



PLANNED CHANGES TO THE REVIEW PROCESS FOR 10 CFR 2.206 PETITIONS

May 25, 2000

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INTRODUCTION

- **Commission Tasking Memo Activity to Improve the Process**
- **Stakeholder Recommendations Evaluated**
- **NRR, NMSS, OGC, OE Joint Effort**
- **Discuss Planned Process Improvements**



PURPOSE OF 10 CFR 2.206

- **Allow Individuals to Raise Health & Safety Concerns and Request Enforcement Action**
- **Enforcement Actions Include**
 - **Orders (e.g., Modify, Suspend or Revoke License)**
 - **Other Enforcement Actions (e.g., Notices of Violation)**
- **Relatively Informal Process**



BASIC PROCESS

- **Petition Review Board Recommends:**
 - **Whether Petition Meets 2.206 Criteria**
 - **Response to Requests For Immediate Action**
 - **Scope and Schedule of Review**
- **Staff Sends Acknowledgment Letter**
- **Staff Reviews Petition and Responds by Director's Decision (DD)**
- **Commission May Choose to Review DD**



PETITIONER CONCERNS

- **Timeliness**
- **Communications**
- **Some Petition Concerns Not Fully Addressed**
- **Limited Petitioner Participation in Process**
- **Lack of Appeal Process**
 - **By Rule, Commission Will Not Consider Requests to Review DDs**
 - **Petitioners' View They Lack Avenues to Challenge Staff Decisions**



PREVIOUS MD 8.11 REVISIONS

- **Revisions Addressed Some Petitioner Concerns**
- **1997 Revision Primarily Addressed Timeliness**
- **1999 Revision Primarily Addressed:**
 - **Greater Petitioner Participation**
 - **Communications**



PREVIOUS MD 8.11 REVISIONS (Continued)

- **1999 Changes Included:**
 - **Opportunity For Pre-PRB Meeting**
 - **Increased Communications Between Petition Manager and Petitioner**
 - **Petitioners added to Service Lists**
 - **Replace Informal Hearing Process With Staff-Petitioner-Licensee Meeting**
 - **DDs Will Identify Staff Actions Taken**



RECENT STAFF ACTIONS

- **1999 MD 8.11 Revision Was an Interim Step**
- **Additional Stakeholder Input Sought**
 - **October 1999, *Federal Register* Notice**
 - **December 1999 and February 2000 Public Meetings**
 - **Other Sources (CSIS, Commission Meetings)**



PLANNED CHANGES

- **Add Opportunity For Post-PRB Meeting With Petitioner**
- **Eliminate Stringent Criteria for Technical Review Meetings**
- **Request Petitioners & Licensees to Comment on Proposed DDs**



POST-PRB MEETING

- **Petitioner Informed of PRB Recommendations Regarding:**
 - Whether Petition Meets 2.206 Criteria
 - Requested Immediate Actions
 - Scope and Schedule of Review
- **Need For Meetings Determined on Case-by-Case Basis**
- **Petitioner Comments Considered by PRB**



POST-PRB MEETING (Continued)

- **Address Comments in Acknowledgment Letter**
- **Current Pre-PRB Meeting Retained as an Option**



TECHNICAL REVIEW MEETING CRITERIA

- **MD Criteria for Technical Review Meeting Eliminated**
- **Petitioner, Licensee, or Staff Can Request a Meeting**
- **Staff Will Hold Meetings When Beneficial to the Review**



COMMENTS ON PROPOSED DIRECTOR'S DECISIONS

- **Petitioner and Licensee Will Receive Proposed DD for Comment**
- **Copy Made Available to the Public**
- **Comments Will Be Addressed as Part of the Final DD**



RESOURCE & PETITION SCHEDULE IMPLICATIONS

- **Increased Resources Used For Petition Reviews**
 - **Significant Increase in Meetings With Petitioners**
 - **Staff Effort to Resolve Comments**
 - **NRR and NMSS Affected Most**
- **Review Time Extended at Least 30 Days**



SCHEDULE

- **Implement Changes On An Interim Basis** **6/30/00**
- **Publish Draft Revised MD 8.11 For Comments in the *Federal Register*** **7/31/00**
- **Issue Revised MD 8.11** **10/20/00**



SUMMARY

- **Earlier Changes Improved Process, But More is Needed**
- **Staff Taking Major Steps to Address Petitioner Concerns**
 - **More Petitioner Input Early (Post-PRB)**
 - **Removing Limitations on Technical Review Meetings With Petitioners (Criteria)**
 - **More Petitioner Input Late (Proposed DD)**



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Scientists

Planned Changes to the Review Process for 10 CFR 2.206

David Lochbaum

Nuclear Safety Engineer

May 25, 2000



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Introduction

UCS has submitted at least ten 2.206 petitions in the past three years.

