitzPatrick. Additionally, that a review be conducted to determine whether NRC staff in the SFPO are complicit or misguided in permitting design changes to these casks without submission of a license amendment.
5. That the NRC conduct an investigation to determine whether Entergy has deliberately circumvented the appropriate technical and regulatory review required to protect worker and public health and safety and the environment.

You participated in a telephone conference call with the PRB on March 29, 2002, to clarify the bases for your Petition. The transcript of this conference call was treated as a supplement to the Petition and is available (1) in NRC's Agencywide Documents Access and Management System (ADAMS) Public Library component on the NRC's Web site <http://www.nrc.gov> (the Public Electronic Reading Room) (Accession No. ML021290025); and (2) for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

On April 12, 2002, the NRC staff acknowledged receiving your Petition and stated pursuant to 10 CFR 2.206 that your Petition was being referred to me for action and that it would be acted upon within a reasonable time. You were also told in the April 12, 2002, correspondence that the safety concerns you raised related to the modified HI-STORM 100 cask design at FitzPatrick were reviewed, and determined not to pose an immediate safety issue.

The staff sent a copy of the proposed Director's Decision to you and to Entergy Nuclear Operations, Inc. for comment on August 13, 2002. You responded with comments by letter dated August 27, 2002, and the licensee responded by letter dated August 28, 2002. The comments and staff response to them are Enclosures to the Director's Decision.

The NRC staff has resolved the issues raised in your February 21, 2002, Petition. In response to your request that Entergy submit an additional safety demonstration of the FitzPatrick storage facility, it was determined, through the NRC inspection program, that Entergy has demonstrated that the proposed fuel storage program presents no increased risks to the national security or worker or public health and safety beyond what is contemplated in the Certificate of Compliance and General License, pursuant to § 72.212(4)-(5). The NRC denied your request that Entergy submit a license amendment, ALARA review, and various other safety evaluations and justifications to the NRC for review for the reasons noted in the detailed discussion in the Director's Decision. Your request to require Entergy to provide more substantial physical and structural protection of the irradiated fuel and ISFSI was also denied, as existing security measures, including issuance of a NRC Order to Entergy on October 16, 2002, have been determined to be adequate. You requested that all documents and information filed in relation to the selection of storage casks and the implementation of dry storage at FitzPatrick be put on the docket for public inspection. Documents and information filed in relation to the selection of storage casks and the implementation of dry storage at FitzPatrick were put on the docket for

public inspection by letter dated May 10, 2002, and the additional information was released to the public at that time. Your request that the PRB submit this Petition to the OIG for review of the SFPO was granted, as noted in the letter dated April 12, 2002. In response to your request to investigate whether Entergy deliberately circumvented the regulatory process, the NRC staff review of Entergy's 10 CFR 72.48 evaluation concluded that the proper regulatory process was followed by Entergy, and no further investigation was warranted. Since the issues of public health and safety and regulatory compliance submitted in the Petition have been resolved, in a process open to the public, the NRC staff does not plan to take any further action on this Petition.

A copy of the Director's Decision (DD-02-02) will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

The documents cited in the enclosed decision are available for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, <http://www.nrc.gov> (the Public Electronic Reading Room).

A copy of the "Issuance of the Director's Decision Under 10 CFR 2.206" that has been filed with the Office of the *Federal Register* for publication is also enclosed.

We would like to thank you for bringing these issues to the attention of NRC. Please feel free to contact Julia Barto, 301/415-8512, to discuss any questions related to this Petition.

Sincerely,

/RA/
Martin J. Virgilio, Director
Office of Nuclear Material Safety
and Safeguards

Docket Nos. 50-333, 72-12

Enclosures: Director's Decision DD-02-02
Federal Register Notice

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Sincerely,
 /RA/
 Martin J. Virgilio, Director
 Office of Nuclear Material Safety
 and Safeguards

Docket Nos. 50-333, 72-12
 Enclosures: Director's Decision DD-02-02
Federal Register Notice

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Dockets	NRC File Ctr	PUBLIC	NMSS r/f	SFPO r/f	PGoldberg
SO'Connor	BO'Connell	GVissing	CJensen	RBellamy, RI	JGoldberg
BFleming (closes NMSS Ticket No. 200200066)			PShea		

PKG: ML022960518

*see previous con.

OFC	SFPO	E	SFPO	E	SFPO	E	SFPO	E	SFPO	E	NMSS		NMSS	
NAME	JBarto*		EZiegler*		JMonninger*		CMiller*		EWBrach*		M Federline		MVirgilio	
DATE	10/15/02		10/15/02		10/22/02		10/22/02		10/22/02		10/ /02		10/28 /02	

C = COVER E = COVER & ENCLOSURE N = NO COPY OFFICIAL RECORD COPY

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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
Martin J. Virgilio, Director**

In the Matter of)	Docket Nos. 50-333 and 72-12
)	
)	
Entergy Nuclear Operations, Inc.)	License No. DPR-59
)	
James A. FitzPatrick Nuclear Power Plant)	10 CFR 2.206

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. Introduction

By letter dated February 21, 2002, as supplemented by a telephone call with the U.S. Nuclear Regulatory Commission's (NRC) Petition Review Board (PRB) on March 29, 2002, Tim Judson and Deborah Katz of the Citizens Awareness Network (CAN) and Shawn McConnell and Tom Dellwo of the New York Public Interest Research Group (NYPIRG) filed a Petition pursuant to Title 10 of the *Code of Federal Regulations*, Section 2.206. The Petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) take the following actions:

1. That the NRC order Entergy Nuclear Operations, Inc. (Entergy) to suspend the dry cask storage program at the James A. FitzPatrick Nuclear Power Plant (FitzPatrick).
2. That the NRC require Entergy to:
 - demonstrate that the proposed fuel storage program presents no increased risks to the national security or worker or public health and safety beyond what is contemplated in the Certificate of Compliance and General License, pursuant to § 72.212(4)-(5);
 - submit its proposed design changes for technical review in the form of a license amendment application and seek regulatory approval for them pursuant to § 72.244;
 - evaluate its use of the HI-TRAC 100 transfer cask for ALARA standards, per § 50, Appendix I;
 - provide more substantial physical and structural protection of the irradiated fuel and Interim Spent Fuel Storage Installation (ISFSI) to satisfy the requirements of §§ 73.51, 73.55, and;
 - demonstrate the use of the HI-STORM 100 can satisfy these requirements at FitzPatrick, or demonstrate countervailing and compelling reasons to utilize the HI-STORM 100 at FitzPatrick, as opposed to any other casks certified by NRC.

