

July 15, 2004

MEMORANDUM TO: Luis A. Reyes  
Executive Director for Operations

FROM: Brian W. Sheron, Associate Director  
for Project Licensing and Technical Analysis  
Office of Nuclear Reactor Regulation

SUBJECT: MAY/JUNE 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 June 30, 2004, there were four open petitions, which were accepted for review under the 2.206 process: two in the Office of Nuclear Reactor Regulation, and two in the Office of Nuclear Materials Safety and Safeguards. One final Director's Decision was issued in June 2004.

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 June 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  | NMSS      | ADPT:NRR |
| NAME   | DSkay    | SLittle  | HBerkow | PGoldberg | BSheron  |
| DATE   | 6/30/04  | 6/21/04  | 7/01/04 | 7/6/04    | 7/12/04  |

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

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SLittle

**Status of Open Petitions**

| <u>Facility</u>             | <u>Petitioner/EDO No.</u>   | <u>Page</u> |
|-----------------------------|---|-------------|
| Indian Point Units 2 and 3  | Richard Blumenthal, Attorney General<br>of the State of Connecticut<br>G20030216..... | 1           |
| Indian Point Units 2 and 3  | Riverkeeper<br>G20030545.....   | 3           |
| Vermont Yankee              | New England Coalition<br>G20040284.....   | 5           |
| Sequoyah Fuels              | Cherokee Nation and State of Oklahoma<br>G20030704.....                               | 6           |
| Radiac Research Corporation | Michael Gerrard<br>G20030681.....   | 7           |

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: 08/16/04  
Last Contact with Petitioner: 5/17/04  
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.

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.

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.

Current Status:

On May 17, 2004, the staff issued the proposed Director's Decision. The petitioner submitted comments by letter dated June 18, 2004.

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|                                      |  |
|--------------------------------------|--|
| Facility:                            | <u>Indian Point Units 2 and 3</u>  |
| Petitioner:                          | Alex Matthiessen, Riverkeeper<br>David Lochbaum, Union of Concerned Scientists |
| Date of Petition:                    | September 8, 2003, as supplemented on<br>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:        | June 18, 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.

The staff received comments on the proposed Decision from the Petitioner and a letter from Congressman Engel on March 30, 2004. The staff issued a response to Congressman Engel on April 29, 2004.

Current Status:

The staff issued the final Decision on June 18, 2004.

|                                      |                                       |
|--------------------------------------|---------------------------------------|
| Facility:                            | <u>Vermont Yankee</u>                 |
| Petitioner:                          | Raymond Shadis, New England Coalition |
| Date of Petition:                    | April 22, 2004                        |
| Director's Decision to be Issued by: | NRR                                   |
| EDO Number:                          | G20040284                             |
| Proposed DD Issuance:                | September 27, 2004                    |
| Final DD Issuance:                   | TBD                                   |
| Last Contact with Petitioner:        | May 28, 2004                          |
| Petition Manager:                    | Alan Wang                             |
| Case Attorney:                       | Steven Lewis                          |

Issues/Actions requested:

That the Nuclear Regulatory Commission (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.

Background:

On April 21, 2004, Vermont Yankee formally notified the NRC that two short spent fuel rod segments were not in the spent fuel pool in the location specified in documents. The segments are described as about 7 inches long and 17 inches long, respectively. Both are approximately the diameter of a pencil. These segments had been placed in a special container at the bottom of the spent fuel pool in 1980. The licensee initiated an investigation to attempt to locate the missing segments. On May 19, 2004, Entergy reported to the NRC that the visual inspection of the spent fuel pool was essentially complete. A camera search of the spent fuel pool did not detect the unaccounted for spent fuel rod segments.

Current Status:

The staff contacted the petitioner on April 28, 2004, to discuss the 2.206 process. Following this call, the NRC sent a letter to the petitioner notifying him that all fuel movements had been completed for the current refueling outage prior to the NRC's receipt of their petition. The staff concluded that the petitioner had not identified a safety concern that would prevent the plant from restarting.

The Petition Review Board (PRB) held a teleconference with the petitioner on May 5, 2004. During this teleconference, the petitioner clarified his request to exclude fuel movements associated with locating the missing fuel pin segments from the scope of his request. Following the teleconference, the PRB met in closed session and determined that the petition satisfied the criteria for review under the 2.206 process. An acknowledgement letter was issued to the petitioner on May 28, 2004.

The NRC determined that its Director's Decision would be based partly on the actions taken by the licensee to locate the missing fuel. The staff called the licensee on May 11, and discussed with them a request to document the actions they are taking and the results of these actions. The requests discussed in this phone call are discussed in a letter to Entergy dated May 21, 2004. By letter dated June 8, 2004, Entergy submitted its response to the NRC's request.

|           |                       |
|-----------|-----------------------|
| 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:                | 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.