Director's Decisions addressed UCS's issues only one time (D C Cook); in all other cases, Director's Decisions failed to address the issues raised.

Changes proposed by the NRC staff are unlikely to lessen our disenchantment with the process.



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Proposed Change 1: Petition Review Board Access

MD 8.11 revised in July 1999 to allow petitioners to meet before PRB; staff proposes to permit interactions after PRB meeting.

UCS Position: Pre-PRB and post-PRB meetings are good, but only when conducted in accordance with MD 3.5

Question: Why do licensees automatically get tickets to the pre-PRB and post-PRB meetings? Petitioners can only observe licensee meetings.



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Proposed Change 2: Revise 2.206 Meeting Criteria

**Staff proposes to lower threshold for
conducting public meetings about 2.206 issues.**

**UCS Position: Positive change if and only if
meetings are conducted per MD 3.5.**



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Proposed Change 3: Provide Peek at NO

Staff proposes to provide the petitioners with the draft denial 30 days prior to the final denial.

UCS Position: This proposal is unacceptable.

Question: Why is the NRC's processes replete with appeals to higher levels, except for 2.206 petitions and allegation responses?



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Sorry Meatloaf

Meatloaf sang “Two Out of Three Ain’t Bad,” but not about these changes to the 2.206 process.

The NRC staff denies 2.206 petitions without addressing the issues. Until the staff addresses the real issues, an effective appeal process is vital. Giving the petitioners the chance to ask, “Are you sure?” is not an effective appeal process.



Recommendations

- ① **NRC staff must address issues raised by petitioners or petitioners must have an effective appeal process.**

- ② **ALL meetings between NRC staff and petitioners (pre-PRB, post-PRB, 2.206 meeting) must be conducted in accordance with MD 3.5.**



Recommendations (continued)

-
- ③ Licensees should not be granted automatic participation in meetings between petitioners and NRC staff unless petitioners are accorded same privilege during meetings between NRC staff and licensees.

 - ④ MD 8.11 requires NRC staff to send petitioners a copy of MD 8.11. It would be better to develop a document explaining the process and the petitioner's role in it and send that document to the petitioner instead of MD 8.11.



Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

Statement of James Riccio

Public Citizen's Critical Mass Energy Project

Before

The U.S. Nuclear Regulatory Commission

May 25, 2000

Good Afternoon, my name is James Riccio. I am a senior analyst with Public Citizen. It is a pleasure to once again present our views to the Nuclear Regulatory Commission. I want to say at the out set that I appreciate the efforts made by the NRC staff to improve the 2.206 process. While I am not convinced that the suggested improvements will repair the process, I will withhold judgement pending their implementation and the disposition of petitions currently before the Commission.

I have been participating in NRC meetings on ways to improve the 2.206 petition process for nearly a decade. I've been engaging the NRC on this issue for so long that my original point of contact within the agency has since passed away. During that time I've seen commissioners and senior management come and go with little improvement to the 2.206 process. Since I first began working to improve the NRC's process there have been 4 different NRC chairman, more than a dozen different commissioners, 4 different executive director of operations, most of which are now pulling paychecks from the nuclear industry. Despite many hours of meetings and reviews of NRC proposals to improve the process, precious little has changed. My experience with the 2.206 petition process leads me to the conclusion that it is basically a device that allows the NRC to shunt aside the public's legitimate safety concerns into a regulatory cul-de-sac, where the issue is left until it is rendered moot.

As far as I am concerned, the 2.206 petition process is still only good for one thing: generating enough media attention to embarrass this agency into taking action. The Commission need look no farther than the shutdown of the D.C. Cook nuclear power plant in Michigan to see this point exemplified.

Ralph Nader, Founder

On October 9, 1997, Mr. Lochbaum submitted a petition to the U.S. Nuclear Regulatory Commission pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations.

