September 25, 2000

MEMORANDUM TO: William D. Travers
Executive Director for Operations

THRU: Samuel J. Collins, Director ***/RA by Roy P. Zimmerman for/***
Office of Nuclear Reactor Regulation

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

SUBJECT: AUGUST REPORT ON THE STATUS OF PUBLIC PETITIONS UNDER 10 CFR 2.206

The attached monthly report gives the status of 10 CFR 2.206 petitions as of August 31, 2000. During the month, two new petitions were received: US Department of Defense and all services/users of depleted uranium (G20000345); and Hydro Nuclear Services (G20000357). Thus, there are six open petitions: two in the Office of Nuclear Reactor Regulation (NRR), three in the Office of Nuclear Material Safety and Safeguards (NMSS), and one in the Office of Enforcement (OE).

Attachment 1 provides the table of contents and detailed status of petitions for NRR, NMSS, and OE. Attachment 2 shows the age and staff hours expended on open 2.206 petitions as of August 31, 2000. Attachment 3 shows the statistics for the 2.206 petitions processed in the past 12 months.

This report and recently issued Director's Decisions are placed in the Agencywide Document Access and Management System (ADAMS), and on the NRC's external home page, making them readily accessible to the public. The URL address is http://www.nrc.gov/NRC/PUBLIC/2206/index.html.

Attachments: As stated

CONTACT: Ram Subbaratnam, NRR
415-1478

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Attachments: As stated

CONTACT: Ram Subbaratnam, NRR
415-1478

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OFFICE	PM:PDII*	LA:PDII	SC:PDII*	D:PDII*	NMSS/IMNS/IMOB*	D:DLPM	ADPT:NRR	D: NRR
NAME	RSubbaratnam	Dunnington	RCorreia	HBerkow	PGoldberg	JZwolinski/SBlack	BSheron	SCollins
	9/15/2000	9/20/2000	9/15/2000	9/15/2000	9/152000	9/20/2000	9/22/2000	9/25 /2000

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A. Kugler, NRR
OCA
OPA
Regional Administrators
PUBLIC w/att 1, 2, & 3

Report on Status of Public Petitions Under 10 CFR 2.206
August 31, 2000
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Attachment 1

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Attachment 1

Report on Status of Public Petitions Under 10 CFR 2.206

Facility:	Moab site of Atlas Corporation (Present Licensee, PricewaterhouseCoopers LLP, Trustee)
Petitioner:	Earthjustice Legal Defense Fund
Date of Petition:	1/11/99
Director's Decision To Be Issued by:	NMSS
Date Referred to Review Organization:	1/12/99
EDO Number:	G19990011
OGC Number:	P-99-02
Scheduled Completion Date:	TBD*
Last Contact with Petitioner:	7/21/2000
Petition Manager:	Myron Fliegel
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requests NRC to take six immediate actions to halt impacts to and to ensure the conservation of the endangered species of fish in the Colorado River near the Atlas site.

Background:

On August 2, 1988, Atlas submitted an application for a license amendment to revise its site reclamation plan for uranium mill tailings at its no longer operating site near Moab, Utah. On March 30, 1994, a notice of intent to prepare an Environmental Impact Statement was published in the *Federal Register*. In January 1996, the Draft Environmental Impact Statement was published for public comment. On July 29, 1998, the U.S. Fish and Wildlife Service (FWS), in accordance with Section 7 of the Endangered Species Act (ESA), issued a final biological opinion for impacts to federally listed endangered species from the reclamation of the Atlas mill tailings site. On October 12, 1998, and November 13, 1998, the petitioner notified NRC of its intent to sue under the ESA. On December 16, 1998, the petitioner filed a Motion for Preliminary Injunction against NRC in the U.S. District Court, District of Utah.