3. That all documents and information filed in relation to the selection of storage casks and the implementation of dry storage at FitzPatrick be put on the docket for public inspection.
4. That the Petition Review Board (PRB) submit this Petition to the NRC's Office of the Inspector General (OIG) for review of the Spent Fuel Project Office (SFPO) compliance with regard to NRC regulations in terms of design changes, licensing, amendments, exemptions and ALARA in its permitting process relating to the use of dry cask storage at FitzPatrick. Additionally, that a review be conducted to determine whether NRC staff in the SFPO are complicit or misguided in permitting design changes to these casks without submission of a license amendment.
5. That the NRC conduct an investigation to determine whether Entergy has deliberately circumvented the appropriate technical and regulatory review required to protect worker and public health and safety and the environment.

The bases for the requests were several safety concerns related to the design changes associated with the HI-STORM 100 cask design, as well as safety concerns related to national security.

The Petitioners participated in a teleconference with the NRC's Office of Nuclear Material Safety and Safeguards PRB on March 29, 2002, to clarify the bases for the Petition. The transcript of this meeting was treated as a supplement to the Petition and is available in the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. The Accession Number is ML021290025. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdrc@nrc.gov.

In a letter dated April 12, 2002, the NRC staff informed the Petitioners that their request to immediately issue an order to suspend the dry cask storage program at FitzPatrick, was denied, and that the issues in the Petition were being referred to the SFPO for appropriate action. In addition, the NRC staff informed the Petitioners that their request to submit this Petition to the OIG for review of the SFPO's compliance with regard to NRC regulations in terms of design changes, licensing, amendments, exemptions and ALARA in its permitting process relating to the use of dry cask storage at FitzPatrick, was approved, and that the issues in the Petition were referred to the OIG for appropriate action.

In a letter dated May 10, 2002, the NRC staff informed the Petitioners that their request to put all documents and information filed in relation to the selection of storage casks on the docket for public inspection under a Demand for Information, was approved. In this letter the NRC staff also stated that although the NRC is not subject to "Demands for Information," we were, nevertheless, treating the demand as a request for documents, and transmitting the requested information.

The NRC sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment on August 13, 2002. The Petitioners responded with comments on August 27, 2002, and the licensee responded on August 28, 2002. The comments and the NRC staff's response to them are Enclosures to this Director's Decision.

II. Discussion

As the basis for their requested actions, the Petitioners raise a number of specific concerns related to the NRC's process for licensing spent fuel storage, and also concerns specifically related to the licensing of FitzPatrick's interim spent fuel storage installation. These concerns, and the evaluations of these concerns by NRC staff, are as follows.

1. Concern: The Petitioners state that the NRC gave Holtec permission to build and redesign casks under a design that was not yet approved under the condition that Holtec would have to modify or even discard the manufactured casks if the design was not certified. The NRC already knew the overpacks would require modification from the original design when the fabrication exemption was granted.

Evaluation: The NRC granted a fabrication exemption to Holtec to manufacture the original HI-STORM 100 casks (Amendment 0 to the HI-STORM 100 design) prior to Amendment 0 being approved by the NRC. This exemption was granted on the condition that Holtec may need to modify or discard the casks if the design they were manufactured to was not certified. The NRC has granted these types of exemptions several times for other cask manufacturers with similar conditions. These exemptions do not in any way authorize eventual use of a non-certified design, they merely allow a cask designer to begin fabrication at risk. All designs to be used for storage of spent fuel must meet the requirements of 10 CFR 72. At the time the fabrication exemption was granted, January 13, 2000, the NRC did not know that the overpacks would require modification for use at FitzPatrick.

On December 13, 2000, NRC staff participated in a public meeting in Oswego County. That same day, prior to the public meeting, NRC staff were given a tour of the FitzPatrick site. During this tour, the licensee mentioned that the transfer cask was too large to be moved out of the fuel handling building in a standard configuration and described several options under consideration. NRC staff indicated to the licensee that non-standard movements of the cask outside of the fuel handling building would require prior NRC approval unless the 10 CFR 72.48 criteria could be met. The NRC staff verbally encouraged the licensee to promptly submit a request for a licensing action, if Entergy determined that one was necessary.

Ultimately, the licensee did redesign the HI-STORM cask under the auspices of 10 CFR 72.48. The NRC reviewed the 10 CFR 72.48 evaluation and determined that the proposed modifications to the cask would not result in a safety issue and met the criteria for design changes under 10 CFR 72.48. The licensee's 10 CFR 72.48 evaluation was subsequently released to the public, in a May 10, 2002, correspondence with the Petitioner. The details of changes made to the HI-STORM cask design are outlined in

that document which can be found in ADAMS, under the package Accession Number ML021340256. The NRC has determined that there is no safety significant concern related to this item in the Petition.

2. Concern: The Petitioners claim that the NRC withheld its knowledge that the casks were too large to be moved out of the containment building without modification during a public meeting in Oswego County.

Evaluation: As discussed above, on December 13, 2000, NRC staff participated in a public meeting in Oswego County. That same day, prior to the public meeting, NRC staff were given a tour of the FitzPatrick site, in which the licensee mentioned several cask movement options. The Petitioner states that many members of the public asked questions concerning cask movements, safe load path analysis, radiation exposure of workers loading the casks, the transfer casks, etc. However, this particular subject was never discussed at this meeting. As described above, the licensee did ultimately redesign the HI-STORM cask to allow movement outside of the containment building, under the auspices of 10 CFR 72.48. The NRC staff reviewed the licensee's 10 CFR 72.48 evaluation, and determined that the proposed modifications to the cask would not result in a safety issue and met the criteria for design changes under 10 CFR 72.48.