The UCS petition requested that the operating licenses for the Donald C. Cook Nuclear Plant, Units 1 and 2 be modified, revoked, or suspended to prevent operation of the units until there was reasonable assurance that significant non-compliances had been identified and corrected. Basically UCS was requesting that the NRC preclude restart of the reactor until plant systems were in conformance with their design and licensing-basis requirements.

On December 9, 1997, the NRC acknowledged receipt of the petition and informed UCS that the Petition had been assigned to the Office of Nuclear Reactor Regulation (NRR) to prepare a response and that action on the specific concerns raised in the Petition would be taken within a reasonable time.

On or about January 6, 1998, the Union of Concerned Scientists contacted NRC's petition manager to inquire as to the status of the petition and D.C. Cook restart activities. He was informed that restart was imminent despite the fact that UCS's petition requested that Cook be prevented from operating until the issues in the petition were addressed. At that time UCS was informed that their petition would be addressed after NRC allowed D.C. Cook to restart. The only thing that precluded restart was the fact that UCS contacted the media and members of Congress.

Since that time, the NRC has issued more than fifty inspection reports attempting to address the design and licensing basis inadequacies that formed the basis of the UCS petition. I've included the list of inspection reports so that the Commission can grasp the extent of the problems identified by the staff after UCS was informed that restart was imminent:

- Inspection Report 99-30 - issued December 3, 1999 (emergency preparedness)
- Inspection Report 99-27 - issued October 15, 1999 (physical security)
- Inspection Report 99-26 - issued January 19, 2000 (case specific check list)
- Inspection Report 99-25 - issued October 21, 1999 (circuit breaker refurbishing)
- Inspection Report 99-24 - issued November 15, 1999 (corrective action program)
- Inspection Report 99-23 - issued December 21, 1999 (safety evaluation reviews)
- Inspection Report 99-20 - issued December 17, 1999 (resident inspection)
- Inspection Report 99-19 - issued November 3, 1999 (resident inspection)
- Inspection Report 99-18 - issued September 15, 1999 (Expanded System Readiness Program)
- Inspection Report 99-17 - issued September 22, 1999 (resident inspection)
- Inspection Report 99-16 - issued September 27, 1999 (operator licensing)
- Inspection Report 99-15 - issued August 13, 1999. (resident inspection)
- Inspection Report 99-14 - issued June 18, 1999 (radiation protection)
- Inspection Report 99-13 - issued July 12, 1999 (restart assessment program)

Inspection Report 99-12 - issued June 18, 1999 (Expanded System Readiness Program)
 Inspection Report 99-11 - issued May 26, 1999 (electrical)
 Inspection Report 99-10 - issued June 11, 1999 (resident inspection)
 Inspection Report 99-09 - issued May 21, 1999 (Expanded System Readiness Program)
 Inspection Report 99-08 - issued May 12, 1999 (emergency preparedness)
 Inspection Report 99-07 - issued September 16, 1999 (Expanded System Readiness Program)
 Inspection Report 99-06 - issued June 3, 1999 (Expanded System Readiness Program)
 Inspection Report 99-05 - issued April 9, 1999 (radiation protection)
 Inspection Report 99-04 - issued May 14, 1999 (resident inspection)
 Inspection Report 99-03 - issued April 23, 1999 (Expanded System Readiness Program)
 Inspection Report 99-02 - issued March 19, 1999 (Expanded System Readiness Program)
 Inspection Report 99-01 - issued March 26, 1999 (Resident Inspection)
 Inspection Report 98-30 - issued February 9, 1999 (corrective actions)
 Inspection Report 98-27 - issued March 18, 1999 (resident inspection))
 Inspection Report 98-26 - issued January 8, 1999 (corrective actions)
 Inspection Report 98-25 - issued December 9, 1998 (measures of restart readiness)
 Inspection Report 98-24 - issued December 14, 1998 (security)
 Inspection Report 98-23 - issued January 19, 1999 (restart readiness - phase 1)
 Inspection Report 98-21 - issued December 28, 1998 (resident inspectors' report)
 Inspection Report 98-20 - issued November 9, 1998 (Motor-operated valve program)
 Inspection Report 98-19 - issued September 28, 1998 (Radiation Protection)
 Inspection Report 98-18 - issued November 6, 1998 (resident inspectors' report)
 Inspection Report 98-16 - issued September 23, 1998 (resident inspectors' report)
 Inspection Report 98-15 - issued August 12, 1998 (resident inspectors' report)
 Inspection Report 98-13 - issued June 9, 1998 (radiation protection)
 Inspection Report 98-12 - issued June 30, 1998 (resident inspectors' report)
 Inspection Report 98-11 - issued May 26, 1998 - Security (letter and summary only)
 Inspection Report 98-10 - issued June 18, 1998 - Control Rod Housing
 Inspection Report 98-09 - issued May 7, 1998 - Architect-Engineer Inspection Followup
 Inspection Report 98-08 - issued May 28, 1998 - Resident Inspectors' Report
 Inspection Report 98-07 - issued June 3, 1998 - Containment Systems
 Inspection Report 98-06 - issued March 5, 1998 - Radiation Protection
 Inspection Report 98-05 - issued April 10, 1998 - Ice Condenser Issues
 Inspection Report 98-04 - issued May 7, 1998 - Confirmatory Action Letter Commitments
 Inspection Report 98-03 - issued February 13, 1998 - training
 Inspection Report 98-02 - issued January 23, 1998 - fire protection
 Inspection Report 97-25 - issued February 20, 1998 - resident inspectors' report
 Inspection Report 97-24 - issued January 23, 1998 - resident inspectors' report
 Inspection Report 97-23 - issued January 21, 1998 - corrective action program
 Inspection Report 97-22 - issued November 26, 1998 - emergency planning
 Inspection Report 97-18 - issued January 13, 1998 - resident inspectors' report
 Inspection Report 97-17 - issued April 9, 1998 -- fibrous material in containment

