

**U.S. NUCLEAR REGULATORY COMMISSION**

**[Docket No. 70-698]**

**[License No. SNM-770]**

**[Westinghouse Electric Company LLC]**

**Waltz Mill Service Center, Madison, PA**

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

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Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards (NMSS), has issued a Directors' Decision with regard to a petition dated October 30, 2002, filed by Viacom, Inc., hereinafter referred to as the "petitioner." The petition concerns the decommissioning of the former Westinghouse Test Reactor (WTR) at the Waltz Mill Service Center, near Madison, PA. In a letter dated December 20, 2002, Westinghouse Electric Company LLC (Westinghouse), the holder of the SNM-770 License at the Waltz Mill Service Center, responded to the Viacom §2.206 petition. Westinghouse submitted supplemental information on the petition on April 14, 2003. Viacom submitted comments on the Westinghouse supplemental information on April 22, 2003. Westinghouse submitted a second supplemental response to the Viacom petition on April 28, 2003.

The petition requested NRC issue an Order to Westinghouse, which would require them to: (1) provide certain radiological survey data to NRC which NRC has requested, and (2) accept under SNM-770 certain residual byproduct materials now held under Viacom license

TR-2 and located at the WTR facility at the Waltz Mill Service Center. As the basis for the request, Viacom states that Westinghouse's refusals to provide the survey data and to accept the residual byproduct materials now held under license TR-2 violates enforceable commitments made to the NRC.

As an alternative, the petitioner states that Westinghouse's refusals constitute a violation of 10 CFR 50.5, *Deliberate misconduct*, which causes Viacom to be in violation of a license condition, the approved Decommissioning Plan (DP) for the WTR. The petitioner claims that granting the petition is necessary for compliance with both the DP and other commitments under SNM-770 and is needed to abate the violation of 10 CFR 50.5 to promote public health and safety by providing for safe completion of decommissioning of the WTR under the DP.

Lastly, the petitioner requests that NRC interpret certain requirements in the DP for the WTR and decide whether they have been met. In a separate letter dated October 29, 2002, Viacom, Inc. applied to the NRC to issue two orders, requesting that the NRC: (1) terminate the TR-2 license, and (2) declare that all of Viacom's obligations under the DP have been satisfactorily completed, except for the submission of the survey data and transfer of the TR-2 residual materials to the SNM-770 license. The petitioner requests that the interpretation of the DP be resolved as part of the NRC's consideration of the October 29, 2002 application.

The petitioner and the licensee met with the NMSS petition review board on February 20, 2003, to discuss the petition. The meeting gave the petitioner and the licensee an opportunity to provide additional information and to clarify issues raised in the petition. The results of that discussion were considered in the determination regarding the petition.

The NRC sent a copy of the proposed Director's Decision to the petitioner and the licensee for comments on June 18, 2003. The petitioner and the licensee responded with comments on July 11, 2003. The comments and the NRC staff's response to them are included in the Director's Decision.

The NMSS Office Director has determined that the request for NRC to issue an Order to Westinghouse to provide certain radiological survey data to NRC which NRC has requested, is moot and will no longer be addressed, and that the request for NRC to issue an Order to Westinghouse to accept under SNM-770 certain residual byproduct materials now held under Viacom license TR-2 and located at the WTR facility is denied. The NMSS Office Director also has denied the request for NRC to issue an Order to Westinghouse to abate a violation of 10 CFR 50.5, and has granted the request for NRC to interpret the Decommissioning Plan for the WTR as part of the response to Viacom's separate request dated October 29, 2002. The reasons for the decisions are explained in the Director's Decision pursuant to 10 CFR 2.206 [DD-03-02], the complete text of which is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS public access component on the NRC's Web site, <http://www.nrc.gov>, under the "Public Involvement" icon.

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

Dated at Rockville, Maryland, this 26<sup>th</sup> day of August 2003.

FOR THE NUCLEAR REGULATORY COMMISSION

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Margaret V. Federline, Deputy Director  
Office of Nuclear Material Safety  
and Safeguards

Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision within that time.

Dated at Rockville, Maryland, this 26th day of August 2003.

FOR THE NUCLEAR REGULATORY COMMISSION

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Margaret V. Federline, Deputy Director  
Office of Nuclear Material Safety  
and Safeguards

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**ADAMS Accession No.** Coordinated with OGC and they have no legal objection

OFC	DCB	DCB	DCB	DWM	NMSS	NMSS
NAME	D. Widmayer	C. Craig	D. Gillen	J. Greeves	J. Goldberg	mvfVirgilio
DATE	8/13/03	8/13/03	8/15/03	8/15/03		8/26/03

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