The NRC's goal is to be as open as practical regarding sharing of information with the public. The Petitioner's comment reinforces the need for the staff to clearly communicate information and be responsive to the public's needs.

3. Concern: The Petitioners claim that a staff Request for Additional Information (RAI) on the HI-STORM 100S (the shorter design) included about 74 unresolved items that the Petitioners are not aware of whether they have been resolved.

Evaluation: The HI-STORM 100S design was submitted for NRC review by Holtec International as proposed Amendment No. 1 to the HI-STORM system. During the NRC review of this amendment request, the staff issued a number of RAIs. Holtec's response to those issues is available to the public in ADAMS at Accession Numbers ML011900075, and ML011900100. These two files are portions of a larger document. All of the files comprising the document are included in a package with Accession Number ML011900259.

It is important to note that the modified cask design being used at FitzPatrick during the first set of cask loadings is not the shorter HI-STORM 100S design, but a similar, shorter design (JAF HI-STORM 100) modified from the originally approved HI-STORM 100 design. The JAF HI-STORM 100 design was approved through a 10 CFR 72.48 evaluation performed by the licensee. That 10 CFR 72.48 evaluation had been under staff inspection for some time prior to receipt of the Petition, and the inspection was eventually completed in April 2002. Evaluations performed by a licensee under 10 CFR 72.48 do not require NRC approval prior to implementation, but are subject to the NRC's inspection program. A copy of the NRC's Inspection Report is available to the public in ADAMS at Accession Number ML021700752.

In addition to loading the JAF HI-STORM 100 cask design approved under 10 CFR 72.48, FitzPatrick has also indicated plans to use the HI-STORM 100S design (the design mentioned in the Petition) in future loadings. That design received a full technical review by the NRC's Spent Fuel Project Office, during which time the 74 technical questions initially posed by NRC staff were resolved by Holtec International. The NRC's technical review of the amendment to the HI-STORM system went through the rulemaking process, whereby public comments are received prior to final NRC approval. The Certificate of Compliance (CoC) and Safety Evaluation Report (SER) may be found in ADAMS under Accession Number ML022000176. The Federal Register Notice for that amendment was published March 27, 2002, and may be found electronically at http://www.access.gpo.gov/su_docs/fedreg/a020327c.html. FitzPatrick was not authorized to use the HI-STORM 100S design until that rulemaking was completed, unless the licensee chooses to submit an exemption request for NRC approval (and receives approval), or chooses to approve the changes under 10 CFR 72.48, in which case the licensee would be required to make the 10 CFR 72.48 evaluation available for NRC inspection.

NRC staff have determined that there is no safety significant concern related to this item in the Petition.

4. Concern: The Petitioner describes a discussion with an employee of the NRC's Spent Fuel Project Office (SFPO) where the Petitioner claims that the employee was not aware of all of the design changes Entergy made (via 10 CFR 72.48), or the details. The Petitioner states it is their understanding that NRC will not independently analyze the design changes, computer modeling and testing, but merely review Entergy's 10 CFR 72.48 evaluation.

Evaluation: At the time the SFPO employee was contacted by the Petitioner, the NRC had only recently received the licensee's 10 CFR 72.48 evaluation of the cask design changes, and had not yet reviewed that evaluation, which describes the design changes in detail. As previously explained, NRC staff subsequently began a technical inspection of the 10 CFR 72.48 evaluation, including the Holtec and licensee calculations supporting the design changes.

The process for inspecting a licensee's evaluation performed under 10 CFR 72.48 does differ from the NRC's technical review and approval process for design changes requiring NRC submittal. However, in both cases the need to perform independent confirmatory analyses of licensee or cask designer calculations is determined by NRC technical review staff. In this case, the staff did not require confirmatory analyses to render its safety findings and found FitzPatrick's evaluation in compliance with applicable regulations. Both the inspection process and the cask certification and approval process are designed to ensure public health and safety is not jeopardized.

NRC staff have determined that there is no safety significant concern related to this item in the Petition.

5. Concern: The Petitioner claims the NRC had clear reason to require a license amendment application and ALARA review, and that the NRC has failed to provide assurance that the FitzPatrick activities will not pose an increased risk to national security, the community, workers, and the environment.

Evaluation: The provisions of 10 CFR 72 allow a general licensee to make changes to the storage casks, provided that the changes do not exceed any of the eight criteria listed in 10 CFR 72.48(c)(2). NRC staff determined through their inspection at the FitzPatrick site that these criteria were not exceeded.

If the NRC had found, through inspection of FitzPatrick's 10 CFR 72.48 evaluation, that the 10 CFR 72.48 criteria were exceeded, then a license amendment or exemption would have been required. However, this was not the case, and as such, the NRC did not have "clear reason" to require a license amendment application.

The Petitioners' concern regarding the need for an ALARA review, and the risk to the community, workers and the environment is addressed below under items 9 and 10. The risk to national security is also addressed below under item 12.

NRC staff have determined that there is no safety significant concern related to this item in the Petition.

6. Concern: The Petitioner claims Entergy's reasons for avoiding a license amendment are financial in nature, and are related to loss of full core offload, future simplification of Private Fuel Storage's regulatory approval for HI-STORM 100 casks, and savings in eventual waste shipments (through use of Holtec's relatively high capacity design).

Evaluation: In determining whether a change to a cask design requires a license amendment or not, licensees are required to evaluate the proposed change against the criteria in 10 CFR 72.48(c)(2). If the proposed change exceeds one of the criteria, then a license amendment would be required. With respect to the FitzPatrick case, the criteria for submittal of a license amendment were not exceeded.

