March 9, 2001

MEMORANDUM TO: William D. Travers
Executive Director for Operations

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

SUBJECT: FEBRUARY 2001 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 February 28, 2001. During the month, the petition on Indian Point Unit 2 by J. Riccio, of Public Citizen, (G20010020) was closed. Currently, there are three open petitions: two in the Office of Nuclear Reactor Regulation (NRR), and one in the Office of Nuclear Material Safety and Safeguards (NMSS).

Attachment 1 provides the detailed status of petitions for NRR and NMSS. Attachment 2 shows the age and staff hours expended on open 2.206 petitions as of February 28, 2001. 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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CONTACT: Ram Subbaratnam, NRR
415-1478

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*See previous concurrence. ** Electronic Concurrence

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DATE	03/06/01	03/06/01	03/05/01	03/05/01	03/05/01	03/06/01	03/06/01	03/08/01

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D. Skay, NRR
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OPA
Regional Administrators
PUBLIC w/att 1, 2, & 3

Report on Status of Public Petitions Under 10 CFR 2.206
February 28, 2001
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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:	11/17/2000
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.

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.

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* Schedule for completion will be set following the filing of Earthjustice's motion withdrawing its petition.

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.

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. On October 30, 2000, the President signed the Floyd B. Spence National Defense Authorization Act for Fiscal Year 2001. Section 3405 of that legislation transfers the Atlas site to the Department of Energy (DOE) with the stipulation that DOE remove the tailings from the Moab site. The legislation also terminates the NRC license no later than October 30, 2001.

Current Status:

On November 17, 2000, all parties to the ASLB hearing agreed to terminate the proceeding. Earthjustice agreed to file a motion withdrawing its petition to intervene. Because the issues raised have been rendered moot by the above transfer, the staff intends to close the petition. However, in view of the statutory requirement that responsibility for the site be transferred to DOE by October 30, 2001, the staff is evaluating the proper disposition of the petition before closing it.

Facility:	Haddam Neck Nuclear Generating Station
Petitioner:	R. Bassilakis, et al. (CAN)
Date of Petition:	9/26/2000
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	9/29/2000
EDO Number:	G20000462
OGC Number:	-
Scheduled Completion Date:	3/23/2001
Last Contact with Petitioners:	1/4/2001
Petition Manager:	E. Pogue/D. Wheeler
Case Attorney:	J. Goldberg

Issues/Action Requested:

(1) A full investigation of Connecticut Yankee Atomic Power Company's (CYAPCO's) protective clothing laundering practices and specifically of the September 20, 2000, incident at a public laundry facility in which petitioners contend that the licensee may have been laundering radioactively contaminated clothing. (2) That NRC revoke CYAPCO's license or suspend it until such time that an investigation is completed and any contamination found at the public laundry facility as a result of the incident is remediated. (3) That "this violation of regulation should be referred to the Department of Justice for investigation." (4) That an informal hearing be conducted.

Background:

A PRB meeting on the petition was held on October 10, 2000. The petitioners were provided with an opportunity to address the PRB in an open session, and did so with the licensee present. 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 petitioners' request were sufficient to warrant further inquiry. The acknowledgment letter and the *Federal Register* Notice on the petition were issued on November 9, 2000. A proposed Director's Decision (DD) was issued on December 19, 2000. The proposed DD is based primarily on the findings of an NRC inspection of the licensee's garment laundering practices conducted in response to the petition. The NRC inspector concluded that adequate controls were in place to assure that CYAPCO training materials did not become contaminated, and that CYAPCO's garment laundering practices are in compliance with NRC regulations and do not endanger the health and safety of the public. A copy of the proposed DD was provided to both the petitioner and the licensee. On January 4, 2001, the petitioners provided comments on the proposed DD, and the staff, in consultation with the Region, is in the process of resolving the comments raised by the petitioners.

Current Status:

A 2-week extension of the completion date has been obtained for issuance of the final DD.

Facility:	Indian Point, Unit 2
Petitioner:	James P. Riccio, et al. (Public Citizen)
Date of Petition:	1/11/2001
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	1/17/01
EDO Number:	G20010020
Scheduled Completion Date:	3/9/2001
Last Contact with Petitioners:	1/30/2001
Petition Manager:	R. Clark
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioners request that the licensee, Con Edison, have its license to operate Indian Point Unit 2 (IP2) suspended or revoked until there has been a full-participation biennial emergency planning exercise required by 10 CFR Part 50, Appendix E. The petitioners also requested that if Con Edison's license to operate IP2 is not suspended or revoked, it be fined $110,000 for each day it is not in compliance with the regulatory requirements specified in 10 CFR Part 50, Appendix E.

