

August 26, 2003

MEMORANDUM TO: Margaret Federline, Chair  
Petition Review Board

FROM: Derek A. Widmayer /RA/  
2.206 Petition Manager

SUBJECT: STAFF RESPONSE TO COMMENTS ON PROPOSED  
DIRECTOR'S DECISION ON VIACOM 2.206 PETITION  
CONCERNING THE WALTZ MILL SERVICE CENTER,  
MADISON, PA

This memorandum documents the NRC staff response to comments on the proposed Director's Decision (DD) for the 10 CFR 2.206 petition received from Viacom, Inc. concerning the decommissioning activities at the Waltz Mill Service Center, Madison, PA. The proposed DD was issued on June 18, 2003. We received comments from Viacom, Inc. and Westinghouse Electric Company LLC, the licensee at the Waltz Mill Service Center, on July 11, 2003.

We have made some editorial changes to the proposed DD for clarity, along with some content changes in response to the petitioner's and the licensee's comments. The full comments and the staff responses are in the Attachment to this memorandum.

If you have any questions about our responses to the comments, or on the DD for the Viacom 2.206 petition, please contact me at 415-6677.

Attachment:  
As stated

## COMMENTS FROM WESTINGHOUSE ELECTRIC COMPANY LLC

COMMENT (1): Page 2, Line 6, change "refusals" to "refusal."

NRC RESPONSE: Agreed. Change made.

COMMENT (2): Page 5, beginning at Line 14, the Proposed Decision states: "In 1997, CBS Corporation (CBS) obtained the business units of WEC that included the Waltz Mill Service Center." A more accurate statement would be, "In 1997, WEC changed its name to CBS Corporation (CBS)."

NRC RESPONSE: Agreed. This change and some additional clarifications are made. (See Viacom comment (C1) below)

COMMENT (3): Page 5, Lines 16-17 (and *passim*), change "Westinghouse Electric Company, LLC" to "Westinghouse Electric Company LLC."

NRC RESPONSE: Agreed. Changes made.

COMMENT (4): Page 5, beginning at Line 18, the Proposed Decision states: "NRC approved the name change on the SNM-770 license to Westinghouse Electric Company on March 22, 1999." A more accurate statement would be, "NRC approved the transfer of the SNM-770 license to Westinghouse Electric Company LLC on March 10, 1999, which became effective on March 22, 1999."

NRC RESPONSE: Agreed. Change made.

COMMENT (5): Page 6, Line 5, change "1997" to "1999."

NRC RESPONSE: Agreed. Change made.

COMMENT (6): Page 7, Lines 6-8, the Proposed Decision states, "However, at the Waltz Mill Service Center, Westinghouse could not hold the TR-2 license because of its foreign ownership." While Westinghouse's foreign ownership may have created an issue in an NRC license transfer context, the parties never sought a license transfer in connection with the 1998 sale of CBS' nuclear assets, because the TR-2 license was not required to carry on the nuclear services business transferred to Westinghouse by CBS. The identified sentence is not needed to support the Director's Decision. Therefore, Westinghouse suggests that it should simply be deleted.

NRC RESPONSE: Agreed. The phrase, "Westinghouse could not hold the TR-2 license because of its foreign ownership," is deleted.

COMMENT (7): Page 12, Line 9, change "USNR" to "USNRC."

NRC RESPONSE: Agreed. Change made.

COMMENT (8): Page 13, beginning at Line 10, the Proposed Decision states: "In issuing a renewed SNM-770 license on January 23, 2003, the NRC accepted . . ." The SNM-770 license was renewed by letter dated June 14, 2002. Accordingly, the sentence should be changed to: "In issuing a renewed SNM-770 license on June 14, 2002, the NRC accepted . . ." The sentence beginning at Line 18 states: "Thus, at the time of license renewal, it was reasonable for NRC to conclude that the stated objective in the correspondence could still be realized, but also, NRC had already received the subject Petition and was well aware of the disagreement over the termination of the TR-2 license." This sentence should be changed by deleting, "had already received the subject Petition and." The following new sentence should be added immediately thereafter: "Well before the Viacom Petition was filed, the NRC was aware of the dispute between Westinghouse and Viacom concerning the termination of the TR-2 license. *See, e.g.*, Letter from RK. Smith, Viacom, to NRC Document Control Center, dated March 25, 2002 (ADAMS accession number ML02093061 1)."

