May 7, 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: MARCH/APRIL 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 April 30, 2004, there were five open petitions, which were accepted for review under the 2.206 process: three in the Office of Nuclear Reactor Regulation, and two in the Office of Nuclear Materials Safety and Safeguards.

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 April 30, 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/DLPM
415-1322

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415-1322

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| OFFICE | PM:PDI-1 | LA:PDI-1 | D:PDII | DD:DLPM | NMSS | ADPT:NRR |
|---|---|---|---|---|---|---|
| NAME | DSkay | SLittle* | HBerkow* | ELeeds* | PGoldberg* | BSheron |
| DATE | 5/3/04 | 4/21/04 | 4/21/04 | 4/27/04 | 4/26/04 | 5/4/04 |

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DISTRIBUTION FOR MARCH/APRIL 2004 REPORT ON THE STATUS OF PUBLIC PETITIONS UNDER TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*, SECTION 2.206

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## Status of Open Petitions

# Report on Status of Public Petitions Under 10 CFR 2.206

| | |
|---|---|
| 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: | 5/03/04 |
| 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.

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.

Current Status:

The staff made substantive changes to the proposed Director's Decision to reference the February 2004 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, the revised Director's Decision was sent back to FEMA for its review and comment. Therefore, the issuance date of the proposed Director's Decision has been extended to May 17, 2004.

| | |
|---|---|
| Facility: | Davis Besse |
| Petitioner: | David Lochbaum, Union of Concerned Scientists<br>James Riccio, Greenpeace<br>Paul Gunter, Nuclear Information & Resource Service |
| Date of Letter: | August 25, 2003 |
| EDO Number: | G20030508 |
| Proposed DD Issuance: | February 5, 2004 |
| Final DD Issuance | April 22, 2004 |
| Last Contact with Petitioner: | April 22, 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 was 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.

In a letter dated November 26, 2003, the NRC provided to the Petitioners its evaluation of their "immediate action" requests. The staff considered the Petitioners' requests to suspend the Davis-Besse license and prohibit plant restart until certain conditions have been met to be equivalent to "immediate action" requests because the Davis-Besse licensee might complete all necessary restart activities, and the NRC staff might complete all necessary oversight activities, before the staff could finalize the Director's Decision on this Petition. Requests 3, 4, and 5 in the Petitioners' August 25 letter were considered immediate action requests and were addressed in the November 26, 2003, letter.

The NRC sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment on February 5, 2004, addressing only the remaining two requests for action (Requests 1 and 2 of the August 25, 2003 Petition). Neither the Petitioners nor the licensee provided comments on the proposed Director's Decision.

Current Status/Remaining Actions:

The staff issued the final Director's Decision on April 22, 2004, addressing in final form the remaining two requests for action (Requests 1 and 2 of the August 25, 2003, Petition).

| | |
|---|---|
| Facility: | Indian Point Units 2 and 3 |
| Petitioner: | Alex Matthiessen, Riverkeeper<br>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 | June 18, 2004 |
| Last Contact with Petitioner: | March 30, 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.

The staff issued the proposed Director's Decision to the petitioner and the licensee on February 19, 2004.

Current Status:

The staff received comments on the proposed Decision from the Petitioner and a letter from Congressman Engel on March 30, 2004. The staff has prepared a response to Congressman Engel which was provided to the EDO on April 29, 2004. The staff will address the petitioner's comments in the final Decision which is scheduled to be issued by June 18, 2004.

| | |
|---|---|
| Facility: | Sequoyah Fuels |
| 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: | 12/31/06 |
| 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.

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.

Current Status:

The staff issued acknowledgment letters to the petitioners on March 2, 2004.

The staff anticipates that completion of the licensing action (review of the groundwater monitoring and corrective action plans) will take approximately 2 years. During this time, the staff will be working with the petitioners to understand their concerns and will consider the petitioners' issues while they evaluate the licensing action request. A decision regarding the 2.206 petition will be made before the staff makes a final decision on the license amendment request.

| | |
|---|---|
| Facility: | Radiac Research Corporation |
| Petitioner: | Michael Gerrard, representing Neighbors Against Garbage |
| Date of Petition: | November 4, 2003, as supplemented on February 27, 2004 |
| Director's Decision to be Issued by: | NMSS |
| EDO Number: | G20030681 |
| Proposed DD Issuance: | 4/30/04 |
| Final DD Issuance | TBD |
| Last Contact with Petitioner: | 4/27/04 |
| Petition Manager: | Charlie Cox |
| Case Attorney: | |

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.

Background:

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 on February 27, 2004, 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 staff issued a letter to the Community Board on March 30, 2004, indicating that it will consider the board's comments in its review of the application.

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.

Current Status:

The staff sent a letter to the petitioners on April 27, 2004, stating that the petition meets the criteria for review under 10 CFR 2.206.