NRC staff have determined that there is no safety significant concern related to this item in the Petition.

7. Concern: In the March 29, 2002, phone call with the PRB, the Petitioners added that they "think it really is important to the NRC to look at this process in terms of its abdication of this responsibility to, in fact, include the public in the process."

Evaluation: The NRC continues to work towards increasing public confidence in the area of spent fuel storage, and appreciates the Petitioners' concern with regard to the availability of information to the public. In this case, the design changes were approved through the 10 CFR 72.48 approval process by the licensee. These licensee evaluations are submitted to the NRC in summary form on a biennial basis, as described in 10 CFR 72.48(d)(2).

Additionally, the provisions of 10 CFR 72.48, which allow a licensee to approve changes without prior NRC approval and public comment, were added to 10 CFR 72 through the NRC's rulemaking process. This modification to the general licensing process provided an opportunity for public comment. At that time, public comments concerning this process were received and evaluated by the NRC.

NRC staff have determined that there is no safety significant concern related to this item in the Petition.

8. Concern: Entergy's design changes increase the risk of terrorism due to use of lower density concrete in the revised cask design.

Evaluation: The low density concrete issue relates to the licensee's determination that some concrete used in the casks did not meet their procurement specifications. However, the concrete used did meet the licensing and safety analysis requirements. Additionally, the modified FitzPatrick cask design actually uses higher density concrete than the HI-STORM 100 cask design originally approved by the NRC, as mentioned by the licensee in the March 29, 2002, phone call with the PRB, and in the licensee's 10 CFR 72.48 evaluation.

NRC staff have determined that there is no safety significant concern related to this item in the Petition.

9. Concern: Entergy's use of the HI-STORM casks does not adequately protect workers because Entergy plans on using the HI-TRAC 100 transfer cask, which has higher worker dose rates than the HI-TRAC 125 transfer cask.

Evaluation: Any general licensee has the option to use either the HI-TRAC 100, or the HI-TRAC 125. The Certificate of Compliance No. 1014, includes the following in the description of the HI-STORM 100 Cask System, "Two types of HI-TRAC transfer casks are available: the 125-ton HI-TRAC and the 100-ton HI-TRAC."

Both transfer casks have undergone NRC technical review, and have been subject to comment during the rulemaking process. The technical review performed by the NRC staff is documented in a Safety Evaluation Report, and can be found in ADAMS, under the Accession Number ML003711865, for Amendment No. 0, and ML022000249 for Amendment No. 1.

NRC staff have determined that there is no safety significant concern related to this item in the Petition.

10. Concern: Entergy's design changes will increase radiation exposure to workers and the environment because the revised design involves lowering of the pedestal and realigning the canister closer to the vents, creating a streaming path.

Evaluation: The design change would have resulted in a local increase in dose rates at the inlet and outlet vents. However, the licensee also required a modified gamma shield be put in place as part of the overall re-design to limit dose rates to workers and the public. The modified gamma shield is discussed in the licensee's 10 CFR 72.48 evaluation that was inspected by NRC staff. NRC staff have determined that the modified cask continues to meet 10 CFR 72 regulatory requirements for worker and public radiation exposure.

NRC staff have determined that there is no safety significant concern related to this item in the Petition.

11. Concern: Entergy's design changes could increase the possibility that the casks will leak through lowering of the pedestal and realigning the canister closer to the vents. The Petitioners also added during the March 29, 2002, phone call with the PRB that the change "involves significant modifications to the heat removal systems [for] this cask".

Evaluation: For a leak to be caused due to lowering of the pedestal, the spent fuel would have to heat up to an unsafe temperature due to a lack of sufficient air flow or other heat removal mechanisms. Air enters the cask through the vents. This air flow dissipates the heat generated from the fuel, maintaining the spent fuel at safe temperatures. With the re-designed cask pedestal, the canister is closer to the vents, but the air flow through the vents under the re-design remains sufficient to cool the canister and spent fuel. The licensee evaluated the effect on heat removal capability due to the cask re-design in their 10 CFR 72.48 evaluation that was inspected by NRC staff. This inspection determined that the licensee's evaluation was acceptable with respect to the thermal impact, and that the heat removal capability of the cask was maintained.

NRC staff have determined that there is no safety significant concern related to this item in the Petition.

12. Concern: The current storage area provides little or no structural protection against many kinds of terrorism scenarios, and this is an unnecessary risk to national security and public health and safety. The Petitioners also further elaborated in a conference call with the PRB on March 29, 2002, that loading the casks and placing them outside (away from the spent fuel pool) merely "shifts the risk around" and "creates more risk by creating more targets." The Petitioners also stated that Entergy should "entertain putting the casks further apart and [place each in a] berm so they would not be such a great terrorist target."

Evaluation: With regards to security measures, we understand and share your concerns following the events of September 11, 2001. The NRC has taken a number of measures to protect the public. Since the September 11 events, the Commission has issued a series of advisories to licensees, including those operating independent spent fuel storage installations (ISFSIs), to augment certain aspects of their security plans and capability. In addition, on October 16, 2002, the NRC issued orders to those licensees operating ISFSIs to require compliance with interim safeguards and security

compensatory measures. In general, the advisories and orders address increased patrols, augmented security forces and capabilities, additional security posts, heightened coordination with law enforcement and military authorities, and limited access of personnel and vehicles to the site, among other measures. NRC has audited FitzPatrick to verify implementation of the security measures addressed and will continue to periodically review the licensee's security program.

Furthermore, we are undertaking a top-to-bottom review of the agency's safeguards and physical security programs, including the basic assumptions of current programs, in light of the continuing uncertainty about future terrorist intentions. This review involves U.S. national security organizations and is part of a broader review being undertaken by the Federal Government.

NRC staff have determined that there is no safety significant concern related to this item in the Petition.

13. Concern: The NRC should "look into what the increased risks are because of [the] shortening of the pedestal". (Comment from the March 29, 2002, PRB phone call).

