

March 26, 2004

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: JANUARY/FEBRUARY 2004 REPORT ON THE STATUS OF PUBLIC  
PETITIONS UNDER TITLE 10 OF THE *CODE OF FEDERAL  
REGULATIONS*, SECTION 2.206

The attached reports give the status of petitions submitted under Title 10 of the *Code of Federal Regulations*, Section 2.206. As of February 29, 2004, there were four open petitions, which were accepted for review under the 2.206 process: three in the Office of Nuclear Reactor Regulation, and one in the Office of Nuclear Materials Safety and Safeguards. Two proposed Director's Decisions were issued this month.

Attachment 1 provides a detailed status of the open petitions.

Attachment 2 provides the status of incoming letters that the staff has been reviewing to determine if they meet the criteria for review under the 2.206 process.

Attachment 3 shows the age statistics for the open 2.206 petitions as of February 29, 2004.

Attachment 4 shows the age trend of closed petitions for the last 3 years.

This report, Director's Decisions, and other 2.206-related documents are placed in the Agencywide Documents Access and Management System. In making these readily accessible to the public, the staff has identified another vehicle to address one of our performance goals, i.e., to enhance public confidence.

Attachments: As stated

CONTACT: Donna Skay, NRR  
415-1322

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UNDER TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*, SECTION 2.206

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# Attachment 1

## Status of Open Petitions

<u>Facility</u>	<u>Petitioner/EDO No.</u>	<u>Page No.</u>
Indian Point Units 2 and 3	Richard Blumenthal, Attorney General of the State of Connecticut G20030216.....	1
Davis Besse Nuclear Power Station	David Lochbaum, Union of Concerned Scientists G20030508.....	3
Indian Point Units 2 and 3	Riverkeeper G20030545.....	5
Sequoyah Fuels	Cherokee Nation and State of Oklahoma G20030704.....	7

# Attachment 1

## Report on Status of Public Petitions Under 10 CFR 2.206

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Facility: Indian Point Units 2 and 3  
Petitioner: Richard Blumenthal, Attorney General of the State of Connecticut  
Date of Petition: April 23, 2003, as supplemented on June 3, 2003, and October 16, 2003  
Director's Decision to be Issued by: NRR  
EDO Number: G20030216  
Proposed DD Issuance: 05/17/04  
Final DD Issuance: TBD  
Last Contact with Petitioner: 2/17/04  
Petition Manager: Harold Chernoff  
Case Attorney: Jack Goldberg

Issues/Actions requested:

That the Nuclear Regulatory Commission (NRC):

- a. Order the licensee to conduct full review of vulnerabilities, security measures, and evacuation plans and to suspend operations, revoke the operating license, or adopt other measures resulting in temporary shutdown of Indian Point Units 2 and 3.
- b. Require the licensee to provide sufficient information to document the existing security measures which provide protection against terrorist attacks.
- c. Modify the licensee's operating license to mandate specifically a defense and security system sufficient to protect the entire facility, including electric equipment, containment, spent fuel storage, and the control room from a land or water based terrorist attack.
- d. Order the revision of the licensee's Emergency Response Plan and the Radiological Emergency Response Plans of the State of New York and nearby counties to account and prepare for terrorist attacks. These revisions must contemplate not only the full range of realistic effects of a terrorist attack on the Indian Point facility, but also a comprehensive response to multiple attacks on the region's infrastructure that could affect execution of the evacuation plans.
- e. If, after taking the above actions, the NRC cannot adequately ensure the security of the Indian Point facility against terrorist threats, or cannot ensure the safety of New York and Connecticut citizens from terrorist attacks, that it take prompt action to permanently retire the facility.

Background:

A closed PRB meeting was held on May 8, 2003, to discuss whether the petition satisfies the criteria for review under 10 CFR 2.206. During this meeting the PRB decided that no immediate action was necessary.

By letter dated June 3, 2003, the Petitioner filed a Supplement to his original 2.206 Petition. The supplement provided additional information in support of the petition in three major areas: (1) shadow evacuation effects, (2) family separation, and (3) recent design basis threat changes.

