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RE Drones

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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10 CFR 2.206 PETITION REVIEW BOARD (PRB)

CONFERENCE CALL

RE

PETITION ON DRONES

+ + + + +

Thursday,

January 14, 2016

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The conference call was held, Mirela Gavrilas, Chairperson of the Petition Review Board, presiding.

PETITIONER: THOMAS SAPORITO

PETITION REVIEW BOARD MEMBERS:

MERRILEE BANIC, Petition Manager for 2.206

petition

CHRISTOPHER RYDER, License and Project  
Manager,

Office of Nuclear Material Safety and  
Safeguards

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DAVID FURST, Senior Enforcement Specialist,  
Office of Enforcement

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## P R O C E E D I N G S

11:29 a.m.

MS. BANIC: Welcome to you all. My name is Merrilee Banic. And I am the NRC Petition Manager for this Petition.

We are here today to allow the Petitioner, Thomas Saporito, to address the Petition Review Board regarding his 2.206 Petition dated July 30, 2015.

As part of the Petition Review Board's or PRB's review of this Petition, Mr. Saporito has requested this opportunity to address the PRB. This meeting is scheduled from 11:30 a.m. to 12:30 p.m.

The meeting is being recorded by the NRC Operations Center and will be transcribed by a court reporter.

The transcript will become a supplement to the Petition. The transcript will also be made publicly available.

I'd like to open this meeting with

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introductions. The PRB Chair is Mirela Gavrilas. I'd like the rest of the Petition Review Board to introduce themselves.

As we go around the room, please be sure to state your name, position, and the office you work for in the NRC for the record. I'll start off.

My name is Merrilee Banic, Petition Manager for this 2.206 Petition.

MR. RIDER: Christopher Ryder. Licensing Project Manager, Office of Nuclear Materials Safety and Safeguards.

MR. ALLSTON: Dennis Allston. Intelligence Analyst, Intelligence Liaison for Assessment Branch.

MR. CARPENTER: Robert Carpenter. Office of the General Counsel.

MS. SIERACKI: Alexa Sieracki. Office of Nuclear Material Safety and Safeguards.

MS. TFAZZOLI: Sheiba Tafazzoli. NMSS.

MS. BANIC: Okay. We've completed introductions here in the room. Are there any NRC participants on the phone?

MR. BURST: Yes. David Furst. Senior Enforcement Specialist, Office of Enforcement.

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MS. BANIC: Is the court reporter on the line?

COURT REPORTER: Yes, ma'am.

MS. BANIC: Court reporter?

COURT REPORTER: Yes, hello.

MS. BANIC: Thank you. Since this Petition applies to multiple licensees and there may be many licensees on the phone, instead of each of you introducing yourselves now, I would like each of you to email your names, positions, and organization to me.

And likewise for the public. It's not required for members of the public to introduce themselves. But, if there are any on the phone that wish to do so, email me your name, position, and organization.

And my email is merrilee.banic, spelled M-E-R-R-I-L-E-E B-A-N-I-C at NRC.gov.

Mr. Saporito, would you please introduce yourself for the record?

MR. SAPORITO: My name is Thomas Saporito. I'm representing Saporodani Associates. And I'm the Petitioner in this proceeding.

MS. BANIC: Thank you. I'd like to

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emphasize that we each need to speak clearly and loudly to make sure that the court reporter can accurately transcribe this meeting. If you have something that you would like to say, please state your name for the record.

We also ask you to minimize any side conversations. And we will try to have only one speaker at a time. Licensees will have an opportunity to ask the Petitioner questions after his presentation.

For those dialing into the meeting, please remember to mute your phones to minimize any background noise or distraction. If you do not have a mute button, this can be done by pressing star six. To unmute, press star six again.

At this time, I'll turn it over to the PRB Chair, Mirela Gavrilas.

MS. GAVRILAS: Thanks Lee. Welcome to this meeting regarding the 2.206 Petition submitted by Mr. Saporito.

I'd like to first share some background on our process. Section 2.206 of Title 10 of the Code of Federal Regulations describes the Petition process.

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The primary mechanism for the public to request enforcement action by the NRC in a public process. This process permits anyone to petition the NRC to take enforcement type action related to NRC licensees or licensed activities.