NRC RESPONSE: Agreed. The January 23, 2003, date mistakenly refers to the latest amendment to the SNM-770 license rather than the renewal of the license that was issued on June 14, 2002. Accordingly, the sentences are changed to correct the error that the petition was sent to the NRC before the license renewal. The fact that NRC was well aware of the dispute before the renewed license was issued (not prior to the petition being received) is the important point to this sentence, therefore other clarifications made include only some of the additional suggested changes.

## COMMENTS FROM VIACOM, INC.

---

### A. THE LICENSE TRANSFER

COMMENT (A1): The record fully supports the conclusion in the Proposed Director's Decision that "acceptance of the TR-2 residual radioactive materials remains an obligation of Westinghouse." (Proposed Director's Decision at 14) The record now also supports the fact that Westinghouse "is committed to the decommissioning of the WTR and will meet its obligation to accept the TR-2 residual radioactive materials upon completion of the ongoing arbitration process." (Proposed Director's Decision at 14) These propositions go to the heart of Viacom's Petition.

NRC RESPONSE: Acknowledged.

COMMENT (A2): Viacom also agrees with the proposed conclusion that "the circumstances of the WTR do not present a threat to the public health and safety" because "the residual contamination at the WTR is carefully controlled and will remain so, both in the control of Viacom and within a site controlled by Westinghouse." (Proposed Director's Decision at 11-12) Viacom also agrees with the NRC staff's observation that after the residual materials are transferred they are to be "appropriately managed" under the SNM-770 license. (Proposed Director's Decision at 11) Viacom also will accept NRC staff's initiative in granting an extension of time until resolution of the arbitration process to complete TR-2 decommissioning. (Proposed Director's Decision at 14) Given the above, Viacom can understand the NRC staff's proposed conclusion that no immediate enforcement action is needed to compel a transfer of residual radioactive materials.

NRC RESPONSE: Acknowledged.

COMMENT (A3): The Petition recognized this last fact and made no request for any immediate enforcement action. The essential thrust of the Petition (and Viacom's Application filed on October 29, 2002 ("Application")) was to invoke NRC's established decision processes so that NRC would be in a position to determine with finality what its requirements with respect to decommissioning and remediation at the Waltz Mill Site were and whether they had been satisfied. This is why, when Westinghouse's initial response to Viacom's Petition raised the issue whether the level of residual contamination in the WTR structures was consistent with NRC's requirements developed in connection with the SNM-770 Remediation Plan, Viacom readily agreed (at the NRC Petition Review Board Hearing on February 20, 2003) to have NRC address this additional matter as part of its review of Viacom's Petition. Viacom's Comments on Westinghouse's Supplemental Response, dated April 22, 2003, also stated that "Viacom would welcome an NRC determination whether the Waltz Mill retired facilities and former WTR structures have been satisfactorily remediated in accordance with the criteria that were approved by NRC during its review of the SNM-770 Remediation Plan." The Proposed Director's Decision leaves these important issues regarding the meaning of or

compliance with NRC's requirements unresolved, including whether, as a condition of the transfer of former WTR structures to the SNM-770 license, NRC will require the immediate remediation of the former WTR structures to unrestricted release criteria.

NRC RESPONSE: NRC staff acknowledges that Viacom welcomes an NRC determination whether the Waltz Mill retired facilities and former WTR structures have been satisfactorily remediated in accordance with the criteria that were approved by NRC during its review of the SNM-770 Remediation Plan. The Director's Decision (DD) is clarified to include this determination as part of the NRC's consideration of Viacom's request for Orders dated October 29, 2002. However, NRC staff recognizes that a dispute between the parties is before the arbitration panel established in accordance with the Asset Purchase Agreement (APA), as discussed in the DD and the response to comments (A4) through (A6) below. Changes made to the DD in response to those comments below clarify the conclusions of the staff concerning the use of arbitration to resolve disputes between Viacom and Westinghouse and the role of the arbitrator's decisions and the continued responsibilities of the NRC.