D.C. Cook has now been shut down for over two and a half years, yet the NRC staff was on the verge of allowing the reactor to restart in January of 1998. In retrospect, I do not believe that the NRC can claim that this shut down was not warranted from a safety perspective. That

being the case, I am at a loss to explain how NRC was going to allow D.C. Cook to restart. Regardless of the answer, the process did not work. The public should not be forced to resort to media tactics in order to get safety concerns addressed by this agency.

In April, I participated in two petition review board meetings within a span of 48 hours. Both petitions addressed the potential for steam generator tube ruptures and NRC required inspection of steam generator tubes. While I believe the introduction of the PRB is a positive addition to the 2.206 process, I was struck by the disparity between the two meetings. The first, concerning the Salem reactors, was conducted like a public meeting, scheduled well in advance of the PRB with both the media and the public allowed to observe if not participate. The second, dealing with Indian Point 2, was held on a moments notice. When I requested a slight delay in scheduling of the meeting so that all of the petitioners could participate, I was rebuffed by the NRC staff.

The only reason that explains the disparate treatment of these two meetings was the status of the reactor. Salem was operating, Indian Point 2 was shut down due to the steam generator tube rupture of February 15, 2000 and the utility wanted to restart the reactor as soon as possible. According to Mr. Travers' memo of May 3, 2000:

Technical meetings and petitioner meetings with the PRB held in conjunction with 10 CFR 2.206 petition reviews are not considered public meetings in the context of MD 3.5. Technical meetings will be given as much advance public notice as possible, but staff decisions on restart or any immediate action request will not be delayed due to the logistics of arranging for or noticing meetings...Such meetings are normally not noticed; however, public observation is permitted.

The status of the reactor or the licensees desire to operate it should not determine the NRC's treatment of 2.206 petitions or NRC's handling of the PRB meeting. Mr. Travers can not have it both ways, he can not simultaneously claim that, "technical meetings will be given as much advance public notice as possible," and then acknowledge that "such meetings are normally not noticed."

All petition review board meetings should be public meetings and should be properly noticed regardless of the status of the nuclear reactor in question. In retrospect, the delay of a day or two in holding the PRB would not have interfered with the staff's scheduled restart of the Indian Point 2 reactor. In fact, at the May 3rd meeting with the licensee, a full six weeks after the PRB meeting, the NRC had still not received all the information it had requested from Consolidated Edison regarding the steam generator tube rupture.

As noted in Mr. Travers memo, another option would be to change the rule to allow petitioners to appeal director's decisions. While we appreciate the NRC affording the public an opportunity to review the director's decisions prior to it being finalized, I do not believe that this can take the place of a legitimate appeal process. While I have grave doubts as to the efficacy of appealing 2.206

director's decisions to the Commission, I have little confidence that the rehashing of the staff conclusions will result in an equitable resolution of the petitioners concerns.