Depending on the results of this evaluation, NRC could modify, suspend or revoke an NRC issued license or take any other appropriate enforcement action to resolve a problem.

The NRC staff guidance for the disposition of 2.206 Petition is in Management Directive 8.11, which is publically available.

The purpose of today's meeting is to give the Petitioner an opportunity to provide any additional explanation or support for the petition before the Petition Review Board's initial consideration and recommendation.

This meeting is not a hearing. Nor is it an opportunity for the Petitioner to question or examine the PRB on the merits of the issues presented in the Petition Request.

No decisions regarding the merits of this Petition will be made at this meeting. Following this meeting, the Petition Review Board

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will conduct its internal deliberation. The outcome of this internal meeting will be discussed with the Petitioner.

The Petition Review Board typically exists of a Chairman, usually a manager at senior executive service level at the NRC. It has a Petition Manager and the PRB Coordinator.

Other members of the Board are determined by the NRC staff based on the content of the information in the Petition request. The members have already introduced themselves.

As described in our process, the NRC staff may ask clarifying questions in order to better understand the Petitioner's presentation and to reach a reasoned decision whether to accept or reject the Petitioner's request for review under the 2.206 process.

Also as described in our process, the licensees have been invited to participate in today's meeting to ensure that they understand the concerns about their facility or activities.

While the licensees may also ask questions to clarify the issues raised by the Petitioner, I want to stress that the licensees are

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not part of the PRB's decision making process. Licensees will have an opportunity to ask the Petitioner questions after his presentation.

I would like to summarize the scope of the Petition under consideration and the NRC activities to date.

On July 30, 2015 during the transcribed teleconference supplementing a Petition on fracking, you, the Petitioner, requested enforcement action be taken to require licensees to respond on how they could prevent drone attacks.

The Petition applies to licensees of operating reactor licenses and/or facilities, and of facilities that may not be currently operating, but continue to store nuclear fuel at the facility.

On September 8, 2015 the Petition Manager for fracking, Perry Buckberg, informed you by email that the PRB decided that your request would be treated as a separate petition. Merrilee Banic was assigned as Petition Manager for the drone issue.

On September 25, 2015 the Petition Manager offered you an opportunity to address the PRB prior to its internal meeting to make initial

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recommendations to accept or reject the Petition for Review. You accepted the opportunity on the same day.

On October 18, 2015 you supplemented your Petition by email. On October 20, 2015 you addressed the PRB by teleconference.

On January 5, 2016 the Petition Manager informed you by email that the PRB was recommending rejection of your Petition and offered you a second opportunity to address the PRB.

The reasons for rejection were that the NRC defers responsibility for regulating aircraft to the Federal Aviation Administration, FAA.

49 USC Title 40.103, requires the FAA to regulate aircraft operations, including those of unmanned aircraft systems, UASs, conducted in the national airspace, to protect persons and property on the ground and to prevent collisions between aircraft and other aircraft or objects.

Moreover, NRC staff continually reviews emerging threats to NRC licensed facilities and makes prompt recommendations to the Commission when a specific attack mode is not addressed by the provision of the designed basic threat.

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Specific emerging attack methods are evaluated for their destructive capability, the consequences of the attack and the interest demonstrated by domestic and international terrorist groups to use the methods in an attack against NRC licensed facilities.

As part of its analysis, NRC staff also studies the ability of a terrorist group to plan, organize and successfully execute the specific attacks against an NRC licensed facility.

You replied on the same date that you strongly disagree with the NRC's conclusion that the FAA has requisite responsibility to protect commercial, nuclear power facilities from drone attacks, and asked to address the PRB a second time.

As a reminder, for the phone participants, please identify yourself if you make any remarks as this will help us in preparation of a meeting transcript that will be made publically available.

Since this is a public meeting, I would like to remind the meeting participants not to discuss any NRC sensitive or proprietary information during today's meeting.

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Mr. Saporito, I'll turn it over to you to allow you the opportunity to provide information you believe the PRB should consider as part of this Petition. You have about 40 minutes for your presentation.

MR. SAPORITO: All right. Thank you, Ms. Chairperson. For the record, my name is Thomas Saporito, representing Saporodani Associates and myself. I am the Petitioner in this proceeding.