COMMENT (A4): The Proposed Director's Decision includes the finding that NRC's March 10, 1999 approval of the transfer of SNM-770 from CBS Corporation to Westinghouse had the effect of amending both the TR-2 and SNM-770 licenses "to include the provisions of the APA." (Proposed Director's Decision at 13; see also Proposed Director's Decision at 7) The Proposed Director's Decision also states that, because of the arbitration process now ongoing between Viacom and Westinghouse, "NRC has assurance that its requirements will be met and the required transfer will take place." (Proposed Director's Decision at 12) Thus, the Proposed Director's Decision seems to rely on the commercial arbitration provision in the APA [the Asset Purchase agreement between CBS Corporation and WGNH Acquisitions, LLC] for the proposition that NRC need not address these unresolved issues in the Petition. This is wrong for the following reasons.

COMMENT (A4a): First, the record does not support NRC's proposed conclusions that NRC incorporated the APA arbitration process into the licenses and approved of the use of commercial arbitration to resolve disputes over NRC requirements. CBS Corporation's September 28, 1998 application for license transfers included proposed enforceable commitments by CBS Corporation to decommission and to maintain decommissioning financial assurances, a request that NRC acknowledge these commitments in its approval of the requested license transfers, and a request that NRC approve of CBS Corporation's assumption of certain decommissioning obligations under the licenses to be transferred (which included SNM-770 but not TR-2). Importantly, while these commitments and requests were described in the application as based on the APA, neither CBS Corporation (the transferor) nor Westinghouse (the transferee) proposed to NRC that NRC approve of all of the APA (most of which has nothing to do with public health and safety or common defense and security) or incorporate the APA (as opposed to the commitments stated in the application) into any NRC license. Moreover, the arbitration provisions in the APA were not discussed or summarized as part of anyone's commitments to the NRC.

There is nothing in the NRC's March 10, 1999 letter approving of the transfers that can possibly be read to incorporate the APA into any license. Since the TR-2 license was not the subject of any transfer application, the transfer approval would not have been an appropriate vehicle to incorporate the APA into the TR-2 license in any event. If anything, the March 10, 1999 approval expressly rejected any concept that the parties' regulatory responsibilities to NRC could be defined or affected by anything in the APA. As indicated above, the application proposed that CBS Corporation, as opposed to the transferee licensees, be held directly and primarily responsible to NRC for meeting certain decommissioning and decommissioning financial assurance obligations that would rest otherwise on the NRC licensee. CBS Corporation's assumption of these regulatory responsibilities was related in the application to the APA. However, NRC rejected this request in its March 10, 1999 letter, stating "NRC will hold the licensees responsible for all requirements and conditions of their respective licenses, including financial responsibility for decommissioning [emphasis added]." The March 10, 1999 letter recognized that, as explained in the application, the APA included certain financial commitments by CBS Corporation to Westinghouse, but the only consequence for NRC was that "NRC will notify CBS, as well as the licensee [Westinghouse], on matters related to decommissioning and/or decontamination under those two licenses [SNM-770 and SNM-1460]."

NRC RESPONSE: NRC staff agrees that some of the statements in the Director's Decision can be misinterpreted concerning the provisions of the APA and the meaning of the NRC's reviews and approvals of license amendment requests that are cited. Clarifying language is made, as explained in the following discussion.

NRC staff agrees that there was never a request, nor intent, that the entire APA was to be incorporated as license conditions as a result of the NRC review and approval of the CBS application filed with the NRC on September 28, 1998. However, there is ample support in the record for the conclusion that the APA was reviewed and the NRC approved the use of commercial arbitration to resolve disputes between the parties over NRC requirements.