I realize that the Office of General Counsel's narrow interpretation of 2.206 petitions to cover only enforcement actions is primarily geared toward precluding the possibility that these petitions could ever be subject to judicial review. However, I believe that the potential for judicial review of director's decisions may be the only thing that will result in legitimizing this process.

Perhaps the next time the Commission goes to Capitol Hill in an effort to alter the rights of American citizens under section 189 of the Atomic Energy Act it could include a provision establishing judicial review of 2.206 petitions. Such a provision was introduced into legislation in 1991 but was never enacted into law. However, given the record of this agency over the past decade, perhaps the next Congress will be more amenable to passing such legislation. I've included the statutory language for the Commission's consideration.

Section 189 of the Atomic Energy Act should be amended to establish the following standard for judicial review of 2.206 petitions:

(d) (1) IN GENERAL. - Any person may petition the Commission to institute a proceeding to modify, suspend or revoke a license, or for such action as may be proper.

(2) STANDARDS FOR GRANTING. - The Commission shall grant any request under paragraph (1) if there is material evidence to suggest that the holder of the license with respect to which a request has been made under paragraph (1) is in significant non-compliance with the terms of its license, this chapter, or the Commission's regulations, or that the conditions at the licensed facility may present an undue risk to the public health and safety, or the common defense and security.

(3) JUDICIAL REVIEW. - Any Commission order denying a request under paragraph (1) shall be subject to judicial review in accordance with chapter 158 of title 28, United States Code and chapter 7 of title 5, United States Code.

I believe that enactment of this provision would restore some balance and accountability to the NRC's handling of 2.206 petitions. Additionally, the knowledge that the Commission's discretion is not unlimited and that the NRC could be held accountable by a court of law would help to enhance public confidence in the NRC and its regulatory decisions.

Despite nearly a decade of frustration with the Nuclear Regulatory Commission and its handling of 2.206 processes, I will continue to work with your staff in an effort to achieve a process that is both fair and equitable. I will continue to use the 2.206 process, not because it works, but because it is the only avenue the public has been afforded to address the legitimate safety concerns at the nuclear reactors that threaten our families, homes and communities.

I thank the Commission for your time and consideration of our comments. I would be happy to answer any questions you may have.

**Statement of Paul Gunter, Director, Reactor Watchdog Project
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Tel. 202-328-0002
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**Before the Commissioners and Staff
United States Nuclear Regulatory Commission
Improvements to the 10 CFR 2.206 Petition Process
May 25, 2000**

I fully appreciate the opportunity to speak before the Commissioners and staff, today.

The May 5, 2000 Memorandum from NRC Executive Director of Operations to the Commissioners focuses on planned changes to the adequacy and viability of the petition process itself.

The concerns and issues addressed in the Memo's Background are not new to those of us that have participated in the petitioning process over the years. Nor are they close to resolution. These issues remain basically repetitions of problems identified and reviewed by NRC and public stakeholders meetings that NIRS participated in June of 1993 and identified in SECY-93-258 and again addressed in the December, 1996 pilot program for an improved process. And again in 1999.

And so, as it has been referred to before, the public, as the proverbial Charlie Brown, is once again being asked to have a run at this issue one more time at the request of NRC.

There is one central concern of public confidence with the past and present 2.206 process that is not addressed by the Memo-

A widely perceived lack of impartiality on the part of the staff and the Commission to fairly review 2.206 petitions under a due process and appropriately mitigate safety issues of significant economic consequence to the nuclear industry.

Do the numerous affected public interest groups that NIRS works with on a daily basis at reactor sites around the country feel they are being given a fair shake by staff and the Commission to address safety issues that have come to the public's attention?

Unfortunately, the answer is still "No."

I would like to make my point by providing the Commission with an example stemming from a petition submitted by NIRS. The oldie, but goodie, and unfortunately still unresolved fire safety issues raised by Thermo-Lag 330-1 fire barriers panels and wraps for cable trays and conduits.

Inoperable Thermo-Lag 330-1 fire barriers once used for the protection of safe shutdown capability stand as an enduring example of how the petition process has failed public safety and due process. And as a result of NRC demonstrated lack of impartiality and this failed petition process continue to undermine public safety as the fundamental fire protection issues raised in the petition and denied by the NRC go unaddressed.