As the Chairman -- Chairperson stated on the record, the NRC recently rejected taking action on my enforcement Petition. And specifically on January 5, 2016, Merrilee Banic sent me an email.

And within the context of that email, the relevant portion of the email states, the concerns you raised were evaluated in rule makings for the design basis threat, 10 CFR 73, Physical Protection of Plants and Material, (72 FR 12705, March 19, 2007)

and the final rule for 10 CFR, Parts 50, 52, 72 and 73, in parenthesis 74 FR 13926, March 27, 2009 -- rests with other Federal Government organizations.

The Commission explicitly addressed security plan provisions, noting that protection of

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NRC licensed facilities against aircraft attacks is beyond the scope of a licensee's obligation.

And for the record, I emphasize the words against aircraft attacks. And the next paragraph it says, therefore, the Petition Review Board, PRB, recommends that the Petition be rejected because the NRC has previously considered and addressed your concerns.

Specifically, the NRC defers responsibility for regulating aircraft to the Federal Aviation Administration, FAA. 49 USC, Part 40103, requires the FAA to regulate aircraft operations, including those of unmanned aircraft systems (or UAS), conducted in the national airspace to protect persons and property on the ground, and to prevent collisions between aircraft and other aircraft or objects.

Now, again for the record, I strenuously object and disagree with the NRC's position. The FAA has no responsibility for the hobby drones identified in the Enforcement Petition under any FAA regulation, under any Federal Register notice whatsoever.

I'll go into detail and explain that.

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And this appears to me this is just a lax attitude within the NRC to be dismissive of Enforcement Petitions filed by members of the public under Section 2.206 of the Federal Regulations under 10 CFR.

And on this basis alone, I request on the record that a copy of the entire record with exhibits and all documents that I submitted to the NRC with respect to this Enforcement Petition, be submitted to the NRC Office of the Inspector General and that the agency can make a meaningful determination as to whether the NRC acted appropriately or inappropriately in this matter.

Now, with that said, I want to talk about, since this is a public meeting, give some background to the reason I filed this Enforcement Petition.

First of all, the United States of America is at war with radical Islamic terrorists. And that's been documented by a number of members of Congress publically.

These individuals -- and that's not the only organization. There's Al Qaeda that's still active and a number of terrorist organizations are

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operating.

But specifically, ISIS or ISIL, or whatever you want to call these people, these radicalized Islamic Muslim people, are in the United States of America. They are sleepers.

The FBI has testified to the United States Congress as such. And the Director of the FBI, James Comey has testified under oath to the Congress that there's a problem with the vetting process in the United States where individuals with bad intentions, terrorists, are being -- are coming into the United States to do harm to Americans.

Recently in California, terrorist killed numerous people. And in Paris, terrorists attacked that city. The ISIS people have actually made a video saying they're coming to Washington, D.C., and they're going to attack Washington, D.C. and New York City.

And there was recently an attack by a terrorist in Philadelphia last week. The individual walked up to a police car and actually discharged 14 rounds into that police car, striking that police officer.

Fortunately, he was not killed. But he

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was seriously injured. And it goes on and on and on. Almost on a weekly basis we hear about terrorist attacks.

And there are more and more of these instances in the United States now. Also, we had an individual who worked for the United States Post Office who decided to fly a gyrocopter into Washington, D.C. and he landed it on the lawn of the White House.

And the reason I bring that up is because that was undetected by the United States Government. And that could have been a terrorist. And very harmful things could have happened out of that incident had it been a terrorist.

So, getting back to the drones, first of all, for the purpose of this Enforcement Petition, and to be perfectly clear to the NRC members of this Petition Review Board, the term drone is defined as a hobby drone in this Petition.

That's what's meant, hobby drone. It's not a commercial drone or a military drone. And as the NRC is certainly aware, the United States military has drones that they operate by remote control and attack bad people in other countries,

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terrorist.

And that's not the type of drone I'm talking about. There are also commercial drones like are being manufactured by the Amazon company.

And I believe Federal Express and UPS are engaged in these practices where they're wanting to take this -- deliver packages with this huge drone, which is more than 55 pounds. And they want to go ahead and deliver packages to people's homes.

So, those are commercial drones. And that's not what I'm talking about. I'm talking about a hobby drone.