Background:

A PRB meeting on the petition was held on January 30, 2001. The petitioners were 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 did not meet the threshold for processing under 10 CFR 2.206 [Part III of Management Directive 8.11, pages 11 and 12] because the petitioner raises no new issues or safety concerns. However, the staff has acknowledged that ambiguities exist in the regulations regarding the frequency and level of exercise participation required between co-located licensees and offsite authorities. This issue has been reviewed and evaluated by the staff and is documented in the Commission Information Paper (SECY-00-0238) dated December 26, 2000. In that paper, the staff concluded that the licensee's practice of alternating participation in the biennial full-participation exercises, with the current level of interactions between the licensees and offsite authorities during the "off biennial" years, is acceptable, and that there is reasonable assurance that appropriate measures could be taken to protect the health and safety of the public in the event of a radiological emergency. Thus, IP2 is not required to conduct another full-participation exercise with offsite authorities until 2002. The petitioners were offered a second opportunity to address the PRB, which they did on February 28, 2001. The acknowledgment letter addressing the issues contained in the petitioners' request was issued on March 1, 2001, and the petition was closed.

Facility:	Indian Point, Unit 2
Petitioner:	Deborah Katz, et al. (CAN)
Date of Petition:	12/4/2000
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	12/11/2000
EDO Number:	G20000568
Scheduled Completion Date:	7/9/2001*
Last Contact with Petitioners:	2/9/2001
Petition Manager:	C. Gratton
Case Attorney:	J. Goldberg

Issues/Action Requested:

(1) That the licensee, ConEd, have its license suspended for the Indian Point Unit 2 (IP2) facility due to persistent and pervasive negligent management, which has endangered the public health and safety and the environment due to significant safety problems existent at the site for decades. (2) Specifically, that NRC investigate the apparent misrepresentation of material fact by the utility to determine whether the significantly insufficient engineering calculations relied on to ensure adequacy of design of key systems, including the steam generator (SG) analysis and the electric bus analysis at the IP2 reactor, were due to a lack of rigor and thoroughness or a result of deliberately misleading information. (3) Should the investigation determine that ConEd deliberately provided insufficient and false information, the petitioners specifically request that ConEd's operating license be revoked for its IP2 reactor. (4) Should NRC not revoke the license, and the IP2 reactor returns to operation, the petitioners specifically request that it remain on the list of agency focus reactors to oversee the operation of the reactor until such time as its management demonstrates that it can fulfill its regulatory requirements and commitments. (5) No license transfer requests should be approved for IP2 until such time that its management can demonstrate that the Updated Final Safety Analysis Report (UFSAR) backlog and the maintenance requirements are up-to-date and workers have been retrained to the complete and revised UFSAR. (6) NRC should keep IP2 off-line until the fundamental breakdown in management is analyzed and corrected.

Background:

The petitioners were, in accordance with Management Directive 8.11, offered an opportunity to address the PRB in an open meeting. This meeting was conducted on January 24, 2001, in NRC headquarters. A PRB meeting to consider the petitioners' issues (items 1 thru 5) was held on February 7, 2001. The PRB recommended accepting the petition, and issuing a partial Director's Decision to address the transfer issue (item 5) by May 2001.

Current Status:

During the public meeting with the petitioners on January 24, 2001, the petitioners gave the staff additional documents for the staff to consider as supplements to the information contained in the original 2.206 petition request. One set of the documents included numerous condition reports from IP2. Because of the sensitive nature of these condition reports, the PRB withheld the reports from being publicly released until they could be evaluated by the staff. In addition, before releasing the condition reports, the PRB recommended that the licensee provide a redacted version of the condition reports that could be made publicly available, which the licensee provided on February 28, 2001. Normally, documents such as these condition reports are addressed in the allegation process and, therefore, are not part of the public record. In this case, however, since the condition reports were presented to the staff as a supplement to the 2.206 petition in a transcribed, public meeting as part of the public 2.206 process, they are being made part of the public record after appropriate redactions to protect the identity of individuals. The acknowledgment letter is on course for issuance by March 9, 2001.

* Schedule for completion will be calculated 120 days from the date of the acknowledgment letter.

Attachment 2
AGE AND RESOURCE EXPENDITURES FOR AGENCY 2.206 OPEN PETITIONS
As of February 28, 2001

ASSIGNED ACTION OFFICE	PETITION 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	ATLAS CORPORATION	3**	TBD[2]	5	70	On November 17, 2000, all parties to the ASLB hearing agreed to terminate the proceeding. Earthjustice agreed to file a motion withdrawing its petition to intervene.
NRR	G20000462	Haddam Neck	4	3/23/2001	139.5	4	Proposed DD issued and comments have been received from petitioners. Staff is reconciling comments.
NRR	G20000568	Indian Point Unit 2	1	7/9/2001	225.5	30	

[1] Staff professional time only; does not include management or administrative time.
[2] 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] (Months)	Comments
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
G20000133	NRR	Indian Point Unit 2	3/14/2000	10/6/2000	6	Partly Granted
G20000232	NRR	Hatch Units 1 & 2	5/3/2000	10/18/200	4	Denied
G20000138,136	NMSS	Envirosafe, Idaho	3/13/2000	12/13/2000	8	Denied
G20000345	NMSS	US Department of Defense	6/1/2000	1/9/2001	3	Denied

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.