NIRS filed its 2,206 petitions on Thermo-Lag on July 21 and August 12 of 1992 requesting enforcement action for immediate suspension of operating licenses in lieu of the removal of Thermo-Lag 330-1 fire barriers and replacement with qualified fire barriers. On August 19, 1992 the NRC staff rejected the petitions in their entirety, although in apparent recognition of the fire hazards, the staff said it would issue a generic letter on the matter "in the near future." On February 4, 1993, the NRC issued its final Director's Decision rejecting the NIRS petitions.

While the NRC tacitly acknowledged the merit of the issue by continuing to pursue the resolution of open items with a NUMARC task force and ultimately the issuance of Confirmatory Action Orders, the Commission denied the NIRS petitions on the basis that they lacked merit. The NRC effectively denied NIRS and its informed sources further active and meaningful participation in the regulatory and mitigation process of the bogus fire barriers.

For the purpose of time, I will focus on just one issue raised in the NIRS petitions ; Seismic Qualification of the fire barrier material. In its July 1992 petition, NIRS was concerned based on reliable information that Thermo-Lag would break apart under a seismic load, fall from cables trays and circuits it was designed to protect. It could shatter in large and heavy sections so as to shear power, instrumentation, and control cables for safe shutdown.

Staff accepted the mechanical properties and computer-generated findings of a consultant of Thermal Science Incorporated, the manufacturer of the failed fire barrier system, then under extensive investigation by the NRC Office of Investigation, the Office of the Inspector General and the Justice Department. The company's consultant was used to dismiss the NIRS petition in part with regard to the contention that the barriers lacked independent physical testing of the material's seismic qualification.

Subsequently, industry tests concluded the material's mechanical properties were significantly lower compared to those used by the TSI consultant. A review of the material indicated that there could be a variance in the weight and the thickness of the material panels by as much as 45%. On October 27, 1995, NRC issued Information Notice 95-49: "Seismic Adequacy of Thermo-Lag Panels" which states "the effects of the variations could be non-conservative when the maximum unit weight of the fire barrier and its accessories (wire mesh, staples, and bands) is higher than the nominal values considered in determining the loads on the raceways and their supports and anchorages." The Information Notice required no license action.

On December 10, 1997, NRC issued Information Notice 95-49 Supplement 1: Seismic Adequacy of Thermo-Lag Panels” informing licensees that the agency had contracted the National Institute of Standards and Technology (NIST) to further test the material property of Thermo-Lag. The information notice concludes “The dynamic forces generated by such accelerations could detach large pieces of Thermo-Lag panels from the cable trays, which in turn, could act as missiles and jeopardize the safety functions of the safety-related equipment and components in the vicinity. However, the potential for such a hazard depends on the plant specific installation, spatial separation, and sustained elevated temperature.” Still the Information Notice required no action on the part of the licensees.

The NIRS petition on this issue and several additional issues was already rendered moot by the much earlier Director’s Decision.

Nearly eight years after the submittal of the NIRS petition, however, the industry and the NRC are in a morass regarding the same basic fire protection issue created by the industry’s end-run approach to the costly removal of Thermo-Lag and replacement with qualified fire barriers. The NRC now finds itself mired ever deeper in Post-Fire Safe Shutdown Circuit Analysis (a.k.a. Fire-Induced Circuit Failures or “Hot Shots”).

We believe that this is all to the detriment of public safety.

From our perspective, if the mission of the NRC is to protect public health and safety, it should welcome the 2.206 petitioner’s aggressive participation in a meaningful process to hasten the resolution and enforcement of safety issues.

As it is, the NRC is currently completely unaccountable for its decisions on 2.206 petitions.

As was suggested in that 1993 meeting of 2.206 stakeholders and now again today, if this Commission wants to restore public confidence in the 2.206 process it can begin the process administratively. The NRC can amend its regulations in Part 2 to change the relief provided for a petition for a manageable standard of judicial review to apply. This Commission could demonstrate leadership as an advocate for due process by making such administrative changes and by rendering Heckler vs. Chaney (470 U.S. 821 (1985)) moot.

We fully support Public Citizen’s call for an amendment to the Atomic Energy Act for the judicial review of the 2.206 petition review by a court of competent jurisdiction. I would just reiterate that the NRC could voluntarily make that change administratively and in so doing make significant gains in the arena of public confidence.

A sample of the amended language is attached to my statement for your review.

Thank you.