And I'll get more into discussion of what that means. But, for the purpose of this Petition, and to educate the public a little bit, how could these hobby drones compromise a nuclear reactor in the United States of America?

Well, very simply. These hobby drones first of all, recently -- last year, I believe it was last year, and I've already addressed this to the NRC once, an engineering student out in the western part of the United States, he designed a hobby drone, he mounted a handgun to it.

He made the drone go airborne. And he

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discharged that handgun numerous times by remote control. This is a hobby drone with a handgun attached to it.

Could you imagine flying that type of a drone into a nuclear plant and just start shooting security people so that a terrorist group could come in there and try to take over the nuclear plant? Or blow the nuclear plant up?

How else could a drone compromise a nuclear plant? Well, every 18 months or so, the nuclear reactor has to be shut down by the licensee to refuel a portion of the nuclear reactor's core. And when that happens, other maintenance activities have to take place. And they open this big hatch on the side of the nuclear reactor containment building. It's an equipment hatch. It's huge. And they remove that so that they can do maintenance to other parts of the equipment inside that containment building. So, when that hatch is open, that's when the nuclear reactor is most vulnerable. A terrorist could fly one or more drones into that containment building and just detonate them.

And they could -- you could compromise the integrity of the nuclear reactor vessel. You're

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certainly going to compromise the containment building.

And you could expel nuclear reactor particles into the environment for thousands of miles. And contaminate those areas and potentially kill Americans depending on the dosages that were released and if they were ingested.

And if you just look at some -- where these nuclear plants are located, like, Phoenix, Arizona has a triple reactor site. It's one of the largest, if not the largest in the United States. And it's only 50 miles from downtown Phoenix, Arizona.

In Miami, you have two nuclear reactors operating down there within 50 miles of the city of Miami. So, you're talking about hundreds of thousands of people that could get harmed.

New York City, well there's nuclear reactors all within reach of New York City. And that would be devastating. It would take out the financial district. New York City -- well probably Washington, D.C.

So, the threats are real. Okay? They could fly these drones in there and blow up the

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spent fuel storage facilities.

Again, you're going to dispense highly enriched -- highly radioactive materials into the environment. Depending on the intensity of the explosion and then how high the particles go into the air currents, who knows where they're going to end up? And you could fly these drones into switch yards, electrical switch yards. They don't even have to be the switch yards of a nuclear plant. They could be located outside of the nuclear plant. You take out these switch yards, it's going to cause a tripping effect on the electric grid. When these power plants are all running, there's like a -- what's called a fly-well effect. An electrical fly-well effect. And when you take out these switch yards, it disrupts that fly-well, and it starts tripping plants off the line down from that. And that happened.

Turkey Point Nuclear Plant, both reactors were tripped off line several years ago when an engine -- it was a human error by an engineer concerning a certain relay at a substation.

But these threats are real. And you could actually compromise the entire national

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electric grid just by disrupting or blowing up these substations, depending on where they're located across the United States.

So, it's a very real threat. If you take out the electric grid, the NRC antenna should go up because you're not going to be able to supply offsite power to keep the water flow, cooling water going through the nuclear reactor core to keep those reactors from melting down.

At all, there's approximately 100 operating reactors around the United States. And you have diesel generators, but they're under-limited by the amount of fuel.

So, you know, after three or four or five days, maybe a week, when there's no more fuel, and there's a problem getting fuel to all these reactors at the same time, you're going to have a real problem.

Now, I want to get back to the NRC's reason for dismissal. They talk about -- they mention, as I read that into the record, they mentioned the Federal Register, the March 27, 2009 Rules and Regulations.

Okay, well there's no mention of drones

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in that document. Let me repeat that. There is no mention of drones in that document.

So, the NRC's reliance on that document to deny this Petition is facetious. It's not factual. Simply untrue and not credible.

And then they talk about the FAA under Title 49. Again, there's no mention of drones in that document.

So the NRC's reliance on that document to deny the Petition is facetious, untrue, not credible, and obviously someone in the NRC is not reading these referenced documents that they're citing to deny this Petition.

So, on the basis that the NRC's reasons for denying the Petition are frivolous and not true, the NRC's action in denying Petitions are called under question. And should be the subject of an NRC Office of the Inspector General Investigation as to whether the NRC's actions were appropriate to this extent.