Evaluation: As mentioned previously, NRC staff have inspected the licensee's 10 CFR 72.48 evaluation with respect to all aspects of the cask re-design, including the shortening of the pedestal, to ensure that the changes maintain public safety, and that the changes were allowed under the provisions of 10 CFR 72.48. The result of this inspection was that the design changes were determined to maintain safety, and comply with the requirements of 10 CFR 72.

NRC staff have determined that there is no safety significant concern related to this item in the Petition.

Based on the specific items noted above and cited by the Petitioners as the bases for their Petition, the following requests of the Petitioners are dispositioned as follows:

1. The Petitioners asked that an order be issued to Entergy to suspend the dry cask storage program at FitzPatrick. In our letter dated April 12, 2002, we notified the Petitioners that we found no safety basis for an immediate order, but would continue to evaluate the need for an order as we continued our safety review of the Petition. Based on the staff's safety review, as detailed in the specific items above, we find no basis for issuance of an order to Entergy to suspend the dry cask storage program at FitzPatrick. The request to issue such an order is therefore denied.

2. We denied the Petitioner's request that Entergy submit an additional safety demonstration of the FitzPatrick storage facility. We determined, through our inspection program, that Entergy has demonstrated that the proposed fuel storage program presents no increased risks to the national security or worker or public health and safety beyond what is contemplated in the Certificate of Compliance and General License, pursuant to § 72.212(4)-(5). We are denying the Petitioners' request that Entergy submit a license amendment, ALARA review, and various other safety evaluations and justifications to the NRC for review for the reasons noted above in the detailed discussion of the various technical items. We also deny the Petitioners' request to require Entergy to provide more substantial physical and structural protection of the irradiated fuel and ISFSI, as existing security measures have been determined to be adequate.
3. We granted the Petitioners' request that all documents and information filed in relation to the selection of storage casks and the implementation of dry storage at FitzPatrick be put on the docket for public inspection by letter dated May 10, 2002, and we provided the additional information to be released to the public at that time.
4. We granted the Petitioners' request that the PRB submit this Petition to the OIG for review of the SFPO, as noted in our letter dated April 12, 2002, to the Petitioners.
5. We also now deny the Petitioners' request to investigate whether Entergy deliberately circumvented the regulatory process. The NRC staff review of Entergy's 10 CFR 72.48 evaluation concluded that the proper regulatory process was followed by Entergy, and no further investigation is warranted.

III. Conclusion

We have granted portions of this Petition as follows: (a) request that all documents and information filed in relation to the selection of storage casks and the implementation of dry storage at FitzPatrick be put on the docket for public inspection by letter dated May 10, 2002, and we provided the additional information to be released to the public at that time, and; (b) request that the PRB submit this Petition to the OIG for review of the SFPO, as noted in our letter dated April 12, 2002, to the Petitioners.

We have denied portions of this Petition as follows: (a) request of issuance of an order to Entergy to suspend the dry cask storage program at FitzPatrick; (b) request to investigate whether Entergy deliberately circumvented the regulatory process; and, (c) request that Entergy submit an additional safety demonstration of the FitzPatrick storage facility, request that Entergy submit a license amendment, ALARA review, and various other safety evaluations to the NRC for review, and request to require Entergy to provide more substantial physical and structural protection of the irradiated fuel and ISFSI.

As provided in 10 CFR 2.206(c), a copy of this Director's Decision will be filed with the Secretary of the Commission for the Commission to review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 28th day of October 2002.

/RA/
Martin J. Virgilio, Director
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Petitioner's comments on the proposed Director's Decision
2. NRC staff response to Petitioner's comments
3. Licensee's reply to the proposed Director's Decision

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CITIZENS AWARENESS NETWORK

August 27, 2002

Mr. E. William Brach
Spent Fuel Project Office
Office of Nuclear Material Safety and Safeguards
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: PROPOSED DIRECTOR'S DECISION ON 2.206 PETITION REGARDING
IRRADIATED FUEL DRY CASK STORAGE AT THE JAMES A. FITZPATRICK
REACTOR

Dear Mr. Brach:

By letter dated August 13, 2002, you offered the petitioners the opportunity to submit comments on the Proposed Director's Decision on our 2.206 petition for emergency enforcement action with regard to the dry cask storage program for irradiated fuel at the James A. FitzPatrick reactor. We appreciate the Petition Review Board's decision to grant two of our demands: to accept our demand for information and have all documents related to FitzPatrick's dry storage program placed on the docket; and to submit our petition to the Office of the Inspector General for review of the Spent Fuel Project Office's compliance in regard to NRC regulations in terms of design changes, licensing, amendments, exemptions, and ALARA in its permitting process with regard to the use of dry cask storage at FitzPatrick.

We have reviewed the proposed decision and find it an inadequate response to the primary request of our petition, that is, to "demonstrate that the proposed fuel storage program presents no increased risks to national security or worker or public health and safety beyond what is contemplated in the certificate of compliance and General License, pursuant to § 72.212(4)-(5)" (February 21 petition to NRC by Citizens Awareness Network and New York-Public Interest Research Group). The Proposed Director's Decision:

- 1) contains factual inaccuracies and misrepresentations;
- 2) lacks sufficient rigor, specificity, and documentation for the public to be confident in the NRC's evaluation of our safety concerns; and

THE EXPERIMENT IS OVER

Web site: www.nukebusters.org E-Mail: cnycan@rootmedia.org

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- 3) casts further doubt on the NRC's regulation of dry cask storage, especially the application of 10 CFR 72.48.

The Proposed Decision responds to 13 specific issues we raised that support our concerns and our request for enforcement action. The Petition Review Board (PRB) concludes in each and every case that "there is no safety significant concern related to this item in the petition" (pp. 3, 4, 5, 6, 7, 8, 9). While we are unsatisfied with the PRB's response to most of our concerns, two of these (#9 and #12) must remain open because the PRB has failed to prevent any evidence to support its claim there is no safety significance to the issues we have raised.