A petition was filed on January 11, 1999, requesting the NRC to take six immediate actions related to potential impact on endangered fish in the Colorado River due to contaminants from the Atlas uranium mill tailings pile. A Petition Review Board (PRB) meeting was held on January 26, 1999, and the petitioner's requests for immediate action were denied by a letter of that date. In the letter, it was noted that none of the six items identified in the petition addresses a health, safety, or environmental concern that requires emergency steps before a complete review as provided for in 10 CFR 2.206. An acknowledgment letter for this petition was published in the *Federal Register* on February 12, 1999. On May 13, 1999, the staff received a supplement to the 2.206 petition requesting immediate action on several items: (1) to suspend the issuance of the license amendment to permit reclamation; (2) to initiate a supplemental National Environmental Policy Act process; and (3) to reinitiate consultation with FWS under the ESA.

* Schedule for completion will be set following resolution of the litigation issues.

Earthjustice had, on January 27, 1999, petitioned the Atomic Safety and Licensing Board (ASLB) to intervene on the Atlas Corporation's proposal to reclaim the Moab mill tailings and on the cleanup of contaminated groundwater, citing the impacts to the endangered fish in the Colorado River and its belief that the biological opinion was erroneous. On May 27, 1999, the NRC wrote to the petitioner, acknowledging receipt of the supplement, denying immediate action, and notifying the petitioner that NRC was deferring action on the 2.206 petition, pending a decision by the ASLB on the petitioner's request for a hearing on similar issues.

On September 17, 1999, the staff filed responses to the ASLB presiding officers' questions of July 30, 1999. On September 29, 1999, the staff provided the ASLB with a copy of its September 29, 1999, letter to Dames & Moore, notifying that organization that it had been selected to become the Trustee for the Atlas Moab site, since the Atlas Corporation is in bankruptcy. Copies of both filings were sent to the petitioner. Dames & Moore subsequently withdrew as trustee and PricewaterhouseCoopers LLP was chosen to be the trustee.

On October 18, 1999, Earthjustice filed a petition with the U.S. Court of Appeals for the 9th Circuit, arguing that the May 27, 1999, letter and a May 28, 1999, license amendment constitute final agency action and a de facto denial of the 2.206 petition. On November 3, 1999, OGC filed a motion to dismiss for lack of jurisdiction with the 9th Circuit Court of Appeals. A copy of the motion was sent to the petitioner. On November 23, 1999, the petitioner filed a response to the NRC motion to dismiss, arguing that the rejection of its request for immediate action and subsequent lack of action on the part of the NRC in issuing a final Director's Decision constitutes a final agency action. NRC filed its reply with the court to the petitioner's response on December 2, 1999.

On October 28, 1999, the ASLB presiding officer found the Earthjustice petition of January 27, 1999, to be timely, and entertained further argument on the issue of petitioner's standing. On November 16, 1999, Earthjustice requested the presiding officer to rule on whether the ASLB has jurisdiction with respect to determining whether NRC has complied with the ESA. On December 6, 1999, the staff filed a response arguing that the ASLB should deny the petitioner's November 16, 1999, motion.

On December 27, 1999, an Order transferring source material license SUA-917 from Atlas Corporation to the Maob Mill Reclamation Trust was signed. The Order transfers the license to the Trust and orders the Trust and the Trustee (PricewaterhouseCoopers LLP) to perform reclamation of the uranium mill tailings site in accordance with the terms and conditions of the license. The terms and conditions of the license include reasonable and prudent measures in the U.S. FWS final biological opinion, as well as mitigative measures developed by the NRC staff. The Order was effective December 30, 1999, and was published in the *Federal Register* on January 3, 2000.

On January 13, 2000, the petitioner filed a reply with the ASLB in support of its motion originally filed on November 16, 1999, for a preliminary ruling on jurisdiction. On February 17, 2000, the ASLB granted the petitioner's request for hearing. The PRB, in consultation with the Office of the General Counsel (OGC), deferred action on this 2.206 petition pending resolution of the litigation before the 9th Circuit Court of Appeals and of the petition before the ASLB.

Current Status:

On June 22, 2000, the petitioner wrote to NRC requesting it to reinitiate consultation with FWS on two additional issues. On July 21, 2000, NRC wrote to the petitioner stating that it will consider the June 22, 2000, letter as a second supplement to the original petition, which is being held in abeyance, pending the hearing before the ASLB. There was no change in status for this month.