On June 19, 2003, the PRB held a conference call with the petitioner's representative (Assistant Attorney General, Robert Snook) to afford the petitioner the opportunity to provide additional information or clarification with regards to the original petition and the recently submitted supplement.

Following the conference call, the PRB determined that the petition satisfied the criteria for review under 10 CFR 2.206. An acknowledgment letter was sent to the petitioner on July 3, 2003, stating that the petition has met the criteria for evaluation under 10 CFR 2.206

The licensee submitted a response to the petitioner's first supplement (dated June 3, 2003) on October 15, 2003.

The petitioner filed a second supplement to his petition on October 16, 2003.

Based on the significant additional amount of information contained in the licensee's response and the supplement to the petition, the staff requested and was granted an extension of time to respond to the petition to January 9, 2004. The petition manager contacted the attorney general's staff on November 5, 2003, and offered him an opportunity to discuss the supplement with the PRB. This request was declined.

A letter acknowledging the petitioner's second supplement was issued on December 13, 2003.

Current Status:

The staff held a conference call with the Federal Emergency Management Agency (FEMA) on January 29, 2004, to discuss FEMA's comments on the proposed Director's Decision. On February 12, 2004, NRR received FEMA's comments and concurrence.

Substantive changes to the proposed Director's Decision are required to reference the recent Riverkeeper court decision (which upheld the NRC's conclusion in the Director's Decision related to Riverkeeper's petition) and to legally strengthen aspects of the proposed Director's Decision. Subsequent to these changes, FEMA's review and comment will be required. Therefore, the issuance date of the proposed Director's Decision has been extended to May 17, 2004. The May 17, 2004, issuance date has been discussed with the petitioner.

Petitioner: David Lochbaum, Union of Concerned Scientists  
James Riccio, Greenpeace  
Paul Gunter, Nuclear Information & Resource  
Service  
Date of Letter: August 25, 2003  
EDO Number: G20030508  
Proposed DD Issuance: February 5, 2004  
Final DD Issuance: TBD  
Last Contact with Petitioner: February 5, 2004  
Petition Manager: Mel Fields  
Case Attorney: Antonio Fernandez

Issues/Actions requested:

That the NRC:

(1) take enforcement action against FirstEnergy Nuclear Operating Company for failure to live up to its commitments made in response to the NRC's October 1996 10 CFR 50.54(f) letter. Since the 50.54(f) letter was issued in direct response to the problems at Millstone that netted its owner a record \$2.1 million fine from the NRC, failure to heed the Millstone warning should carry at least an equivalent sanction.

(2) take enforcement action against First Energy for the numerous design basis violations dating back to the date of licensing with penalties for each day that the licensee was out of compliance with NRC regulations.

(3) suspend the license and prohibit restart of the Davis-Besse reactor unless and until FirstEnergy has adequately addressed all 1,000 design basis deficiencies identified in 1997,

(4) suspend the license and prohibit restart of the Davis-Besse reactor unless and until FirstEnergy has updated its Probabilistic Risk Assessment to reflect the flaws in its design and licensing basis, and

(5) suspend the license and prohibit restart of the Davis-Besse reactor with any systems in a "degraded but operable" condition.

Background:

A public meeting was held between the petitioners and the Petition Review Board on September 17, 2003. The transcript from the meeting will also be treated as a supplement to the petition. Following the conference call, the PRB determined that the petition satisfied the criteria for review under 10 CFR 2.206.

The staff issued a letter to the petitioner on October 7, 2003, acknowledging receipt of the petition.

By letter dated October 20, 2003, the licensee provided its response to the petition.

By letter dated November 26, 2003, the staff supplemented the October 7, 2003, acknowledgment letter to address the requests for immediate action.

Current Status:

The staff issued the proposed Director's Decision to the petitioner and licensee on February 5, 2004. The staff has not received any comments to date. The staff plans to issue the final Director's Decision by April 22, 2004.