I. Factual Inaccuracies and Misrepresentations

Issue #2 has to do with the NRC's withholding information about the design changes from the public. The PRB acknowledges that the design problem for using the HI-STORM casks at FitzPatrick was not mentioned at the public meeting held in Oswego County on December 13, 2000, after NRC staff were made aware of the problem during a tour of FitzPatrick earlier that day. In response, the PRB claims that the purpose of the meeting was to discuss the regulatory program for dry cask storage: "Had a member of the public asked a question during the meeting regarding cask movement, NRC staff could have responded or referred the question to Entergy" (4).

This statement is factually incorrect. Members of the public, Mr. Judson included, asked questions about the movement of the casks at that meeting, including the safe load path analysis, the radiation exposure of workers loading the casks, and the use of the HI-TRAC 100 transfer cask. With regard to the choice of the HI-STORM 100 transfer cask, the NRC staff did defer to FitzPatrick managers to explain that weight limits on the crane or building structure precluded use of the HI-TRAC 125 transfer cask. However, both NRC and Entergy failed to mention the fact that the cask was too large to be moved out of the fuel handling building and its use would require modification of the design or of fuel handling procedures. At the very least, this issue would have been an important example of how the NRC regulatory process would apply to the dry storage program at FitzPatrick.

Members of the public also asked about regulatory approvals Entergy would require and opportunities for the public to intervene. NRC staff repeatedly emphasized that, under the general license, FitzPatrick would require no additional oversight or regulatory approvals to implement dry cask storage at FitzPatrick, once the seismic qualifications and safe load path analysis had been satisfactorily completed. NRC's clear implication at the meeting was that this matter was merely one of processing paperwork, less significant than a technical specification change. At the time of the meeting, NRC knew that there were significant challenges facing the cask design and fuel handling procedures, which could even require a license amendment. Contrary to the PRB's claims, NRC had the opportunity to notify the public and failed to do so.

The PRB attempts to cover up for a much more complicated and pervasive problem undermining the NRC's credibility. The NRC staff's default position in dealing with the public is to withhold information about technical matters and safety problems for fear of justifying the public's concerns about nuclear power. This culture of obfuscation precludes transparency in the regulatory process and undermines the democratic safeguards built into the NRC's mandates and regulations.

In the case of issue #1, which has to do with the NRC's prior knowledge of the design changes, the PRB claims that "NRC did not know that the [HI-STORM] overpacks would require modification for use at FitzPatrick," and that "[t]he NRC first became aware of the planned modifications when FitzPatrick applied for a different exemption on August 24, 2001" (3). These statements are unconvincing. The PRB acknowledges that NRC has been aware that "the [HI-TRAC] transfer cask was too large to be moved out of the fuel handling building in a standard configuration" since December 13, 2000, when NRC staff were given a tour of the FitzPatrick site (3). The lack of a paper trail documenting Entergy's intention to modify the casks is insufficient to convince the public that the NRC was unaware of the licensee's predicament, or it indicates a significant lack of oversight and regulatory involvement.

II. Issues that Must Remain Open

In response to our request that NRC require an ALARA evaluation of the use of the HI-TRAC 100 rather than the HI-TRAC 125 (issue #9), the PRB merely says, "The licensee stated in a conference call with the PRB and the Petitioners on March 29, 2002, that they will not be using the HI-TRAC 100 transfer cask. They have procured and will be using the HI-TRAC 125 transfer cask" (7). The NRC provides no evidence or documentation to support Entergy's statement, which contradicts several previous statements made up to that point. FitzPatrick management defended the use of the HI-TRAC 100 at the December 13, 2000 public meeting in Oswego County, and Dr. Andrew Kadak reported in March 2000 that FitzPatrick officials planned to use the HI-TRAC 100. It is shocking that NRC lacks documentation or regulatory procedures to verify Entergy's statements – particularly where workers' radiation exposure and the Commission's own ALARA regulations are concerned. The NRC's reluctance or inability to independently verify Entergy's statements makes it impossible for the public to have confidence in the PRB's answer to our petition, the NRC's regulation of dry cask storage, and the agency's protection of worker health and safety.

In response to our concerns about the increased risk of terrorism posed by the design of the cask storage facility, the PRB's statements are inconsistent. On the one hand, the PRB does not address the specific issues raised by the Petitioners. It merely states that "the Commission has issued a series of advisories to licensees, including those operating independent spent fuel storage installations, to augment certain aspects of their security plans and capability." It also refers to the Commission's ongoing evaluation of safeguards and structural vulnerabilities since

the September 11 attacks. However, neither of these statements constitutes evidence demonstrating that the dry casks facility does not increase the site's vulnerability to terrorism. The PRB has presented no support for its conclusion that "there is no safety significant concern" with regard to this issue. It would be more accurate to say that NRC cannot determine at this time whether there is a significant safety issue related to terrorism. This issue should remain open pending completion of the generic review of terrorism risks and revision of the design basis threat.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Judson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tim Judson, Organizer
Citizens Awareness Network
140 Bassett St.
Syracuse, NY 13210

MEMORANDUM TO: Margaret Federline, Chair
Petition Review Board

FROM: Julia M. Barto /RA/
Petition Manager

SUBJECT: STAFF RESPONSE TO COMMENTS ON DRAFT DIRECTOR'S
DECISION DD-02-02

This memorandum documents the NRC staff response to comments on the proposed Director's Decision (DD) DD-02-02 (Citizen's Awareness Network Petition concerning the operation of Entergy's James A. FitzPatrick Interim Spent Fuel Storage Installation.

1. Petitioner's Comment I:

The Petitioner states that the Proposed Director's Decision contained factual inaccuracies and misrepresentations in the NRC's response to the following:

Issue No. 1: The Petitioner states that the NRC knew the HI-STORM overpacks would require modification from the original design when a fabrication exemption was granted. Specifically, the following statements from the proposed Director's Decision caused concern, "NRC did not know that the [HI-STORM] overpacks would require modification for use at FitzPatrick" and that, "[t]he NRC first became aware of the planned modifications when FitzPatrick applied for a different exemption on August 24, 2001..." The Petitioner expresses concerns over insufficient documentation of Entergy's intention to modify the casks. The Petitioner states that, ultimately, either the NRC had some knowledge of the licensee's intentions, or the NRC lacks oversight and regulatory involvement.