Proposed Amendment to 10 C.F.R. 2.206 To Provide a Managable Standard for Judicial Review

Suggested amendment language appears in boldface type. Changes to existing text are struck out with overlining.

Sec. 2.206 Requests for action under this subpart.

(a) Any person may file a request to institute a proceeding pursuant to Sec. 2.202 to modify, suspend, or revoke a license, or for such other action as may be proper. Such a request shall be addressed to the Executive Director for Operations and shall be filed either (1) by delivery to the Public Document Room at 2120 L Street, NW., Washington, DC, or (2) by mail or telegram addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, **or (3) by e-mail addressed to SECY@nrc.gov.** The requests shall specify the action requested and set forth the facts that constitute the basis for the request. The Executive Director for Operations will refer the request to the Director of the NRC Office with responsibility for the subject matter of the request for appropriate action in accordance with paragraph (b) of this section.

(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.

(c)(1) Director's decisions under this section will be filed with the Office of the Secretary. Within twenty-five (25) days after the date of the Director's decision under this section that no proceeding will be instituted or other action taken in whole or in part, the Commission may on its own motion review that decision, in whole or in part, to determine if the Director has abused his discretion. This review power does not limit in any way either the Commission's supervisory power over delegated staff actions or the Commission's power to consult with the staff on a formal or informal basis regarding institution of proceedings under this section. **If the Commission does not review the decision within twenty-five (25) days, the decision shall be considered a final order of the Commission for purposes of appeal to a court of competent jurisdiction.**

(2) ~~No~~ **Any** petition or other request for Commission review of a Director's decision under this section will be entertained by the Commission. **The Commission will take action on a petition or other request within thirty (30) days of taking jurisdiction of the petition. Commission's decision shall be deemed final for purposes of appeal within twenty-five (25) days of issuance.**

[39 FR 12353, Apr. 5, 1974, as amended at 42 FR 36240, July 14, 1977; 45 FR 73466, Nov. 5, 1980; 52 FR 31608, Aug. 21, 1987; 53 FR 43419, Oct. 27, 1988]

	Briefing on Recent Improvements to the 10 CFR 2.206 Process
	<i>May 25, 2000</i>

	Industry Interest in Improvements to the 2.206 Process
	<ul style="list-style-type: none"> ∪ Ensure purpose of 2.206 process is understood ∪ Ensure procedural and substantive fairness ∪ Ensure 2.206 process improvements are consistent with other NRC regulatory reforms ∪ Ensure Directors Decisions on 2.206 petitions are supportable and understood

	Ensure Purpose of 2.206 Process Is Understood
	<ul style="list-style-type: none"> ∪ There is no statutory requirement for 2.206 process ∪ Purpose is to allow members of the public to request action to enforce NRC requirements ∪ Agency's administration of 2.206 must be consistent with regulation's purpose (i.e., requests that raise public health and safety issues not related to a licensee are not appropriate for treatment through the 2.206 process)

	Ensure Procedural and Substantive Fairness
	<ul style="list-style-type: none"> ∪ Fairness depends on <ul style="list-style-type: none"> ∪ Agency timeliness and responsiveness ∪ Communication with licensee as well as petitioner to obtain information early in the evaluation process ∪ Clear definition of procedural steps agency will take to evaluate and render a decision on 2.206 petitions ∪ Director's Decisions that are clear and understandable to all stakeholders ∪ Agency action to appropriately handle press inquiries regarding 2.206 petitions

	Ensure 2.206 Process Improvements are Consistent with Other NRC Regulatory Reform
	<ul style="list-style-type: none"> ∪ Use of open process to obtain stakeholder insights ∪ Application of principles of good regulation ∪ Application of risk insights ∪ Appropriate allocation of resources

	Ensure Decisions on 2.206 Petitions are Supportable and Understood
	<ul style="list-style-type: none"> ∪ NRC communication regarding purpose of 2.206 process critical to petitioners understanding results ∪ Statistics regarding 2.206 decisions confirm rigor of other regulatory and licensee initiated processes ∪ Quicker, more understandable 2.206 decisions, based on rigorous analysis, will foster public confidence in the process

Conclusions

- ∪ Agency's action to institute improvements in the 2.206 process demonstrates a commitment to overall regulatory reform
- ∪ Agency's action appropriately considered input provided by stakeholders
- ∪ Result should be timeliness, transparency, agency responsiveness to the petitioner and clarity in decisionmaking