## Status of Potential Petitions Under Consideration

| | |
|---|---|
| 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.

| | |
|---|---|
| Facility: | St. Lucie |
| Petitioner: | Thomas Saparito |
| Date of Letter: | January 25, 2004 |
| Responsible Office: | NRR |
| PRB meeting: | March 31, 2004 |

Issues/Actions requested:

That the NRC take immediate action to cause the cold shutdown of the St. Lucie nuclear power station, Unit 1 and request the NRC Office of the Inspector General to investigate circumstances of the events related to an exemption from Appendix R. The petitioner also requested that the NRC provide the public an opportunity to intervene at a public hearing to challenge its authorization of exemptions to Appendix R for St. Lucie.

Resolution:

The NRC staff attempted to contact the petitioner to provide him an opportunity to address the PRB and provide additional information. The petitioner did not reply to the staff's e-mails. The NRC determined that the petitioner did not provide a technical basis for its request to shutdown St. Lucie or order an investigation by OIG. In addition, the regulations do not allow for public hearings as part of the exemption process. Therefore, this will not be treated as 2.206 petition. The petitioner was notified of this decision.

| | |
|---|---|
| Facility: | Vermont Yankee |
| Petitioner: | Raymond Shadis |
| Date of Letter: | April 23, 2004 |
| Responsible Office: | NRR |
| PRB meeting: | May 5, 2004 |

Issues/Actions requested:

That the NRC order a halt to all fuel movement at Vermont Yankee until such time as the licensee has rendered an accurate and NRC verified account of the location, disposition, and condition of all irradiated fuel, including fuel currently loaded in the reactor core.

Resolution:

The Petition Review Board will hold a teleconference with the petitioner on May 5, 2004.

## AGE STATISTICS FOR AGENCY 2.206 PETITIONS

| ASSIGNED ACTION OFFICE | FACILITY | Incoming petition | PRB meeting[1] | Acknowledgment letter / days from incoming[2] | Proposed DD issuance Date/ age[3] | Scheduled date for final DD/ age [4] | Comments if not meeting the Agency's Completion Goals |
|---|---|---|---|---|---|---|---|
| NRR | Indian Point | 04/23/03 | 05/08/03 | (1) 07/03/03<br>70<br>(2) 12/15/03 | ~~10/31/03~~<br>~~01/09/04~~<br>~~2/26/04~~<br>5/17/04 | TBD | [2]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. [3]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<br>43 | 2/05/04<br>121 | 4/22/04 | |
| NRR | Indian Point | 09/08/03 | 9/24/03 | 10/22/03<br>37 | 2/19/04<br>120 | 6/18/04 | |
| NMSS | Sequoyah Fuels | 11/19/03 | 01/28/04[1] | 2/26/04<br>97 | 12/31/06 | TBD | [1,2]<br>Commission action delayed initiation of petition review until 01/15/04. |
| NMSS | Radiac Corp. | 11/04/03 | 2/20/04 | 4/27/04 | TBD | TBD | Due to scheduling difficulties, a meeting with the petitioner and licensee was delayed to 2/20/04. |

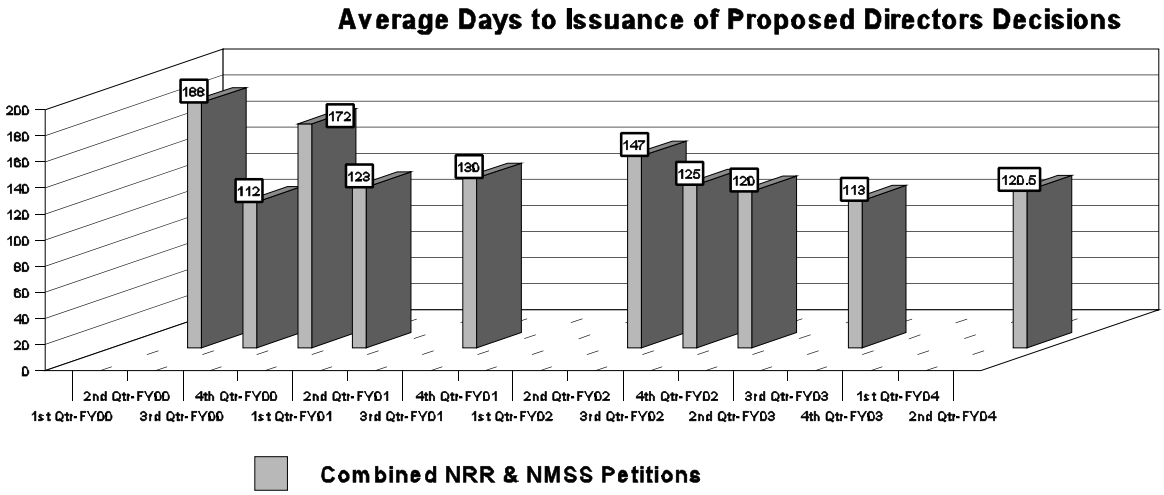
1) Goal is to hold a PRB meeting, which the petitioner is invited to participate in, within 2 weeks of receipt of petition (there is often a delay of up two weeks from the date that the letter is issued until it is received by the reviewing organization).

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 3




Attachment 4