Issue No. 2: The NRC withheld knowledge that the HI-STORM 100 casks were too large to be moved out of the containment building without modification during a public meeting in Oswego County, December 13, 2000. The Petitioner states that at the time of the meeting, NRC knew there would be significant challenges facing the cask design and fuel handling procedures. The Petitioner states that, in fact, many members of the public asked questions concerning cask movements, safe load path analysis, radiation exposure of workers loading the casks, the transfer casks, etc. However, this particular subject was never discussed at this meeting. The Petitioner is specifically concerned about the following response from the proposed Director's Decision: "Had a member of the public asked a question during the meeting regarding cask movement, NRC staff could have responded or referred the question to Entergy."

Staff's Response:

The comments are related; therefore, staff will respond to them together. As discussed in the proposed Director's Decision, on December 13, 2000, NRC staff participated in a public meeting in Oswego County. That same day, prior to the public meeting, NRC staff

were given a tour of the FitzPatrick site. During this tour, the licensee mentioned that the transfer cask was too large to be moved out of the fuel handling building in a standard configuration and described several options under consideration. NRC staff indicated to the licensee that non-standard movements of the cask outside of the fuel handling building would require prior NRC approval unless the 10 CFR 72.48 criteria could be met. The NRC staff verbally encouraged the licensee to promptly submit a request for a licensing action, if Entergy determined that one was necessary.

Ultimately, the licensee did redesign the HI-STORM cask under the auspices of 10 CFR 72.48. The NRC reviewed the 10 CFR 72.48 evaluation and determined that the proposed modifications to the cask would not result in a safety issue and met the criteria for design changes under 10 CFR 72.48. The licensee's 10 CFR 72.48 evaluation was subsequently released to the public, in a May 10, 2002, correspondence with the Petitioner. The details of changes made to the HI-STORM cask design are outlined in that document which can be found in ADAMS, under the package Accession Number ML021340256.

The Petitioner expresses concerns that the NRC withholds technical information concerning safety problems from the public for fear of justifying the public's concerns about nuclear power. Although, the NRC staff have determined that there is no safety significant concern related to this item in the Petition, we still believe this is an important comment which reinforces the need for the staff to clearly communicate with the public in our outreach efforts. We have attempted to address the Petitioner's concerns by amending our response to reflect the above information, and deleting the paragraph containing the sentence, "Had a member of the public asked a question during the meeting regarding cask movement, NRC staff could have responded..." The Staff has reconsidered that the statements in that paragraph are not a fair response to the Petitioners.

2. Petitioner's Comment II:

The Petitioner expresses continued concerns with Issue Nos. 9 and 12, and request that those items remain open.

Issue No. 9: Entergy's use of the HI-STORM casks does not adequately protect workers because Entergy plans on using the HI-TRAC 100 transfer cask, which has higher worker dose rates than the HI-TRAC 125 transfer cask. The Petitioner commented that the response in the proposed Director's Decision provides no evidence or documentation to support Entergy's statements that they were using the HI-TRAC 100 transfer cask. The Petitioner's bottom line comment was "The NRC's reluctance or inability to independently verify Entergy's statements makes it impossible for the public to have confidence in the PRB's answer to our petition, the NRC's regulation of dry cask storage, and the agency's protection of worker health and safety."

Staff's Response:

The Petitioner raises a valid point. Our reply in the proposed Director's Decision could be interpreted to imply that the HI-TRAC 100 transfer cask is not safe for use. When in fact, any general licensee has the option to use either the HI-TRAC 100, or the HI-TRAC 125. The Certificate of Compliance no. 1014, includes the following in the description of the HI-STORM 100 Cask System, "Two types of HI-TRAC transfer casks are available: the 125-ton HI-TRAC and the 100-ton HI-TRAC."

Both transfer casks have undergone NRC technical review, and have been subject to comment during the rulemaking process. The technical review performed by the NRC staff is documented in a Safety Evaluation Report, and can be found in ADAMS, under the Accession Number ML003711865, for Amendment No. 0, and ML022000249 for Amendment No. 1.

Again, the NRC staff have determined that there is no safety significant concern related to this item in the Petition; however, we have amended the final Director's Decision to delete any reference to which specific transfer cask Entergy is using to facilitate its spent fuel loading operations, and replaced it with the above information concerning the general license.

Issue No. 12: The current storage area provides little or no structural protection against many kinds of terrorism scenarios, and this is an unnecessary risk to national security and public health and safety. The Petitioner expresses concerns that the response in the proposed Director's Decision does not constitute evidence to demonstrate that the ISFSI design does not increase the site's vulnerability to terrorism. The Petitioner also states that there is no evidence to support the conclusion that "there is no significant safety concern." The Petitioner requests the issue to stay open, pending completion of the generic review of terrorism risks and revision of the design basis threat.

Staff Response:

We have amended the final Director's Decision to reflect the recent issuance of NRC Orders to all independent spent fuel storage installation licensees. However, as the specifics of the orders and advisories are safeguards information and, as such, not available to the general public, the petitioners desire for evidence to alleviate their concerns cannot be met.



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August 28, 2002
JAFP-02-0180

T.A. Sullivan
Vice President, Operations-JAF

12-12
50-333

U. S. Nuclear Regulatory Commission
E. William Brach
Director Spent Fuel Project Office
Office of Nuclear Material Safety and Safeguards
Washington, DC 20555-0001

SUBJECT: James A. FitzPatrick Nuclear Power Plant
Docket No. 50-333
**Proposed Director's Decision on 2.206 Petition Regarding Spent Fuel
Dry Cask Storage at the James A. FitzPatrick Nuclear Power Plant**

Dear Sir:

We have reviewed the Proposed Director's Decision on 2.206 Petition Regarding Spent Fuel Dry Cask Storage at the James A. FitzPatrick Nuclear Power Plant as transmitted by your letter dated August 13, 2002.

