



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

January 27, 2000

SUMMARY OF DECEMBER 15, 1999, MEETING WITH MR. DAVID LOCHBAUM ET AL.
TO DISCUSS CONCERNS AND RECOMMENDATIONS RELATED TO THE PROCESS
FOR PETITIONS UNDER 10 CFR 2.206

The NRC staff met with Mr. David Lochbaum of the Union of Concerned Scientists (UCS) and Mr. James Riccio of the Public Citizen's Critical Mass Energy Project at NRC Headquarters on December 15, 1999, to discuss concerns and recommendations related to the process for petitions under 10 CFR 2.206. Enclosure 1 is the list of attendees. Mr. Lochbaum and Mr. Riccio are members of a task force that has voiced concerns related to how the NRC staff processes petitions submitted under 2.206. Mr. Lochbaum presented a brief summary of the associated regulations, some historical information on petitions, and a summary of the task force's concerns and recommendations. Enclosure 2 is the handout provided by Mr. Lochbaum.

Mr. Lochbaum presented three major concerns: (1) the NRC staff is not properly applying the regulations when it processes 2.206 petitions, (2) there are no avenues for appeal to NRC decisions related to a 2.206 petition, and (3) the time the NRC staff takes to respond to the petitions is longer than the staff allows for some other processes, creating the perception that the NRC staff does not give petitions a high enough priority.

During the discussion, the NRC staff clarified the regulations and, as a result, there was general agreement that the staff was applying the regulations properly. With respect to appeals, the staff agreed to consider changes to its internal procedures, within the context of the current regulation, that would provide petitioners some means to interact with the staff to express disagreement with a staff determination related to initial Petition Review Board recommendations or a proposed Director's Decision. Based on the existing regulation at 10 CFR 2.206(c), these appeals would have to occur before the Director's Decision is issued. In terms of timeliness, all parties agreed that any immediate actions that are requested in a petition (e.g., a request to prevent a plant from restarting) must be processed in time to make the response meaningful (i.e., before the plant has restarted). For any longer-term action requested in petitions, the NRC staff agreed to review its current expectations for the time allowed to issue the Director's Decision (currently 120 days after the NRC staff issues its acknowledgment letter) to determine whether changes are appropriate. The existing process, as described in NRC Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206 Petitions," already requires NRC staff contact with the petitioner(s) on a periodic basis and if the response will be significantly delayed in relation to the original schedule. Therefore, it does not appear that any significant process changes will be necessary in order to address the task force's concerns in the timeliness area.

On October 7, 1999, the NRC staff issued a notice in the *Federal Register* (64 FR 54654) requesting public comments on MD 8.11. The comment period ends on January 31, 2000. The NRC staff will consider comments received in response to the *Federal Register* notice, in addition to the comments received during the December 15, 1999, meeting, for its next revision of MD 8.11.

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As indicated in the *Federal Register* notice, the NRC staff will hold a public meeting to discuss comments that are received on MD 8.11. This meeting is tentatively scheduled for February 10, 2000. The NRC staff will issue a meeting notice with details of the meeting arrangements in advance of the meeting date.



Andrew J. Kugler, Project Manager, Section 1
Project Directorate III
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Enclosures: 1. List of Attendees
2. Handout from the Union of
Concerned Scientists

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LIST OF ATTENDEES

MEETING WITH MR. DAVID LOCHBAUM, ET AL.,

TO DISCUSS CONCERNS AND RECOMMENDATIONS RELATED TO THE

PROCESS FOR PETITIONS UNDER 10 CFR 2.206

DECEMBER 15, 1999

<u>NAME</u>	<u>AFFILIATION</u>
David Lochbaum	Union of Concerned Scientists
James Riccio	Public Citizen's Critical Mass Energy Project
Ellen Ginsberg	Nuclear Energy Institute
Suzanne Black	NRC/NRR ¹ /Division of Licensing Project Management (DLPM)
Herbert Berkow	NRC/NRR/DLPM/Project Directorate (PD) II
Andrew Kugler	NRC/NRR/DLPM/PDIII-1
Ram Subbaratnam	NRC/NRR/DLPM/PDII-2
Jack Goldberg	NRC/Office of the General Counsel
Edward Baker	NRC/Agency Allegations Advisor
Nick Hilton	NRC/Office of Enforcement
Victor Dricks	NRC/Office of Public Affairs
Paul Goldberg	NRC/Office of Nuclear Material Safety and Safeguards