Material statements and representations are made in the following provisions of the APA concerning the Waltz Mill Service Center: Sections 5.31; 8.1(a); 8.2(x); and 8.8. Section 5.31 of the APA is entitled, Waltz Mill Service Center, and provides general information about CBS and the purchaser as concerns the NRC approved decommissioning plans. Section 8.1(a) includes in the second to the last paragraph that ". . . CBS shall, . . . implement all remedial measures, including removal and decontamination activities, as may be required by and are in accordance with approvals received or to be received from the NRC (the "Plans") (x) in those areas of the Waltz Mill Service Center identified in the plans as "Retired Facilities" and (y) which are associated with the termination of the TR-2 NRC License, which Plans are incorporated herein by reference." These plans incorporated by reference are (1) the "Waltz Mill Facility SNM-770 Remediation Plan," as subsequently revised, and the "Westinghouse Test Reactor (TR-2) Final Decommissioning Plan," as subsequently revised. Section 8.8 is the provision entitled, Arbitration of Certain Environmental Liabilities, such liabilities being specifically identified as, "the Waltz Mill Service Center described in Section 8.1(a)."

The application submitted by CBS for Transfers and Amendments of various NRC Materials License, Quality Assurance Program Approvals and Certificates of Compliance which was filed with the NRC on September 28, 1998, asking for an amendment to the SNM-770 license refers to the APA on Page 4, footnote 3. This application was supplemented with a letter dated November 24, 1998, which encloses the APA. Condition No. 3 of Amendment No. 19 of NRC License SNM-770 issued on March 10, 1999, says that the license is amended in its entirety in accordance with the September 28, 1998, letter. Condition No. 26 of Amendment No. 19 of NRC License SNM-770 states, " Except as specifically provided otherwise in this license, the licensee shall conduct its program in accordance with the statements, representations, and procedures contained in the documents, including any enclosures, listed below." Item D. of the list of documents is the November 24, 1998, letter that encloses the APA. Therefore, the record is clear that the statements, representations and procedures in the APA cited above concerning the Waltz Mill Service Center are incorporated by reference in License No. SNM-770.

And, while it is true that the September 28, 1998, application letter and the March 10, 1999, approval letter address financial assurance matters specifically, this does not mean that any other matter concerning the NRC and protection of the public health and safety and the environment discussed in the application, or in documents referred to in the application, is summarily dismissed as unimportant.

The record is just as convincing that CBS (now Viacom) has made similar commitments concerning the Waltz Mill Service Center for its decommissioning activities under the TR-2 license. As described above, the APA itself incorporates the TR-2 DP by reference, and the DP is incorporated by reference into the TR-2 license in Amendment No. 8 to the TR-2 license. Viacom agrees to, as part of its February 28, 2000, supplement to the CBS application to transfer the TR-2 license to Viacom (Application for Transfer and Amendment of License Number TR-2, Docket Number 50-022, dated February 14, 2000), among other things, ". . . abide by all commitments and representations previously made to the NRC by CBS for the licenses being transferred by the NRC pursuant to the Applications, . . ." and, "accept responsibility and liability for decommissioning and decontamination of the facilities and sites being transferred." Lastly, in its July 5, 2000, letter to Westinghouse Electric Company LLC (included as exhibit 7 in the Westinghouse December 20, 2002, response to the Viacom 2.206 Petition), Viacom clearly acknowledges its commitments pursuant to Section 8.1 of the APA, and the fact that the TR-2 Decommissioning Plan is (as approved by the NRC, and incorporated in its license ) referenced in the APA.

In conclusion, the Director's Decision is clarified to specify Sections 5.31; 8.1(a); 8.2(x); and 8.8. of the APA are statements and representations made by the licensees concerning the Waltz Mill Service Center that are incorporated into the licenses for the Waltz Mill Service Center (Licenses SNM-770 and TR-2), and that one of these is that arbitration will be used to settle disputes between Viacom and Westinghouse concerning the completion of work described in the two NRC approved decommissioning plans, as revised.