We have reviewed the evaluation of the concerns as presented in the Proposed Director's Decision, and have no comments regarding the evaluation and decision.

Very truly yours,

T. A. Sullivan
Vice President Operations

TAS/RP/ED/dmr

VE04

cc: Regional Administrator
U. S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406

Office of the Resident Inspector
U. S. Nuclear Regulatory Commission
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Lycoming, NY 13093

Mr. G. Vissing, Project Manager
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Division of Licensing Project Management
U. S. Nuclear Regulatory Commission
Mail Stop OWFN 8C2
Washington, DC 20555

U.S. NUCLEAR REGULATORY COMMISSION

DOCKET NOS. 72-12 AND 50-333

LICENSE NO. DPR-59

ENTERGY NUCLEAR OPERATIONS, INC.

JAMES A. FITZPATRICK NUCLEAR POWER PLANT

NOTICE OF ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC), has issued a Director's Decision with regard to a Petition dated February 21, 2002, filed by Mr. Timothy Judson of the Citizens Awareness Network, et al., hereinafter referred to as the "Petitioner." The Petition concerns the operation of Entergy's James A. FitzPatrick Interim Spent Fuel Storage Installation (ISFSI). The Petitioner requested the following:

1. That the NRC order Entergy to suspend the dry cask storage program at the FitzPatrick reactor.
2. That the NRC require Entergy to:
 - demonstrate that the proposed fuel storage program presents no increased risks to the national security or worker or public health and safety beyond what is contemplated in the Certificate of Compliance and General License, pursuant to § 72.212(4)-(5);

- submit its proposed design changes for technical review in the form of a license amendment application and seek regulatory approval for them pursuant to § 72.244;
 - evaluate its use of the HI-TRAC 100 transfer cask for ALARA standards, per § 50, Appendix I;
 - provide more substantial physical and structural protection of the irradiated fuel and ISFSI to satisfy the requirements of §§ 73.51, 73.55; and
 - demonstrate the use of the HI-STORM 100 can satisfy these requirements at FitzPatrick, or demonstrate countervailing and compelling reasons to utilize the HI-STORM 100 at FitzPatrick, as opposed to any other casks certified by NRC.
3. That all documents and information filed in relation to the selection of storage casks and the implementation of dry storage at FitzPatrick be put on the docket for public inspection.
4. That the Petition Review Board (PRB) submit this Petition to the NRC's Office of the Inspector General (OIG) for review of the Spent Fuel Project Office's compliance with regard to NRC regulations in terms of design changes, licensing, amendments, exemptions and ALARA in its permitting process relating to the use of dry cask storage at FitzPatrick. Additionally, that a review be conducted to determine whether NRC staff in the Spent Fuel Project Office are complicit or

misguided in permitting design changes to these casks without submission of a license amendment.

5. That the NRC conduct an investigation to determine whether Entergy has deliberately circumvented the appropriate technical and regulatory review required to protect worker and public health and safety and the environment.

As the basis for the February 21, 2002, request, the Petitioner states several safety concerns related to the design changes associated with the HI-STORM 100 cask design, as well as safety concerns related to national security.

The Petitioner addressed the PRB on March 29, 2002, in a telephone conference call to clarify the bases for the Petition. The meeting gave the Petitioner and the licensee an opportunity to provide additional information and to clarify issues raised in the Petition.

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to the licensee for comment on August 13, 2002. The Petitioner responded with comments on August 27, 2002, and the licensee responded on August 28, 2002. The comments and the NRC staff's response to them are Enclosures to the Director's Decision.

The Director of the Office of Nuclear Material Safety and Safeguards has determined that the safety concerns the Petitioner raised related to the modified HI-STORM 100 cask design at FitzPatrick were reviewed, and determined not to pose an immediate safety issue. Therefore, the request to require that an order be issued to Entergy to suspend the dry cask storage program at FitzPatrick was denied. In response to the Petitioner's request that Entergy submit an additional safety demonstration of the FitzPatrick storage facility, it was

determined, through the NRC inspection program, that Entergy has demonstrated that the proposed fuel

storage program presents no increased risks to the national security or worker or public health and safety beyond what is contemplated in the Certificate of Compliance and General License, pursuant to § 72.212(4)-(5). The NRC denied the Petitioner's request that Entergy submit a license amendment, ALARA review, and various other safety evaluations and justifications to the NRC for review for the reasons noted in the detailed discussion in the Director's Decision. The Petitioner's request to require Entergy to provide more substantial physical and structural protection of the irradiated fuel and ISFSI was also denied, as existing security measures, including issuance of an NRC Order to Entergy on October, 16, 2002, have been determined to be adequate. The Petitioner requested that all documents and information filed in relation to the selection of storage casks and the implementation of dry storage at FitzPatrick be put on the docket for public inspection. Documents and information filed in relation to the selection of storage casks and the implementation of dry storage at FitzPatrick were put on the docket for public inspection by letter dated May 10, 2002, and the additional information was released to the public at that time. The Petitioner's request that the PRB submit this Petition to the OIG for review of the SFPO was granted, as noted in the letter dated April 12, 2002. In response to the Petitioner's request to investigate whether Entergy deliberately circumvented the regulatory process, the NRC staff review of Entergy's 10 CFR 72.48 evaluation concluded that the proper regulatory process was followed by Entergy, and no further investigation was warranted. The reasons for these decisions are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD-02-02), the complete text of which is available for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The text is also accessible through the ADAMS Public Library on the NRC's Web site, <http://www.nrc.gov> (Public Electronic Reading Room).

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 28th day of October 2002.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/
Martin J. Virgilio, Director
Office of Nuclear Material Safety
and Safeguards