¹ Office of Nuclear Reactor Regulation (NRR)

UNION OF CONCERNED SCIENTISTS

The NRC's 2.206 Public Petition Process: Not Very Appealing

<COVER SLIDE>

On November 4, 1977, UCS submitted our first 2.206 petition to the NRC. We submitted our most recent 2.206 petition on November 24, 1997. We submitted plenty of petitions during the intervening two decades. Our views on the 2.206 process were documented in a report titled, "The Public As Enemy: NRC Assaults on Public Participation in the Regulation of Operating Nuclear Plants," released in April 1992. As suggested by the title, UCS was not happy. Among the conclusions from this report:

- "...the Commission's denial of virtually all such requests in recent years demonstrates arbitrary and capricious behavior and hostility to public participation..."
- "...recent actions of the Commission have seriously eroded the opportunities for meaningful public participation in the NRC licensing process."
- "It is very damaging to the credibility of both the nuclear industry and the NRC that the public lacks meaningful opportunities for participation in the regulation of operating plants."

Since this report was issued, the NRC has conducted public workshops on the petition process and revised its management directive for handling petitions. These efforts were, at best, cosmetic. UCS could re-issue "The Public As Enemy" report and really only have to change the date. The conclusions remain the same.

The obvious question is why UCS submitted so many petitions over so many years via a process we deemed fundamentally flawed. The sad but true answer is that there are no other options available. Instead of providing endorsement of the NRC's 2.206 process, our petitions were reaffirming our conviction that the NRC prevents meaningful public participation. We continued trying. The NRC continued denying.

But we are not here today to whine – much – about the past. Instead, we'd rather make a case for what we feel is wrong with the NRC's petition process and recommend practical remedies.

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Section 2.206 of Title 10 to the Code of Federal Regulations allows any person to petition the NRC to institute a proceeding under Section 2.202 to modify, suspend, revoke a license or for any other action that might be proper. The key point to remember is that the petition seeks to institute a 2.202 proceeding.

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While not explicitly defined in the regulations, UCS believes that "other actions" includes NRC enforcement actions.

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From the NRC's current enforcement policy, its enforcement actions are Notices of Violation, Civil Penalties, Orders, Notices of Nonconformance, Notices of Deviation, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information.

These enforcement actions, in conjunction with the modification, suspension, or revocation of a license, cover just about anything that a public petitioner might seek through the 2.206 process.

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Paragraph (b) of Section 2.206 requires the Director of the NRC office handling the petition to either institute a Section 2.202 proceeding or deny a proceeding.

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Paragraph b) of Section 2.206 thus gives the NRC only two choices – either institute a Section 2.202 proceeding or deny the petition.

ENCLOSURE 2

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Section 2.202 specifies that a proceeding is initiated by the issuance of an order outlining the issues.

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Section 2.202 specifies that the recipient of the order must file a response under oath or affirmation. The recipient also has the right of requesting a hearing into the matter.

So far, the 2.206 process appears reasonable. On paper, any member of the public can petition the NRC to institute a formal proceeding to modify, suspend, or revoke a license or take other enforcement action. The problem is that this reasonable process exists only on paper. The reality is very different.

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While there are many problems with how the NRC implements the 2.206 process, the three major problems are:

1. The NRC is not following Section 2.206(b) because it fails to institute 2.202 proceedings.
2. The NRC lacks the means to revoke or suspend the license for an operating nuclear power plant; thus, the 2.206 process actually collapses to only those requests to modify a license or take other enforcement action.
3. The NRC gives licensees more rights to appeal its decisions than it affords public petitioners.
4. The NRC treats 2.206 petitions at an unfairly slow pace compared to other agency actions.

