

January 12, 2006

MEMORANDUM TO: Luis A. Reyes  
Executive Director for Operations

FROM: Gary M. Holahan, Associate Director  
for Risk Assessment and New Projects  
Office of Nuclear Reactor Regulation

SUBJECT: DECEMBER 2005 REPORT ON THE STATUS OF PUBLIC PETITIONS  
UNDER TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*,  
SECTION 2.206

The enclosed report gives the status of petitions submitted under Title 10 of the *Code of Federal Regulations*, Section 2.206. As of December 31, 2005, there were two open petitions that were accepted for review under the 2.206 process in the Office of Nuclear Reactor Regulation (NRR). Two petitions were closed in December 2005. Information that has changed since the last monthly report is highlighted.

Enclosure 1 provides a detailed status of the open petitions.

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

Enclosure 3 shows the age statistics for the open 2.206 petitions as of December 31, 2005.

This report, Director's Decisions, and other 2.206-related documents are placed in the Agencywide Documents Access and Management System (ADAMS). In making these readily accessible to the public, the staff has identified another vehicle to address our performance goal of ensuring openness in our regulatory process.

Enclosures: As stated

CONTACT: Donna Williams, NRR/DPR  
301-415-1322

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OFFICIAL AGENCY RECORD

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

Date: January 12, 2006

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**Status of Open Petitions**

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All Plants that use Hemyc Fire Barrier	Nuclear Information and Resource Service G20050379.....	4
Vermont Yankee	Jonathan Block G20050706.....	5

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

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Facility:	<u>All Depleted Uranium Munition Licensees</u>
Petitioners:	James Salsman
Date of Petition:	April 3, 2005
Director's Decision to be Issued by:	NMSS
EDO Number:	G20050242
Proposed DD Issuance:	September 23, 2005
Final DD Issuance:	December 30, 2005
Last Contact with Petitioner:	December 30, 2005
Petition Manager:	Joe DeCicco
Case Attorney:	Giovanna Longo

### Issues/Actions requested:

That all licenses allowing the possession, transport, storage, or use of pyrophoric uranium munitions be modified to impose enforceable conditions on all such licensees in order to rectify their misconduct and any other corrective action as deemed proper.

The petition requests immediate action to correct the alleged misconduct on the part of uranium munitions licensees, for the protection of the health and safety of the public and the environment. This petition alleges gross negligence and other serious misconduct including fraud, willful wrongdoing, and a serious breach of the public trust, on the part of uranium munitions licensees and their officers, employees, contractors, and agents. This petition requests specific and identical modifications to all NRC licenses for the use, storage, transportation, or possession of pyrophoric uranium munitions, intended to correct uranium munitions licensees' misconduct. In particular, the petition requests:

- That all the provisions modifying said licenses be constructed with strict enforcement provisions, imposing substantial fines to fullest extent allowed by law, and immediate license suspensions or revocations if the uranium munitions licensees do not conform to the requirements of the corrective modifications to their licenses within short lengths of time;
- Immediate and sustained remediation and mitigation of conditions resulting from warfare and peacetime activities;
- The suspension of uranium munitions licenses, as modified, until licensees become compliant with the provisions of the modified licenses; and
- Any other corrective action as the Commission may deem proper.

### Background:

The petitioner claimed, as a basis for his request, negligence on the part of the licensees. Specifically, the licensees were unaware of the fact that uranium reacts with nitrogen, and there has been no attempt to detect hexavalent uranium, including uranium trioxide (UO<sub>3</sub>), in the combustion products of depleted uranium ordnance by the

Army. Because of this omission, the petitioner requests that all contemporary uranium ordnance safety studies be redone in order to determine the extent of uranyl nitrate combustion product emissions.

The petitioner submitted an original petition dated April 3, 2005, via email. The last supplement to the petition was submitted May 4, 2005, immediately after discussing the petition with the Petition Review Board (PRB) in a public meeting via teleconference.

The NRC issued a letter to the petitioner on May 26, 2005, informing him that his concerns will be addressed through the 2.206 process. The letter also informs the petitioner that the NRC did not see a need to take the immediate action requested in the petition.

The Notification of Receipt of a 2.206 Petition was published in the *Federal Register* on June 6, 2006 (70 FR 32661). The NRC notified the licensees, via a letter, of the receipt of the 2.206 petition on June 10, 2005, inviting the licensees to respond to the safety concerns, expressed by the petitioner, within their organization's area of responsibility.