Facility: Indian Point Units 2 and 3  
Petitioner: Alex Matthiessen, Riverkeeper  
David Lochbaum, Union of Concerned Scientists  
Date of Petition: September 8, 2003, as supplemented on  
September 22, 2003  
Director's Decision to be Issued by: NRR  
EDO Number: G20030545  
Proposed DD Issuance: February 19, 2004  
Final DD Issuance: TBD  
Last Contact with Petitioner: January 5, 2004  
Petition Manager: Brian Benney  
Case Attorney: Antonio Fernandez  
Issues/Actions requested:

That the Nuclear Regulatory Commission (NRC):

1. Issue an Order requiring Entergy to immediately shut down Indian Point Units 2 and 3 and maintain the reactors shut down until such time that the containment sumps are modified to resolve the Generic Safety Issue 191 problem; or
2. Issue an Order requiring Entergy to prevent restart of Indian Point Units 2 and 3 from their next scheduled refueling outages until such time that the containment sumps are modified to resolve the GSI-191 problem, and

Require Entergy to (a) maintain all equipment needed for monitoring leak-before-break of reactor coolant pressure boundary components within containment fully functional and immediately shutdown the affected reactor upon any functional impairment to monitoring equipment, and (b) refrain from any activity under 10 cFR 50.59, 10 CFR 50.90, Section VII.C, or GL 91-18 Revision 1 that increases or could increase the probability that a loss of coolant accident occurs.

Background:

A public PRB meeting was held with the petitioners on September 24, 2003. The petitioners presented the staff with a supplement to their petition dated September 22, 2003. The transcript from the meeting will also be treated as a supplement to the petition. The licensee stated that it would be submitting a response to the petition. Following the conference call, the PRB determined that the petition satisfied the criteria for review under 10 CFR 2.206.

Several letters have been received by the NRC separately in support of the Riverkeeper petition. The NRC staff will inform the authors of those letters of the status of its review of the Riverkeeper petition but will not open separate 2.206 reviews for the additional letters.

The staff issued a letter to the petitioner on October 22, 2003, acknowledging receipt of the petition and addressing the need for immediate action. The staff concluded that there is no need to take immediate action. By letter dated October 29, 2003, the petitioner responded to the acknowledgment letter. The October 29, 2003, letter included an additional assertion that the licensee is not complying with 10 CFR 50.46 regarding analysis and reporting of emergency core cooling system performance.

Current Status:

The staff issued the proposed Director's Decision to the petitioner and the licensee on February 19, 2004. The staff has not received any comments to date. Comments are due by March 19, 2004.

Facility:	<u>Sequoyah Fuels</u>
Petitioner:	Kelly Hunter Burch, State of Oklahoma and Julian Fite, representing Cherokee Nation
Date of Petition:	November 19, 2003
Director's Decision to be Issued by:	NMSS
EDO Number:	G20030704
Proposed DD Issuance:	TBD
Final DD Issuance:	TBD
Last Contact with Petitioner:	03/02/04
Petition Manager:	Myron Fliegel
Case Attorney:	Antonio Fernandez

Issues/Actions requested:

That the NRC deny the request for an amendment to the materials license of Sequoyah Fuels Corporation. The amendment seeks approval of a proposed ground water corrective action plan and a proposed ground water monitoring plan.

Background:

This petition was originally submitted as a hearing request to the Atomic Safety and Licensing Panel in response to a notice of a license amendment request by Sequoyah Fuels. The petitioners each submitted a hearing request after the published deadline. Therefore, the ASLB dismissed the hearing requests and referred them to the Executive Director for Operations under the provisions of 10 CFR 2.1205(i)(2) for appropriate disposition under 10 CFR 2.206. Subsequently, the Cherokee Nation appealed the ASLB's decision to the Commission.

Current Status:

The Commission reaffirmed the ASLB decision on January 15, 2004. The Petition Review Board held a meeting with representatives of the two petitioners and the licensee on January 28, 2004, and is preparing acknowledgment letters to the petitioners.

## Attachment 2

### Status of Potential Petitions Under Consideration

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Facility:	Radiac Research Corporation
Petitioner:	Michael Gerrard, representing Neighbors Against Garbage
Date of Letter:	November 4, 2003
Responsible Office:	NMSS
PRB meeting:	February 20, 2004

#### Issues/Actions requested:

That the NRC close the Radiac Research Corporation because a threat to the common defense and security exists at the facility that is not being considered by the local licensing agency. The petitioner claims that this threat exists because the facility is located in a major population center; security at the facility is poor; and an adjoining hazardous waste storage facility is permitted to handle flammable liquids, reactives, and oxidizers, and has inadequate fire prevention and suppression systems.