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What evidence is there that the NRC is not following Section 2.206(b)? The evidence is simply overwhelming. For example, UCS petitioned the NRC in October 1997 regarding the D C Cook nuclear plant. The NRC did every single action that we requested in our petition. Some of those actions revealed problems that have kept this two-unit plant shut down to this date. In October 1998, the NRC imposed a \$500,000 civil penalty on the plant's owner based in large part on violations uncovered during its investigation of the actions requested by our petition. However, the NRC denied our petition. The NRC did not institute a proceeding under Section 2.202.

We The People petitioned the NRC in August 1995 regarding the Millstone Unit 1 nuclear plant. The NRC did many of the actions that We The People requested. Some of those actions revealed problems that kept this reactor shut down until its owners decided not to attempt to restart it. In December 1997, the NRC imposed a record \$2.1 million civil penalty on the plant's owner based in large part on violation uncovered during its investigation of the actions requested by We The People's petition. However, the NRC basically denied the petition. The NRC did not institute a proceeding under Section 2.202.

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In January 1995, the NRC Inspector General issued a report on the NRC's 2.206 process. The Inspector General's Office examined 49 'closed' petitions. The NRC had denied all 49 petitions. The OIG found that all of the petitions had been denied even though the NRC took action to respond to petitioners' requests in roughly 20 percent of the petitions. No proceedings under Section 2.202 were instituted.

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The aforementioned evidence is circumstantial. The 'smoking gun' that proves beyond all doubt – not just reasonable doubt – that the NRC is not following 2.206(b) exists in the NRC's internal procedure for handling public petitions. Management Directive 8.11, "Review Process for 10 CFRE 2.206 Petitions," fails to mention Section 2.202 once. It is not even listed as a reference in the procedure. The procedure itself does not describe initiating a proceeding when a petition is fully granted, even though that is the only recourse permitted under the regulations. Quite simply, the NRC is not following this regulation.

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Turning now to the second problem, what evidence is there that the NRC has no means to revoke or suspend an operating license? The current decommissioning chaos is ample evidence. But the best evidence of this problem exists in the simple question: Who would be responsible for safety at a nuclear power plant with a revoked or suspended license?

<SLIDE 14>

Since an operating plant license cannot be revoked or suspended, public petitioners can only use 2.206 to ask for a license modification (which would be called a license amendment if the licensee sought it) or other enforcement action.

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Members of the public can ask the NRC to modify an operating plant license as can the owners of the plant themselves. But the NRC treats these two external stakeholders seeking common actions very, very differently.

Section 2.206(c)(2) specifies that "No petition or other request for Commission review of a Director's decision under this section will be entertained by the Commission." In this case, there is a level playing field. We have not been entertained by the Director's decisions. Not at all.

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So, public petitioners have absolutely no right to appeal an NRC decision. What about licensees? Well, the NRC provides plant owners seeking an amendment to their operating licenses five – count them – five formal levels of appeal. They can appeal a decision to the NRC Branch Chief, to the NRC Division level, to the NRC Office level, to the Executive Director for Operations level, and if those appeals are unsuccessful, they can appeal a decision directly to the Commission. Plant owners can entertain the Commission as they please. But the public has no place to appeal. Is it any wonder that the public finds the petition process so unappealing?

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Last but not least, the 2.206 petition process is untimely. According to Management Directive 8.11, the goal for reaching a Director's Decision, which is simply the decision on whether to initiate a 2.202 proceeding as opposed to the final decision on the merits of the safety issues, is 120 days from the date of the NRC's acknowledgement letter. Curiously enough, Management Directive 8.11 establishes no objectives for issuing an acknowledgement letter. Thus, the NRC staff wait twenty years before sending an acknowledgement letter and the 120 day clock on the Director's Decision would not start until that time.