Facility:	**Indian Point Unit 2**
Petitioner:	David A. Lochbaum, Union of Concerned Scientists (UCS), on behalf of Nuclear Information & Resource Service, PACE Law School Energy Project, and Public Citizen's Critical Mass Energy Project
Date of Petition:	3/14/2000
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	3/14/2000
EDO Number:	G20000133
OGC Number:	-
Scheduled Completion Date:	10/5/2000 (Technical issues will be resolved prior to plant restart)
Last Contact with Petitioners:	8/31/2000
Petition Manager:	L. Wiens
Case Attorney:	J. Goldberg

Issues/Action Requested:

Petitioners request that the NRC issue an Order to ConEd Company of New York preventing the restart of Indian Point Unit 2 (IP2) until the following conditions are satisfied: (1) all four steam generators (SGs) are replaced; (2) the SG tube integrity concerns identified in Dr. Joram Hopenfeld's Differing Professional Opinion (DPO) and in generic safety issue GSI-163, "Multiple Steam Generator Tube Leakage," are resolved; (3) Potassium Iodide (KI) tablets are distributed to residents and businesses within the 10-mile emergency planning zone or stockpiled in the vicinity of the IP2 facility; (4) concerns as to the adequacy of emergency preparedness at the IP2 site are addressed; and (5) the requirement to conduct biennial emergency plan exercises is satisfied. The petitioners also requested that a public meeting be held in the vicinity of the IP2 facility as soon as possible.

Background:

Petition Review Board (PRB) meetings were held on March 16, March 21, April 17, April 27, June 22, and July 20, 2000. The petitioners were provided with an opportunity to address the PRB in open sessions during the March 16, June 22, and July 20, 2000 meetings, and did so with the licensee present.

The PRB initially concluded that only the first issue (SG replacement) met the threshold for processing under 10 CFR 2.206. An acknowledgment letter and *Federal Register* notice on the petition were issued on April 5, 2000. The petitioners' request for a public meeting was granted and conducted on April 7, 2000. During that meeting the petitioners provided additional supporting information for the other issues contained in their petition. Further, by letter dated April 12, 2000, Public Citizen's Critical Mass Energy Project supplemented the petition with regard to the KI issue, and by letter dated April 14, 2000, the UCS supplemented the petition with regard to the DPO. A supplemental acknowledgment letter dated June 26, 2000, was issued, which accepted the KI issue as meeting the 2.206 criteria; however, the DPO issue was determined to still not meet the criteria.

Current Status:

Two additional supplements have been received. A June 29 supplement provided comments on the IP2 SG operational assessment and stated that the regulations require each licensee at a site to conduct a biennial full-participation emergency exercise. A July 13 supplement requested the PRB include the resolution of the Dr. Hopenfeld DPO in the 2.206 process. Of the five issues listed above, the requests for resolution of Dr. Hopenfeld's DPO (second request) and the request that a new emergency exercise be conducted due to alleged inadequate emergency preparedness at IP2 (fourth request) were determined not to meet the criteria for review under 2.206. Additionally, on August 8, 2000, ConEd announced that it will replace the IP2 SGs during the

current outage. A third acknowledgment letter addressing the June 29, and July 13, 2000, petition supplements was issued on August 31, 2000. The Director's Decision on this petition is in preparation.

Facility:	**Envirosafe of Idaho**
Petitioner:	Envirocare and Snake River Alliance
Date of Petition:	3/13/2000
Director's Decision To Be Issued by:	NMSS
Date Referred to Review Organization:	3/16/2000
EDO Number:	G20000138, G20000136
OGC Number:	-
Scheduled Completion Date:	10/25/2000
Last Contact with Petitioners:	7/28/2000
Petition Manager:	J. Lusher
Case Attorney:	J. Goldberg

Issues/Action Requested:

Snake River Alliance is requesting that the NRC: (1) take jurisdiction of 11e.(2) material; (2) take action to ensure the workers and the public are fully protected from radiation exposure; and (3) enforce the Atomic Energy Act of 1954 and NRC's regulation governing disposal of mill tailings byproduct material as defined in section 11e.(2) of Uranium Mill Tailing Radiation Control Act of 1978 (UMTRCA). Envirocare contends that the Commission's current interpretation of UMTRCA is erroneous and that it should be revised as soon as possible. It also requests that the NRC recognize its authority over all section 11.e.(2) material, and should take appropriate enforcement action to ensure that all such material is disposed of at section 11e.(2)-licensed facilities.