COMMENT (A4b): Second, to the best of Viacom's knowledge, NRC has never incorporated all of the terms of a complex and lengthy commercial sale document such as the APA into an NRC license. If NRC had done so here, all of the APA would have become an enforceable NRC license condition, with the result that all violations of the APA would also constitute violations of NRC requirements and, contrary to the Proposed Director's Decision (at 10), no contractual dispute between Viacom and Westinghouse could be "irrelevant as far as NRC is concerned." (Proposed Director's Decision at 10). Moreover, if the APA's dispute resolution procedure had somehow been incorporated into the TR-2 license, then Viacom's Petition and Viacom's Application should both have been rejected by NRC because they sought to use NRC procedures to resolve questions about NRC requirements rather than relying on the arbitration procedure in the APA. Yet NRC accepted both for review. (Proposed Director's Decision at 3, 19) Accordingly, the proposed conclusion that NRC incorporated the APA (or at least the arbitration provisions of the APA) into the licenses is not only unsupported, but it is also unprecedented and inconsistent with other parts of the Proposed Director's Decision.

NRC RESPONSE: NRC staff agrees that the entire APA was not incorporated into either of the NRC licenses in this case. As discussed in the NRC Response to Comment (A4a) above, language is included in the Director's Decision that clarifies the NRC positions concerning the APA. Given these clarifications, NRC staff does not agree that the contractual dispute over the data somehow gains relevance in terms of whether or not Viacom can or cannot fulfill its responsibilities in decommissioning the WTR under the TR-2 license in accordance with the approved DP. NRC staff believes it has followed the correct procedures in accepting the Viacom 2.206 petition, because, as argued by Viacom in the Petition Review Board meeting held on February 20, 2003, the petition met the requirements for NRC review. Likewise, NRC staff believes it is appropriate to accept the Viacom license application because it requests termination of the TR-2 license, which only NRC has the authority to do under the Atomic Energy Act.

COMMENT (A4c): Third, since NRC's March 10, 1999 letter also approved of the transfers of twelve other NRC licenses (including five NRC Approvals and Certificates, and the NRC license for the Columbia Fuel Fabrication Facility), the Proposed Director's Decision necessarily implies that NRC incorporated the APA as an enforceable requirement in a total of fourteen licenses. NRC cannot have intended such a result, especially considering that the effect would be the creation of over seventeen hundred pages of enforceable NRC requirements, most of which address financial and other matters beyond NRC jurisdiction.

NRC RESPONSE: NRC staff agrees that the entire APA was not incorporated into the NRC licenses for all of the facilities. As discussed in the NRC Response to Comment (A4a) above, language is included in the Director's Decision that clarifies the NRC positions concerning the APA.

COMMENT (A4d): Fourth, a commercial arbitration is an alternate dispute resolution mechanism or "ADR." In SECY-02-0098, "Status of the Staff's Evaluation of the Possible Use of Alternative Dispute Resolution in the Agency's Enforcement Program," the NRC staff informed the Commission that, after evaluating public comments, it could not reach any final conclusion

about NRC's use of ADR. NRC staff further informed the Commission there was a need for further evaluation and input from stakeholders, and that one or more ADR pilot programs could be held. It would be contrary to NRC staff policy (as represented to the Commission) for NRC staff now to construe its March 10, 1999 transfer letter as an NRC approval of an ADR procedure (the commercial arbitration provision of the APA), especially considering the parties proposed nothing of the sort in the transfer application and nothing in the March 10, 1999 letter makes any specific mention of either arbitration or any other form of ADR, much less any ADR pilot program.

Finally, while Viacom agreed to use arbitration to resolve issues about its and Westinghouse's commercial obligations to each other under the APA, Viacom did not agree to use arbitration to determine its or Westinghouse's obligations to the NRC. Moreover, the record of the arbitration proceeding will be confidential, in contrast to NRC proceedings that must ordinarily be conducted on a public record. The federal "Alternative Dispute Resolution Act," 5 U.S.C. §§ 571-584, cautions federal agencies against using arbitration without the parties' consent and, even if consent is forthcoming, cautions against use of arbitration to resolve a controversy that relates to an administrative program if, among other things: "a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record." (5 U.S.C. § 572) .

The above discussion is critically important because Westinghouse has advised one of the arbitration panels that the Proposed Director's Decision suggests that the NRC will determine that the issues raised in Viacom's Petition should be decided by that Panel. Thus, while Viacom has urged that Panel to recognize that NRC will have the final word about what its requirements mean (including the meaning of the "TR-2 Final Decommissioning Plan" and the criteria approved in connection with the "SNM-770 Remediation Plan") and whether NRC requirements have been met, Westinghouse has apparently read the Proposed Director's Decision to say the exact opposite-that NRC will defer to the Panel regarding the meaning and satisfaction of NRC requirements.