Compare that 120 day objective to other NRC timeliness standards:

1. Licensees have only 60 days to submit a 10 CFR Part 21 report of generic safety issues.
2. Members of the public usually have merely 30 days, sometimes 60 days, to review license amendment requests and file any opposition.
3. NRC inspectors have only 30 days to write and issue inspection reports.
4. Licensees have only 20 days to respond to orders issued per 10 CFR 2.202.
5. Petitioners have only 30 minutes (0.0208 days) to present their concerns to the 2.206 Petition Review Board.

If members of the public can be expected to review a thousand-page license renewal submittal and develop legal and technical grounds for intervention within 30, or at most 60 days, it is clearly unacceptable for the NRC staff to take 120 days or longer to reach a Director's Decision on a 2.206 petition

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Our conclusions are problem statements provided on Slide 9:

1. The NRC is not following Section 2.206(b) because it fails to institute 2.202 proceedings.
2. The NRC lacks the means to revoke or suspend the license for an operating nuclear power plant; thus, the 2.206 process actually collapses to only those requests to modify a license or take other enforcement action.
3. The NRC gives licensees more rights to appeal its decisions than it affords public petitioners.
4. The NRC treats 2.206 petitions at an unfairly slow pace compared to other agency actions.

We conclude that these problems seriously impair the 2.206 petition process today to the same degree as detailed in our April 1992 report, "The Public As Enemy."

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Our recommendations seem reasonable: the NRC must abide by Section 2.206(b), the NRC must give the public the same rights to appeal decisions as are enjoyed by the licensees, and the NRC must treat 2.206 petitions with the same haste as it assigns other comparable licensing/safety actions.

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How should the NRC abide by Section 2.206(b)? Upon receipt of a petition, the NRC should first screen it to determine if it satisfies the petition standards. The existing screening criteria in Management Directive 8.11 seems appropriate.

If the screening criteria are not met, the NRC staff should inform the petitioner and extend that petitioner an opportunity to appeal this decision.

If the screening criteria is met, the NRC staff should institute a proceeding under 2.202.

TAKING THE ACTIONS REQUESTED BY THE PETITIONER BUT FAILING TO INSTITUTE A 2.202 PROCEEDING MUST NOT BE AN OPTION.

<SLIDE 21>

How should the NRC give the public fair rights to appeal decisions? The NRC could extend public petitioners the same appeals options that it provides licensees by providing for automatic appeals to the Commission when the Executive Director for Operations denies a petitioner's request. This automatic appeal process would conform to existing Section 2.206(cc)(2) because the Commission review would not be requested by the petitioner.

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The NRC must reduce its objective for reaching a Director's Decision to at most 60 days and preferably 30 days. This reduction is justified for two main reasons. First, the Director's Decision is, after all, not the agency's final ruling on the safety issues raised in the petition but rather the agency's determination to initiate a proceeding in the issues pursuant to Section 2.202. It should not take 120 days for this agency to render that decision. The second reason that the 30 to 60 day time frame for Director's Decisions is justified is because that is how much time the agency provides members of the public to review license amendment requests, including those large, complex ones for activities such as improved Technical Specifications and license renewal. If members of the public can review license amendment materials within 30 or 60 days and reach a decision whether to initiate an intervention, the NRC staff can surely reach a Director's Decision within the same time frame.

If the NRC staff truly feels it cannot perform as efficiently and productively as members of the public, please let UCS know and we will seek public volunteers to assist the agency.

<SLIDE 23>

Today, and at every possible opportunity over the past 20 years, UCS has contended that the 2.206 process is broken. Why do we continue to submit 2.206 petitions if we feel that the process is broken? The sad truth is that even though the 2.206 process is a very bumpy road leading to a dead-end, it is the only avenue available for the public to engage the NRC on sincere safety issues. Thus, our options are limited to raising safety issues via the process or remaining silent on them. We prefer safety to silence despite the many obstacles represented by the NRC's 2.206 process.