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

Current Status:

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. Because of the time period anticipated to resolve his petition, the staff has informed the petitioner that status updates will be provided as necessary, but not necessarily be every 60 days as called for by NRC guidance.

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: 6/14/04  
Final DD Issuance: TBD  
Last Contact with Petitioner: 6/14/04  
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.

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.

Current Status:

On June 14, 2004, the staff issued a proposed Director's Decision to the petitioners. Comments are due by July 14, 2004.

## Status of Potential Petitions Under Consideration

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|                     |   |
|---------------------|---|
| Facility:           | All operating nuclear power plants            |
| Petitioner:         | David Lochbaum, Union of Concerned Scientists |
| Date of letter:     | May 14, 2004 (G20040350)                      |
| Responsible Office: | NRR   |
| PRB meeting:        | May 25, 2004                                  |

Issues/Actions requested:

That the Nuclear Regulatory Commission issue Confirmatory Orders to the licensees of all operating nuclear power reactors for all regulatory commitments placed on dockets between January 1, 2000, and June 30, 2004.

Status:

The Petition Review Board held a conference call with the petitioner on May 25, 2004. The NRC determined that the request did not meet the criteria of 10 CFR 2.206 and informed the petitioner of this decision. The reasons for this decision will be documented in a letter to the petitioner which is scheduled to be issued in July.

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|                     |                           |
|---------------------|---------------------------|
| Facility:           | Turkey Point, Unit 3      |
| Petitioner:         | Thomas Saparito           |
| Date of letter:     | June 10, 2004 (G20040393) |
| Responsible Office: | NRR                       |
| PRB meeting:        | June 24, 2004             |

Issues/Actions requested:

That the Nuclear Regulatory Commission order the shutdown of Turkey Point, Unit 3, and reinstate all safety inspection requirements in Order EA-03-009 in its entirety.

Status:

The PRB held a conference call with the petitioner on June 24, 2004. During this call, the petitioner provided additional information and indicated that he would supplement his petition. The staff will defer making a decision on whether the letter meets the criteria of 2.206 pending receipt and review of the additional information.

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|                     |                           |
|---------------------|---------------------------|
| Facility:           | Pilgrim                   |
| Petitioner:         | Mary Lampert              |
| Date of letter:     | June 12, 2004 (G20040422) |
| Responsible Office: | NRR                       |
| PRB meeting:        | July 1, 2004              |

Issues/Actions requested:

That the Nuclear Regulatory Commission require Pilgrim Nuclear Power Station to cease operations during a strike of its workers if a strike occurs.

Resolution:

The petitioner was contacted on June 29, 2004. The petitioner accepted an opportunity to address the PRB. This teleconference is scheduled for July 1, 2004.

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|                     |                           |
|---------------------|---------------------------|
| Facility:           | Vermont Yankee            |
| Petitioner:         | Michael Mulligan          |
| Date of letter:     | June 17, 2004 (G20040418) |
| Responsible Office: | NRR                       |
| PRB meeting:        | TBD                       |

Issues/Actions requested:

That the Nuclear Regulatory Commission ask for the resignation of Entergy CEO or the shutdown of all of Entergy's nuclear power plants.

Status:

The Petition Review Board met internally and determined that this request is more appropriately handled under the allegation process. The petitioner has been contacted and offered an opportunity to address the Board prior to its final determination.

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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.

Status:

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.

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### 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<br>70<br>(2) 12/15/03                      | <del>10/31/03</del><br><del>01/09/04</del><br><del>2/26/04</del><br>5/17/04<br>147 | 8/16/04                                       | <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.<br><sup>3</sup> Age of petition is calculated from date of second acknowledgment letter, less the time that the petition was with FEMA for review. |
| NRR                    | Indian Point   | 09/08/03          | 9/24/03                  | 10/22/03<br>37  | 2/19/04<br>120   | 6/18/04<br>complete                           |   |
| NMSS                   | Sequoyah Fuels | 11/19/03          | 01/28/04 <sup>1</sup>    | 2/26/04<br>97   | 12/31/06   | TBD   | <sup>1,2</sup><br>Commission action delayed initiation of petition review until 01/15/04.   |
| NMSS                   | Radiac Corp.   | 11/04/03          | 2/20/04                  | 4/27/04   | 6/14/04<br>49  | TBD   | Due to scheduling difficulties, a meeting with the petitioner and licensee was delayed to 2/20/04.  |
| NRR                    | Vermont Yankee | 4/22/04           | 5/11/04                  | 5/28/04<br>36   | 9/27/04  | TBD   |   |

- 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.

# Average Days to Issuance of Proposed Directors