Background:

The Executive Director for Operations has agreed in principle that the petitions from Snake River Alliance and Envirocare can be consolidated and handled as one petition because the requested actions are similar per Management Directive (MD) 8.11, Page 9. This was finalized in the Petition Review Board (PRB) meeting held on April 11, 2000. The petitioners, in accordance with MD 8.11, were provided with an opportunity to address the PRB in an open session to articulate the petition, with the owners of the facility present.

A PRB meeting on the petitions was held on April 11, 2000. The Petition Manager advised the petitioners by phone on April 12, 2000, that the petitions have been consolidated and accepted as a single petition for review under the 10 CFR 2.206 process. The acknowledgment letters and the *Federal Register* Notice on the petitions were issued on April 25, 2000.

Current Status:

The Petition Manager was informed by Mr. Bickwit, representing Envirocare, that a response to the U.S. Corps of Engineers was filed with the Document Control Desk on August 30, 2000. Mr. Bickwit also indicated that copies had been sent to all the interested parties involved with the petition. On September 10, 2000, the Petition Manager filed an extension request to the completion date to October 25, 2000, because of the late filing of rebuttal to the court's response from Mr. Bickwit. The Office of the General Counsel and staff continued their review of the additional information, and work on the Director's Decision is in progress.

Facility:	**Hatch Nuclear Units 1 & 2**
Petitioner:	David A. Lochbaum, Union of Concerned Scientists (UCS)
Date of Petition:	5/3/2000
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	5/4/2000
EDO Number:	G2000232
OGC Number:	-
Scheduled Completion Date:	10/20/2000
Last Contact with Petitioners:	9/15/2000
Petition Manager:	L. Olshan
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requested that the NRC issue a demand for information to the owner of Hatch regarding the liquid and gaseous radwaste systems.

Background:

A PRB meeting on the petition was held on May 15, 2000. The petitioner was provided with an opportunity to address the PRB in an open session, and did so with the licensee present.

Current Status:

The PRB concluded that the petition meets the threshold for processing under 10 CFR 2.206 and also concluded that the details provided in the petitioner's request were found sufficient to warrant further inquiry. The acknowledgment letter and the *Federal Register* Notice on the petition were issued on June 20, 2000. A request for additional information was sent to the licensee on June 27, 2000, and the response was received on July 26, 2000. The Director's Decision on this petition is in review and is on course to meet the scheduled completion date.

Facility:	**Hydro Nuclear Services**
Petitioner:	Shannon T. Doyle
Date of Petition:	7/18/2000
Director's Decision To Be Issued by:	OE
Date Referred to Review Organization:	7/24/2000
EDO Number:	G20000357
OGC Number:	-
Scheduled Completion Date:	TBD
Last Contact with Petitioners:	9/14/2000
Petition Manager:	N. Hilton
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requested that the NRC take enforcement action against Hydro Nuclear Services/Westinghouse and/or its successors (Hydro Nuclear) for willfully failing to comply with a Department of Labor (DOL) order. Specifically, the DOL Administrative Review Board (ARB) issued an order in "Shannon T. Doyle vs. Hydro Nuclear Services," 1989-ERA-22, which requires Hydro Nuclear Services, a former division of Westinghouse, to take certain actions. As a basis for his request, the petitioner stated that after a full 2 months of the order becoming administratively final, Hydro Nuclear had not complied with the order, therefore creating a potential chilling effect, which serves as a disincentive to workers in the nuclear industry to step forward to identify potential safety problems.

The petitioner stated that responsibility for the failure to comply with the DOL order originated at the highest corporate level and deserved a Severity Level I classification. He requested that the NRC immediately "debar" Westinghouse from doing business in the nuclear industry at least until such time that they fully comply with the ARB order. Additionally, a fine should be immediately assessed against Westinghouse commensurate with a Severity Level I violation, and each day of noncompliance should count as a separate violation, with its own fine.