#### Resolution:

The staff held internal PRB meetings to address the question of immediate action and has concluded that there is no need for immediate action. The petitioner was informed of this decision. Due to scheduling difficulties, a meeting with the petitioner and licensee was delayed to February 20, 2004. At this meeting, the petitioner and licensee indicated that they would submit supplemental information that addresses the applicability of their petition to the 2.206 criteria. On February 27, 2004, the licensee submitted a letter requesting that the NRC dismiss the petition as not meeting the criteria of 2.206. The petitioner also submitted a letter that addressed the question of whether the petition meets the criteria for a 2.206 petition. After considering the petition and supplemental letters, the staff accepted the petition for review under 2.206.

On February 19, 2004, a separate letter was submitted to the NRC by Community Board No. 1 of the City of New York with similar concerns regarding Radiac Research Corporation. The letter is under review by the staff.

Representative Velacquez, in whose district Radiac is located, wrote a letter to Chairman Diaz on December 10, 2003, citing concerns similar to those in the petition. Chairman Diaz replied by letter dated February 24, 2004, stating that the NRC would consider his concerns as part of the review of the petition.

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Facility: Maine Yankee  
Petitioner: Randall Speck, Special Counsel for the State of Maine  
Date of Letter: November 15, 2002  
Responsible Office: NMSS  
PRB meeting: To be scheduled

Issues/Actions requested:

That the NRC conduct a hearing on the efficacy of indefinite, long-term spent fuel storage at Maine Yankee.

Resolution:

The petitioner has also requested a hearing, pursuant to 10 CFR 2.202, regarding the October 16, 2002, safeguards order and interim compensatory measures. On December 10, 2002, the staff sent a letter to the petitioner stating that a decision on the acceptability of the 2.206 petition will be held in abeyance until the staff makes a determination on the hearing request. This letter remains as a potential 2.206 petition but the staff cannot consider whether it will be treated as a 2.206 petition until the Licensing Board settles the issues before it.

**Attachment 3**

**AGE STATISTICS FOR AGENCY 2.206 PETITIONS**

ASSIGNED ACTION OFFICE	FACILITY	Incoming petition	PRB meeting <sup>1</sup>	Acknowledgment letter / days from incoming <sup>2</sup>	Proposed DD issuance Date/ age <sup>3</sup>	Scheduled date for final DD/ age <sup>4</sup>	Comments if not meeting the Agency's Completion Goals
NRR	Indian Point	04/23/03	05/08/03	(1) 07/03/03 70 (2) 12/15/03	<del>10/31/03</del> <del>01/09/04</del> <del>2/26/04</del> 5/17/04	TBD	<sup>2</sup> Staff delayed issuing acknowledgment letter pending submittal of a supplement by the petitioner (received on June 3). Due to scheduling conflicts a teleconference with the petitioner was not completed until June 19. <sup>3</sup> Proposed DD issuance date was extended due to (1) a supplement to the petition, and a response from the licensee that were received within 2 weeks of the original due date; and (2) need for review of the proposed Director's Decision in light of a recent court ruling.
NRR	Davis Besse	08/25/03	9/17/03	10/07/03 43	2/05/04 121	4/22/04	
NRR	Indian Point	09/08/03	9/24/03	10/22/03 37	2/19/04 120	TBD	
NMSS	Sequoyah Fuels	11/19/03	01/28/04 <sup>1</sup>	2/26/04 97	TBD	TBD	<sup>1,2</sup> Commission action delayed initiation of petition review until 01/15/04.

- 1) Goal is to hold a PRB meeting, which the petitioner is invited to participate in, within 2 weeks of receipt of petition (there is often a delay of up two weeks from the date that the letter is issued until it is received by the reviewing organization).
- 2) Goal is to issue acknowledgment letter within 5 weeks of the date of incoming petition.
- 3) Goal is to issue proposed DD within 120 days of the acknowledgment letter.
- 4) Goal is to issue final DD within 45 days of the end of the comment period.

**Attachment 4**

**Average Days to Issuance of Proposed Directors Decisions**