NRC RESPONSE: The use of arbitration to resolve disputes between Viacom and Westinghouse, since the result cannot bind NRC, is an appropriate means for the parties to resolve their disputes, and is not inconsistent with Commission policy on alternate dispute resolution.

COMMENT (A5): In sum, the Proposed Director's Decision must be clarified to avoid any implication that an arbitration panel, rather than NRC, will have the final say regarding the meaning of or compliance with NRC requirements. NRC cannot avoid its regulatory duty to decide what its requirements are and whether they have been satisfied. The indication to the contrary, that NRC delegated this function to an arbitration panel, is inconsistent with other parts of the Proposed Director's Decision, unsupported, and contrary to NRC and U.S. Government policy.

NRC RESPONSE: NRC staff agrees in part, and has clarified the Director's Decision so that it is clear that NRC is not bound by the results of the arbitration. The NRC retains the final say on

all matters within its jurisdiction and, in due course, will approve of the transfer of the radioactivity from the TR-2 license to the SNM-770 license, the termination of the TR-2 license, the continued protection of the public health and safety and the environment under the SNM-770 license, and ultimately, the termination of the SNM-770 license.

COMMENT (A6): NRC's decision on Viacom's pending Application will resolve one of the matters in dispute between the parties - whether the TR-2 Final Decommissioning Plan requires all of the reactor bioshield to be removed. Once the problem with the Proposed Director's Decision addressed above is rectified, there is no remaining reason why NRC cannot address the other matters of interpretation and compliance with NRC requirements raised by Viacom in its Petition and Comments on Westinghouse's Supplemental Response. This includes whether, following the transfer of WTR residual materials under the NRC approved TR-2 Final Decommissioning Plan, NRC will require prompt remediation of WTR structures (or Waltz Mill retired facilities) using NRC criteria for unrestricted release, notwithstanding Westinghouse's plans to maintain an NRC license for the Waltz Mill Site for another twenty years. If NRC will not fulfill its duty now and address these issues, in response to Viacom's Petition, an arbitration panel will be required to address them in the course of resolving the APA commercial dispute. The parties will expend time and resources on an arbitration decision that could be inconsistent with NRC's later decisions, which will be controlling on the parties regardless of the arbitration. This is not a productive use of NRC's or the parties' resources.

NRC RESPONSE: As explained in the responses to Comments (A4a) and (A5), NRC staff concludes that use of arbitration to resolve the disputes between Viacom and Westinghouse at the Waltz Mill Service Center concerning the decommissioning of the WTR is appropriate.

## **B. THE SURVEY DATA**

COMMENT (B1): Viacom agrees with NRC staff that "the contractual dispute [between Viacom and Westinghouse] concerning the data held by Westinghouse is irrelevant as far as NRC is concerned regarding whether Viacom is able to fulfill its responsibilities under the TR-2 license." (Proposed Director's Decision at 10) Nevertheless, the Proposed Director's Decision does not fully address Viacom's argument that, even though Viacom could conceivably generate similar data itself, Westinghouse's failure to provide the survey data to NRC violated a commitment Westinghouse made to NRC to cooperate in TR-2 decommissioning and the transfer of residual materials to the SNM-770 license. Moreover, the Proposed Director's Decision's conclusion (at 10) that an order requiring Westinghouse to give NRC the data is not warranted because "without a thorough review of the disputed data, NRC has no basis to determine that the data is adequate to determine the residual radioactivity, and thus would be sufficient to meet the first condition specified in the IR [NRC Region I Inspection No. 50-22/1999-202]" could be misunderstood. NRC should not put itself in an unfortunate "Catch-22" position whereby it is unable to order any licensee to give it data unless it already has the data for review.

NRC RESPONSE: NRC does not agree that Westinghouse's failure to provide the survey data to the NRC violated a commitment made to the NRC and NRC agrees that the sentence concerning a review of the data could be misinterpreted. However, this section of the Director's Decision has been changed in response to Comment (B2) below.