Background:

The petitioner initially filed a complaint with DOL in 1988. The petitioner's complaint was not found to have merit by both DOL Wage and Hour Division and an Administrative Law Judge (ALJ). However, on March 30, 1994, the Secretary of Labor reversed the previous decisions and found for the petitioner. On June 18, 1995, the NRC issued an enforcement action based on the Secretary of Labor's decision. After numerous legal proceedings, the DOL ARB issued a final order on May 17, 2000, awarding various damages to the petitioner. Hydro Nuclear had also requested a stay of the remedy pending appeal to the US Court of Appeals; however, in the DOL ARB order, the ARB denied Hydro Nuclear a stay. As of July 18, 2000, the date of the petition, the petitioner had not received the monetary portion of the settlement.

As established by the Energy Reorganization Act, any person adversely affected by a DOL order may obtain review of the order in the United States court of appeals. According to Westinghouse, Hydro Nuclear filed a petition for review of the ARB order with the United States Court of Appeals on May 18, 2000, in the Sixth Circuit. The petition challenges both the liability and damages aspects of the order. In addition, on July 3, 2000, Hydro Nuclear renewed its stay request with respect to the monetary portions of the ARB order in a motion made to the United States District Court for the Western District of Pennsylvania in connection with a proceeding filed to obtain execution of the monetary judgment portion of the ARB order. In an order issued August 14, 2000, the District Court granted Hydro Nuclear's motion for a stay of the monetary portion pending appeal, stayed the proceeding before the District Court, and ordered that a bond be posted on behalf of Hydro Nuclear to guarantee payment in the event a final judgment is rendered for the petitioner by the Court of Appeals.

Current Status:

The Petition Review Board (PRB) met in an informal session on August 30, 2000, and deliberated the merits of this petition. The petitioner was contacted and offered an opportunity to address the PRB in an open session to articulate his concerns raised in the petition. The PRB meeting was conducted on September 14, 2000, with the Hydro Nuclear participating. The PRB decided that the request does not meet the threshold because it does not satisfy the second criterion stipulated in Part III of Management Directive 8.11 for reviewing the petition, i.e., among other requirements, the petitioner failed to provide some element of support beyond the bare allegation. Also, in regard to the petitioner's allegation that Hydro Nuclear's failure to comply with a DOL order created a chilled environment in the nuclear industry, the PRB concluded that it did not find any support for such an allegation in the petition. Further, the staff has concluded that because Hydro Nuclear is pursuing its case in the courts, as is its right, NRC involvement at this point would not be appropriate. The staff is preparing an acknowledgment letter informing the petitioner of the PRB's decision.

Facility:	**US Department of Defense and all services/users of depleted uranium (DU)**
Petitioner:	Doug Rokke
Date of Petition:	6/1/00
Director's Decision To Be Issued by:	NMSS
Date Referred to Review Organization:	7/18/00
EDO Number:	G20000345
OGC Number:	---
Scheduled Completion Date:	TBD*
Last Contact with Petitioner:	9/8/2000
Petition Manager:	Roberto J. Torres
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requested a formal NRC hearing to consider: (1) the revocation of the master DU license for the US Department of Defense (DOD) and all services; (2) implementation of fines and consideration of personal criminal liability; (3) formal protection under the whistleblower statutes for him and all others who are trying to obtain medical care for all DU casualties; and (4) completion of environmental remediation of all DU contamination.

Background:

The petitioner served as a health physicist for the depleted uranium team in Operation Desert Storm (i.e., Gulf War), and after the Gulf War served as the DOD/Army Depleted Uranium Project Director. The petitioner alleges that he became sick from DU exposure and subsequently was denied medical care. The US Navy has a master material license issued by NRC Region II. On February 19, 1999, during a training exercise, DU ammunition was expended on the Live Impact Area of the Vieques Naval Range, on Vieques Island, Puerto Rico. The NRC was notified of the incident by the Naval Radiation Safety Committee (NRSC) Executive Secretary on March 5, 1999. The NRSC identified the issuance of the DU ammunition and the subsequent firing of it as a Severity Level IV violation of the Navy's Master Material License (MML); specifically, a violation of Naval Radioactive Material Permit Number 13-00164-L1NP.