The staff received responses to the June 10, 2005, letter from three licensees which address issues in the petition.

A proposed Director's Decision was sent to the petitioner and the involved licensees on

September 23, 2005. In its proposed Decision, the NRC staff requested that comments be submitted by October 21, 2005. Comments were received from the petitioner and two licensees.

Current Status:

The staff issued a final Decision on December 30, 2005.

Facility:	<u>Vermont Yankee</u>
Petitioner:	Ray Shadis, representing New England Coalition
Date of Petition:	May 3, 2005
Director's Decision to be Issued by:	NRR
EDO Number:	G20050360
Proposed DD Issuance:	October 11, 2005
Final DD Issuance:	December 23, 2005
Last Contact with Petitioner:	December 23, 2005
Petition Manager:	Stew Bailey
Case Attorney:	Giovonna Longo

Issues/Actions requested:

That the NRC:

- Require Entergy to conduct a review at Vermont Yankee (VY) to determine the type, amount, application, and placement of Hemyc fire barrier material; and an assessment of the safety significance of each application;
- Require Entergy to promptly provide justification for operation in non-conformance with 10 CFR Part 50, Appendix R;
- Upon a finding that VY is operating in an unanalyzed condition, order a power reduction until such time as it can be demonstrated that VY is operating in conformance with Appendix R and all other applicable regulations.

Background:

The PRB held a teleconference with the petitioner on May 17, 2005. In this teleconference, the petitioner stated that he wished to expand the scope of his request to include all fire protection systems at VY, not only Hemyc.

The NRC issued a letter to the petitioner on June 15, 2005, informing him that the petition has been accepted for review under the 10 CFR 2.206 process. However, in its letter, the staff stated that the petitioner had not provided sufficient basis for the staff to expand the scope of the petition beyond that documented in the May 3, 2005, letter. In addition, the staff denied the request for immediate action, stating that continued plant operation, while the Hemyc applications are being removed and replaced, will not pose an undue risk to public health and safety.

On August 17, 2005, the licensee submitted a letter describing their plans with regard to removal of Hemyc material at VY.

The NRC staff issued a proposed Decision on October 11, 2005, and requested that comments be submitted by November 10, 2005. No comments were received.

Current Status:

**The staff issued the final Decision on December 23, 2005.**

Facilities: Shearon Harris; H.B. Robinson, Unit 2; McGuire.

Units 1 and 2; Catawba, Units 1 and 2; Ginna; FitzPatrick; Indian Point, Units 2 and 3; Vermont Yankee; Waterford; and Arkansas Nuclear One, Units 1 and 2

Petitioners: Nuclear Information and Resource Service and others  
Date of Petition: May 12, 2005  
Director's Decision to be Issued by: NRR  
EDO Number: G20050379  
Proposed DD Issuance: October 20, 2005  
Planned Final DD Issuance: January 9, 2006  
Last Contact with Petitioner: October 20, 2005  
Petition Manager: Chandu Patel  
Case Attorney: Giovanna Longo

Issues/Actions requested:

That the NRC:

- Issue a generic communication to the named reactor sites to determine the extent of condition of inoperable fire barriers;
- The generic communication should require that the named sites provide justification for operation in non-compliance with all applicable fire protection regulations; and
- With the determination that any of the named sites are operating in an unanalyzed condition or that assurance of public health and safety is degraded, NRC will order a suspension of the license or a power reduction of the affected reactors until it can be demonstrated that the licensees are operating in conformance with all applicable fire protection regulations.

Background:

The PRB held a meeting with the petitioners on June 1, 2005, in which the petitioners provided additional information to support their requests.

The NRC issued a letter to the petitioner on June 27, 2005, informing them that the petition has been accepted for review under the 10 CFR 2.206 process. In its letter, the staff denied the request for immediate action, stating that continued plant operation, while corrective actions are being implemented, will not pose an undue risk to public health and safety. These corrective actions could include: (1) implementing plant modifications such as replacing the Hemyc or MT fire barriers with an appropriately rated fire barrier material, upgrading the Hemyc or MT to a rated barrier, or rerouting cables or instrumentation lines through another fire area; or (2) performing a technical evaluation that considers defense-in-depth and safety margins. A proposed Director's Decision was issued on October 20, 2005, and comments were requested by November 29, 2005. As of December 31, 2005, no comments had been received.

Current Status:

The staff plans to issue the final Director's Decision by January 9, 2006.