**UNION OF
CONCERNED
SCIENTISTS**

Repairing the 2.206 Petition Process

David Lochbaum
Nuclear Safety Engineer
dlochbaum@ucsusa.org
December 15, 1999

What Does §2.206 Say?

- (a) Any person may file a request to institute a proceeding pursuant to §2.202 to modify, suspend, or revoke a license, or for any other action as may be proper. [emphasis added]

What Are 'Other Actions'?

**While not defined within the regulations,
UCS believes that 'other actions' includes, as a
minimum, all of NRC's enforcement actions.**

What Does NRC Say are Enforcement Actions?



**Notices of Violation
Civil Penalties
Orders
Notices of Nonconformance
Notices of Deviation
Confirmatory Action Letters
Letters of Reprimand
Demands for Information**

**Source: NRC Enforcement Policy, Section VI,
“Enforcement Actions” (www.nrc.gov/OE)**

What Else Does §2.206 Say?

(b) Within a reasonable time after a request pursuant to paragraph (a) of this section has been received, the Director of the NRC office with responsibility for the subject matter of the request shall either institute the requested proceeding in accordance with this subpart or shall advise the person who made the request in writing that no proceeding will be instituted in whole or in part, with respect to the request, and the reasons for the decision. [emphasis added]

What Can NRC Do With Petition?

§2.206(b) gives the NRC only two choices:

1) institute a §2.202 proceeding

OR

2) deny the petition

What Does §2.202 Say?

- (a) The Commission may institute a proceeding to modify, suspend, or revoke a license or to take such other action as may be proper by serving on the licensee or other person subject to the jurisdiction of the Commission an order that will:**
- (1) Allege the violations with which the licensee or other person subject to the Commission's jurisdiction is charged, or the potentially hazardous conditions or other facts deemed to be sufficient ground for the proposed action, and specify the action proposed;**

What Else Does §2.202 Say?

- (2) Provide that the licensee or other person must file a written answer to the order under oath or affirmation within twenty (20) days of its date, or such other time as may be specified in the order;**
- (3) Inform the licensee or any other person adversely affected by the order of his or her right, within twenty (20) days of the date of the order, or such other time as may be specified in the order, to demand a hearing on all or part of the order, except in a case where the licensee or other person has consented in writing to the order;**

Problem Statements

- ① **NRC is not following 2.206(b) because it is not instituting 2.202 proceedings.**
- ② **NRC has no means to revoke or suspend the license of an operating power plant, thus 2.206 collapses to only requests to modify a license or take other proper action.**
- ③ **Petitioners do not have the same rights as licensees when appealing NRC decisions.**
- ④ **NRC unfairly treats petitions in “slow motion.”**

NRC is not following 2.206(b)

**Evidence: We The People's petition on
Millstone and UCS's petition on D C Cook**

**NRC did everything WTP and UCS requested -
and then some - but failed to invoke a 2.202
proceeding.**

Even more evidence that NRC is not following 2.206(b)

Evidence: “In all 49 cases [between 01/01/90 and 06/10/94] where a decision was rendered, NRC had issued a denial of actions requested. We noted that although NRC had denied the specific action requested in the petitions, it did take some action to respond to the petitioners concerns on at least ten or about 20 percent of the 49 petitions denied.” OIG/94A-28, 01/23/95

NRC did some of what was requested, but failed to invoke 2.202 proceedings.

Compelling evidence that NRC is not following 2.206(b)

**Evidence: NRC's internal procedure for
processing 2.206 petitions:**

**does not mention §2.202 once, even as a
reference**

**does not discuss initiating a proceeding
when a petition is fully granted**

**Source: Management Directive 8.11, "Review
Process for 10 CFR 2.206 Petitions," July 1,
1999**

NRC has no means to revoke or suspend an operating license

Evidence: Decommissioning dilemma

The NRC lacks effective regulations for decommissioning nuclear power plants whether planned (Big Rock Point) or not (Maine Yankee).