COMMENT (B2): However, this aspect of the Petition is essentially moot and need not be addressed by NRC staff. By letter dated May 20, 2003, Westinghouse informed NRC staff that the survey data in question would be provided to Viacom and, by letter dated May 23, 2003, Viacom informed NRC staff that, after it received and reviewed the data, it would then be in a position to provide that data to NRC. Viacom has received the data from Westinghouse and is in the process of reviewing it for completeness, after which it will be given to the NRC staff.

NRC RESPONSE: Acknowledged. NRC staff has made appropriate changes to the Director's Decision indicating that this aspect of the Petition is moot and is not going to be addressed.

### **C. OTHER COMMENTS**

COMMENT (C1): The Proposed Director's Decision includes the statement (at 5) that "[i]n 1997, CBS Corporation, Inc. (CBS) obtained the business units of WEC...." However, there was no acquisition here. In 1997 Westinghouse Electric Corporation simply changed its name to CBS Corporation. The Proposed Director's Decision also states (at 5) "NRC approved the name change on the SNM-770 license to Westinghouse Electric Company on March 22, 1999." NRC's March 10, 1999 letter addressed both transfers of NRC licenses to a different legal entity and corresponding name changes.

NRC RESPONSE: Agreed. These changes and some additional clarifications are made. (See Westinghouse Comments No. 2 and 4 above)

COMMENT (C2): The Proposed Director's Decision includes the statement (at 6) that "[t]he entire [SNM-770] Remediation Plan was approved by NRC as supplemented in Amendment 21 to the SNM-770 license on January 19, 2000." The statement may reflect some confusion about what was requested and approved in Amendment 21. As explained below, Amendment 21 referenced the original SNM-770 Remediation Plan (then over three years old and largely moot) merely as a historical document explaining the background for the Revised Soil Plan that was the subject of the Amendment application.

Amendment 21 was issued in response to Westinghouse's August 9, 1999 letter application for NRC's approval of its Revised Soil Plan. Amendment 21 added three new letters to the list of correspondence referenced in condition 23 of the license. (Compare condition 23 in Amendment 20, issued on September 8, 1999 with condition 23 in Amendment 21.) Two of the three, the letter application dated August 9, 1999 and correspondence dated January 11, 2000 attached Westinghouse's 1999 Revised Soil Plan and

Westinghouse's subsequent responses to NRC staff questions about that Revised Soil Plan, and so the intended effect of these two additions to the correspondence listed in condition 23 was to approve of the Revised Soil Plan, as Westinghouse requested. The third addition to the correspondence list was Westinghouse Electric Corporation's letter dated November 27, 1996, which attached the original SNM-770 Remediation Plan. However, as Westinghouse explained in its August 9, 1999 letter application, the remediation of buildings (as opposed to soils) discussed in the SNM-770 Remediation Plan had in fact been conducted under the SNM-770 license (in accordance with NRC's August 21, 1998 and other earlier approvals) without the need for any NRC approval of the SNM-770 Remediation Plan, and it was only the proposed soils remediation that required NRC's approval at this point in time.

Accordingly, the August 9, 1999 letter application explained that the requested reference to the original 1996 SNM-770 Remediation Plan was merely for "administrative reasons." Indeed, an NRC approval of the merits of the original SNM-770 Remediation Plan at this point in time would have been contrary to NRC's expressed concern that the remediation criteria proposed in that Plan were not sufficient (*see* NRC letter dated June 10, 1998). Moreover, if NRC had intended Amendment 21 to constitute an approval of the original SNM-770 Remediation Plan, it would also have added Westinghouse Electric Company's June 19, 1998 letter to the list of correspondence in condition 23, for this letter proposed the remediation criteria for buildings that NRC approved on August 21, 1998 and that were in fact used in conducting the remediation of buildings under the SNM-770 license.