Facilities:	<u>Vermont Yankee</u>
Petitioners:	Jonathan Block
Date of Petition:	October 11, 2005
Director's Decision to be Issued by:	NRR
EDO Number:	G20050706
Proposed DD Issuance:	December 7, 2005
Planned Final DD Issuance:	February 23, 2006
Last Contact with Petitioner:	December 7, 2005
Petition Manager:	Jim Shea
Case Attorney:	Giovonna Longo

Issues/Actions requested:

That the NRC issue an emergency order for a temporary closure or de-rating of the Vermont Yankee Nuclear Power Station (VY) as a result of flood damage to the city of Keene, town of Hinsdale in New Hampshire, and other portions of New Hampshire that are part of existing evacuation routes for VY and are within the effluent pathway in an emergency event.

Background:

During a telephone conversation with the petition manager on October 18, 2005, the petitioner informed the staff that he had received information from FEMA regarding the State of New Hampshire's awareness of evacuation issues at the time of the flooding and that alternate routes had been evaluated. Therefore the staff determined that the emergency request for temporary plant closure or de-rating was not necessary and was subsequently denied by the NRC's Petition Review Board (PRB). The petitioner further emphasized his broader concern regarding demonstration that FEMA and the State of New Hampshire actually have plans for an evacuation if an event occurred at VY simultaneously with a natural disaster such as the recent flooding. During the call, the petition manager informed the petitioner that his request met the criteria for review under 10 CFR 2.206. The petitioner was offered an invitation to address the PRB with additional information to support the petition but declined.

Current Status:

A combined acknowledgement letter and proposed Director's Decision was issued on December 7, 2005. The letter requested comments within 30 days. As of December 31, 2005, no comments had been received.

## Status of Potential Petitions Under Consideration

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Facility: Nine Mile Point  
Petitioner: Robert Norway  
Date of Petition: October 10, 2005  
EDO Number: G20050726  
PRB meeting: None requested

### Issues/Actions requested:

The petitioner is requesting that the NRC fully redact the individual's name from the documentation associated with Enforcement Action EA-96-116 and the corresponding May 10, 1996, enforcement conference that the NRC had placed in the public domain.

### Current Status:

The PRB determined that this petition does not meet the criteria of 10 CFR 2.206 because the petitioner has not requested an enforcement action against the licensee. **A letter was issued to the petitioner on December 21, 2005, informing him of the staff's decision. The petitioner's concern has been referred to the Office of Enforcement for resolution.**

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Facility: Peach Bottom and Three Mile Island  
Petitioner: Eric Epstein  
Date of Petition: November 18, 2005  
EDO Number: G20050793  
PRB meeting: **February 21, 2006**

### Issues/Actions requested:

The petitioner is requesting that the NRC issue a Demand for Information to Exelon Generation Company, requiring them to demonstrate that emergency preparedness planning for day care and nursery school populations within each facilities' Emergency Planning Zone is adequate or that adequate interim compensatory actions have been taken. The petitioner also requests that the indirect license transfers associated with the PSEG-Exelon merger be held in abeyance until the licensees can demonstrate compliance with the licenses with regards to emergency planning.

### Current Status:

**The petitioner addressed the PRB during a teleconference on December 21, 2005. The staff is reviewing the additional information obtained during the teleconference.**

**AGE STATISTICS FOR AGENCY 2.206 PETITIONS**

Assigned Action Office	FACILITY/ Petitioner	Incoming petition	PRB meeting <sup>1</sup>	Acknowledgment letter/days from incoming <sup>2</sup>	Proposed DD issuance Date/age <sup>3</sup>	Date for final DD/age <sup>4</sup>	Comments if not meeting the Agency's Completion Goals
NMSS	All Depleted Uranium Munition Licensees/ James Salsman	4/03/05	5/04/05	5/26/05 52	9/23/2005 120	12/30/05 68	
NRR	Vermont Yankee/ Ray Shadis	5/03/05	5/17/05	6/15/05 43	10/11/05 118	12/23/05 42	
NRR	All plants that use Hemyc fire barrier/ NIRS	5/12/05	6/01/05	6/27/05 33	10/20/05 115	01/09/06	
NRR	Vermont Yankee/ Jonathan Block	10/11/05	N/A	11/30/05 28	12/07/05 57	2/23/06	

- 1) Goal is to hold a PRB meeting, which the petitioner is invited to participate in, within 2 weeks of receipt of petition.
- 2) Goal is to issue acknowledgment letter within 35 days 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.