A team of Navy Health Physicists was deployed to Vieques between March 10 and 19, 1999. The team performed visual and radiological surveys and recovered a total of 57 DU ammunition penetrators. NRC conducted an inspection on March 22-23, 2000, of the NRSC actions as a result of this incident. Based on the results of this inspection, the NRC determined that the NRSC properly identified a Severity Level IV violation and appropriately issued a Notice of Violation to the responsible command. NRC Inspection Manual Chapter 2810, "Master Material License Inspection Program," states that the NRC will not take any further enforcement action, to cite or to pursue escalation for Severity Level IV violations by permittees that have already been identified and adequately corrected by the MML's Radiation Safety Committee.

Current Status:

The petitioner was contacted on July 25, 2000, and was informed of the 10 CFR 2.206 process. Subsequent attempted contacts, including a letter dated August 8, 2000, offering him an opportunity for a presentation to the PRB, received no response. The PRB finally met on August 29, 2000, and accepted the petition. An acknowledgment letter and a *Federal Register* notice on the petition were issued on September 8, 2000.

* Schedule for completion will be set from the date of the acknowledgment letter

Attachment 2
AGE AND RESOURCE EXPENDITURES FOR AGENCY 2.206 OPEN PETITIONS
As of August 31, 2000

ASSIGNED ACTION OFFICE	PETITION NUMBER	OGC NUMBER	FACILITY	AGE (months)*	Scheduled Completion Date	Resources Expended by Action Office (HOURS)[1]	Resources Expended by OGC (HOURS)[1]	Comments if not meeting the Agency's 120-day Completion Goal
NMSS	G19990011	P-99-02	ATLAS CORPORATION	3**	TBD[2]	5	65	Earthjustice filed a petition with the U.S. Court of Appeals for the 9th Circuit regarding the staff's de facto denial of the 2.206 petition. Staff action deferred pending resolution of the litigation before the 9th Circuit Court of Appeals and the petition before the ASLB
NMSS	G20000138,136		ENVIROSAFE OF IDAHO	4	10/25/2000	146	25	
NRR	G20000133, Supplements	-	INDIAN POINT UNIT 2	4	10/5/2000	805	25	
NRR	G20000232	-	HATCH UNITS 1 & 2	2	10/20/2000	172	6	
OE	G20000357	-	HYDRO NUCLEAR SERVICES	-	TBD	-	6	
NMSS	G20000345	-	DEPARTMENT OF DEFENSE	-	TBD	66	-	

[1] Staff professional time only; does not include management or administrative time.
[2] Projected completion date. See Attachment 1 for explanation.
*Age calculated from the date of the acknowledgment letter.
** The clock on this petition stopped as of May 27, 1999.

Attachment 3
Table on Status of Public Petitions
Under 10 CFR 2.206 for DDs Issued and/or Closed During the Last 12 Months

Petition Number	Assigned Action Office	Facility	Petition Date	DD Date	Age at Closure[1,2]	Comments
G19990173	OE	Seabrook	3/31/99	8/3/99	3	Denied
GT97181	NRR	Connecticut Yankee	3/11/97	9/9/99	29	Partly Granted
G19990201	NRR	Millstone	3/31/99	9/28/99	4	Denied
G19990224	NRR	Nine Mile Point 1 & 2	4/5/99	10/28/99	4	Denied
G19990268	NRR	Nine Mile Point 1	5/24/99	11/28/99	5	Denied
GT96919	NRR	Millstone 1, 2 & 3	11/25/96, as amended 12/23/96	2/16/2000	37	Partly Granted
G19990465	NRR	Indian Point Unit 2	9/15/99	4/13/2000	6	Denied
G20000062	NRR	Indian Point Unit 3	2/10/2000	7/26/2000	4	Partly Granted

1) Age calculated from the date of the acknowledgment letter.
2) Goals: Acknowledgment letter issued within 5 weeks from date of receipt; DD issued within 4 months of acknowledgment letter.