

August 26, 2003

Martin G. Malsch  
Attorney for Viacom, Inc.  
Egan & Associates, PLLC  
7918 Jones Branch Drive  
Suite 600  
McLean, VA 22102

Dear Mr. Malsch:

This letter responds to the petition you filed on October 30, 2002, with Dr. William Travers, Executive Director for Operations at the U.S. Nuclear Regulatory Commission, pursuant to Section 2.206 of Title 10 of the *Code of Federal Register* (10 CFR 2.206). In your petition, you requested NRC to issue an Order to Westinghouse Electric Company LLC (Westinghouse), the holder of the SNM-770 license at the Waltz Mill Service Center, Madison, PA, 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 former Westinghouse Test Reactor (WTR) facility at the Service Center. The petition also requested, as an alternative, that NRC issue an Order to Westinghouse to abate a violation of 10 CFR 50.5, *Deliberate misconduct*, which causes Viacom to be in violation of a license condition, the approved Decommissioning Plan for the WTR.

You met with the petition review board on February 20, 2003, to clarify the bases for your petition. The transcript of this meeting was treated as a supplement to the petition and 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.

On March 13, 2003, the NRC staff acknowledged receiving your petition and stated pursuant to 10 CFR 2.206 that your petition was being referred to me for action and that it would be acted upon within a reasonable time.

Westinghouse provided a response to the petition on December 20, 2002, and also submitted supplemental information on April 14 and 28, 2003. You submitted comments on April 22, 2003, on the April 14, 2003, Westinghouse supplemental information. The information in all of these correspondences was considered by the staff in its evaluation of the petition.

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

The NRC has completed its review and, as set forth in detail in the enclosed copy of Director's Decision (DD-03-02), the following decisions have been made regarding your requests. The

request to issue an Order to Westinghouse, the holder of license SNM-770 on the Waltz Mill Service Center near Madison, PA, which would require Westinghouse to provide certain radiological survey data to NRC which NRC requested, is now moot and the NRC is not addressing the request further. We have denied the request to issue an Order to Westinghouse, the holder of license SNM-770 on the Waltz Mill Service Center near Madison, PA, which would require Westinghouse to accept under SNM-770 certain residual byproduct materials now held under Viacom license TR-2 and located at the former Westinghouse Test Reactor (WTR) facility at the Waltz Mill site. We have also denied the request to issue an Order to Westinghouse to abate a violation of 10 CFR 50.0, *Deliberate Misconduct*, by accepting the residual byproduct materials now held under Viacom license TR-2 at the WTR and producing survey data. We have granted the request to consider the issue of the interpretation of the Decommissioning Plan and whether Viacom has completed decommissioning of the WTR when addressing Viacom's October 29, 2002, application for orders rather than in this Director's Decision. NRC is responding to the October 29, 2002, Viacom application for orders in a separate correspondence.

A copy of the Director's Decision (DD-03-02) will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c). 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. All of the documents cited in the enclosed decision are 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 Library component on the NRC's Web site, <http://www.nrc.gov>, (the Public Electronic Reading Room).

I have also enclosed a copy of the notice of "Issuance of the Director's Decision Under 10 CFR 2.206," that has been filed with the Office of the *Federal Register* for publication.

Please feel free to contact Derek A. Widmayer at 301-415-6677 to discuss any questions related to this petition.

Sincerely,

**/RA/ M. Federline for**

Martin J. Virgilio, Director  
Office of Nuclear Material Safety  
and Safeguards

Docket Nos: 50-22, 70-698

Enclosures:

1. Director's Decision, DD-03-02
2. *Federal Register* Notice

cc: Michael F. McBride  
John W. Lawrence  
Service List