NRC RESPONSE: NRC staff agrees that the statement in the proposed Director's Decision that states "The entire [SNM-770] Remediation Plan was approved by NRC as supplemented in Amendment 21 to the SNM-770 license on January 19, 2000," is inaccurate. Clarifications are made that supplemental information submitted and subsequently approved by the NRC in several correspondence after the Remediation Plan was submitted in 1996 constitute the entire "Plan" that is now approved and referenced in the license.

COMMENT (C3): The Proposed Director's Decision includes the statement (at 6) that "NRC identified the Waltz Mill Service Center as a Site Decommissioning Management Plan (SDMP) Site in 1990, requiring it to address remediation of significant contamination in unused buildings and soils." It should be clarified that the Site was included in the SDMP because contaminated soils created the potential for offsite groundwater contamination (*see e.g.*, the August 1999 "Revised Soil Plan," particularly Section 1.0 - "Background," approved by NRC on January 19, 2000 in an amendment to the SNM-770 license).

NRC RESPONSE: Agreed. Clarifications are made.

COMMENT (C4): The Proposed Director's Decision addressed Viacom's argument about Westinghouse's violation of 10 C.F.R. § 50.5 by, among other things, citing NRC Inspection Report No. 50-22/1999-202. (Proposed Director's Decision at 16) Since that Report did not consider the possibility of such a violation, it cannot be cited for the proposition that no violation occurred.

NRC RESPONSE: Agreed. The reference to the NRC Inspection Report has been deleted.

#### **D. CONCLUSION**

The NRC should decide all of the matters raised in Viacom's Petition and in the parties' subsequent submissions, including whether remediation has been completed in accordance with NRC-approved criteria and whether the WTR structures must be decommissioned for unrestricted release promptly after transfer to the SNM-770 license, because ultimately NRC must decide them in any event. Doing so now would eliminate the potential for inconsistent determinations by NRC and the arbitration Panel hearing the parties' dispute under the APA. The Proposed Director's Decision must be clarified so as to eliminate any suggestion that NRC has delegated its duty to interpret and apply its regulatory requirements to the arbitration Panel, and to address the other comments set forth above.

NRC RESPONSE: NRC staff has decided all of the matters raised in Viacom's Petition and the subsequent submissions, as required by 10 CFR 2.206, concerning whether the requested actions of the petitioner should proceed. In this case, the action requested by Viacom was for an order to be issued to Westinghouse, and the requested action is denied. NRC staff acknowledges the parties (Westinghouse and Viacom) have agreed to the use of an arbitration panel to resolve their disputes concerning the completion of activities under the two approved Decommissioning Plans. Further, NRC staff cannot and has not delegated its duties to the arbitration panel, as the NRC retains the responsibility and authority to approve the licensing actions and ensure that its regulatory requirements continue to be met. As required in Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," the full set of comments by Viacom are addressed above.

MEMORANDUM TO: Margaret Federline, Chair  
Petition Review Board

FROM: Derek A. Widmayer /RA/  
2.206 Petition Manager

SUBJECT: STAFF RESPONSE TO COMMENTS ON PROPOSED  
DIRECTOR'S DECISION ON VIACOM 2.206 PETITION  
CONCERNING THE WALTZ MILL SERVICE CENTER,  
MADISON, PA

This memorandum documents the NRC staff response to comments on the proposed Director's Decision (DD) for the 10 CFR 2.206 petition received from Viacom, Inc. concerning the decommissioning activities at the Waltz Mill Service Center, Madison, PA. The proposed DD was issued on June 18, 2003. We received comments from Viacom, Inc. and Westinghouse Electric Company LLC, the licensee at the Waltz Mill Service Center, on July 11, 2003.

We have made some editorial changes to the proposed DD for clarity, along with some content changes in response to the petitioner's and the licensee's comments. The full comments and the staff responses are in the Attachment to this memorandum.

If you have any questions about our responses to the comments, or on the DD for the Viacom 2.206 petition, please contact me at 415-6677.

Attachment:  
As stated

DISTRIBUTION: File Center NMSS r/f DCB r/f

**ADAMS Accession No.**

OFC	DCB	DCB	DWM
NAME	C. Craig	D. Gillen	J. Greeves
DATE	08/13/03	08/15/03	08/15/03

**Official Record Copy**