Who would be responsible for safety at a nuclear power plant with a revoked or suspended license?

2.206 can only be used for license modification or other action

**Because NRC cannot revoke or suspend an
operating plant license, petitioners can only use
2.206 to ask for a license modification (a.k.a.
license amendment) or other action.**

Petitioners lack rights of licensees for NRC decisions

**Petitioner cannot appeal NRC decision to deny
petition:**

**§2.206(c)(2) - “No petition or other request for
Commission review of a Director's decision
under this section will be entertained by the
Commission.”**

Petitioner has no place within NRC to appeal.

Petitioners lack rights of licensees for NRC decisions

**Licensees seeking renewal of their operating
licensees have five (5) formal levels of appeal:**

- 1) NRC Branch Chief**
- 2) NRC Division**
- 3) NRC Office**
- 4) Executive Director**
- 5) Commission**

**Source: Att. 5 to NRC/NEI Meeting Summary dated
November 17, 1999**

NRC unfairly treats petitions in “slow motion”

**NRC’s time frame for reaching a Director’s
Decision on 2.206 petitions is 120 days (MD
8.11 Handbook page 14)**

**NRC’s time frame for other safety decisions is
much quicker:**

60 days for Part 21 submittal

**30 to 60 days to review license renewal
applications**

30 days for Inspection Report issuance

20 days for responses to 2.202 orders

Conclusions

- ① NRC is not following 2.206(b) because it is not instituting 2.202 proceedings.**
- ② NRC has no means to revoke or suspend the license of an operating power plant, thus 2.206 collapses to only requests to modify a license or take other proper action.**
- ③ Petitioners do not have the same rights as licensees when appealing NRC decisions.**
- ④ NRC unfairly treats petitions in “slow motion.”**

Recommendations

- ① **NRC must conform to 2.206(b).**
- ② **NRC must give petitioners the same rights as licensees when appealing NRC decisions.**
- ③ **NRC must treat petitions with same 'dispatch' afforded comparable items.**

NRC must conform to 2.206(b)

How NRC should process petition:

Screen petition (existing criteria in MD 8.11 seem appropriate)

If screening criteria are not met, inform petitioner and extend opportunity to appeal

If screening criteria are met, institute 2.202 proceeding with order to licensee

Involve petitioner in proceeding

Inform petitioner of proceeding results and extend opportunity to appeal

NRC must give petitioners right to appeal decisions

Current regulation is silent on petitioner appealing screening decision - thus, NRC procedures could provide formal appeal as they provide for license renewal applicants.

Current regulation prohibits petitioner from requesting Commission review of Director's Decision, but NRC procedures could provide automatic escalation to Commission in the same manner that license renewal applicants can carry their "beefs" to the Commission.

NRC must treat petitions with same 'dispatch' as other matters

**NRC must reduce the goal for a Director's
Decision from 120 days to at most 60 days,
preferably 30 days.**

**Recall that a decision to initiate a 2.202
proceeding could trigger an order to a licensee
requiring a response within 20 days -- taking
120 days (or longer) to determine whether to
take such prompt action is unacceptable.**

Final Observation

Given UCS's position that 2.206 process is fundamentally flawed, one (or more) might wonder why UCS persists in submitting 2.206 petitions.

For the public, sadly there is no other recourse than this pitiful 2.206 process. That's why it is imperative that the NRC repair this process if the agency is sincere about improving public confidence.

As indicated in the *Federal Register* notice, the NRC staff will hold a public meeting to discuss comments that are received on MD 8.11. This meeting is tentatively scheduled for February 10, 2000. The NRC staff will issue a meeting notice with details of the meeting arrangements in advance of the meeting date.

Original signed by:

Andrew J. Kugler, Project Manager, Section 1
Project Directorate III
Division of Licensing Project Management
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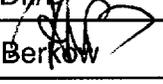
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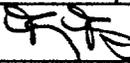
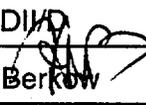
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