Now, let's talk about the FAA in more detail. The NRC relied on Section 336, the special rule for -- under the FAA.

They say FAA has authority, you know, to

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protect the public. And the NRC relies on them. But they are relying -- the NRC's reliance is with respect to aircraft.

Aircraft. That's the definition given in those documents referenced by the NRC. It's aircraft. That means that an airplane people get into and they travel in, that's an aircraft.

You know, if I go to an airport and rent an airplane and get into it and fly, that's an aircraft. The Petition, the Enforcement Petition talks about drones.

Hobby drones. Not commercial drones. And not military drones. Hobby drones. So, if you read Section 226, it says a special rule for model aircraft.

Subpart A in general notwithstanding any other provision of the law relating to the incorporation of unmanned aircraft systems into Federal Aviation Administration plans and policies, including this subtitle, the Administrator of the Federal Aviation Administration may not promulgate any rule or regulation regarding a model aircraft or an aircraft being developed as a model aircraft.

So, the FAA has not the authority. Now

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these are -- this rule I just read you, these are only proposed rules.

Okay, these -- there is no rule on the books today under the FAA where the Administrator of the FAA has any authority over model or hobby type drones which are the subject of the Enforcement Petition.

So, even if these rules are adopted by the FAA at a later date, the FAA still, as I just read into the record, has no authority to regulate or otherwise restrict the operation of hobby drones or model aircraft if you will, under the law.

So, the NRC is totally and absolutely wrong when they rely on the regulations in the paragraphs that were stated in that email that I read into the record. That was submitted to me by the Project Manager, Merrilee Banic, because they're incorrect.

They're in -- they may be -- the statements in there may be correct. But they're -- with respect to -- denying the Petition on the basis of those statements, incorrect because they reference an aircraft that is not the subject of this Petition, which addresses a hobby drone model

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type of aircraft, if you will.

And so, the Petition must stand as valid as a matter of law. And the NRC must accept the Petition as a matter of law under the rules and regulations of the NRC's own authority under 10 CFR 2.206.

And I think that's clear and it's on the face. And that's subject to -- that's also a request that here on the record, that the NRC Office of the Inspector General look into that situation.

As to why the NRC would deny this Petition based on rules and regulations that aren't even -- that address the subject matter of the Petition, which is a hobby drone or a model aircraft if you will.

And on that basis, let me just check to make sure I got everything here. Yes. Okay.

And on that basis, I'll turn it back over to the Chairperson, and if you [have any questions] -- and I'll be certainly glad to answer them to the best of my ability.

MS. GAVRILAS: Thank you, Mr. Saporito. I'm going to pass it back to Lee Banic.

MS. BANIC: Thank you, Mr. Saporito. At

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this time, does the staff here at Headquarters have any questions for Mr. Saporito?

(No response)

MS. BANIC: No questions. Do any NRC staff on the phone have any questions for Mr. Saporito?

(No response)

MS. BANIC: Does any licensee of an operating nuclear plant have any questions?

(No response)

MS. BANIC: Does any licensed or nuclear plant not currently operating have any questions?

(No response)

MS. BANIC: Before I conclude the meeting, members of the public may provide comments regarding the Petition and ask questions regarding about the 2.206 Petition process.

However, as stated in the opening, the purpose of this meeting is not to provide an opportunity for the Petitioner or the public to question or examine the PRB regarding the merits of the Petition.

(No response)

MS. BANIC: Mr. Saporito, thank you for

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taking the time to provide the NRC staff with clarifying information on the Petition you submitted.

MR. SAPORITO: All right, thank you.

MS. BANIC: Before we close, does the court reporter need any additional information for the transcript? I can email the court reporter the spellings of any names you might need.

COURT REPORTER: Hi, yes. I think a few of the names in the beginning that we mentioned, I would need spellings on.

If there's an email address that I can reach you at, I could shoot you over the names. And then if you want to respond to that, that would be best I think.

MS. BANIC: Okay. I provided the email address earlier.

COURT REPORTER: Yes. I can -- oh, yes. Actually I can shoot you an email there right now.

MS. BANIC: Okay. Thank you.

COURT REPORTER: Thank you.

MS. BANIC: With that this meeting is concluded and we will be terminating the phone connection.

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(Whereupon, the above-entitled matter  
went off the record at 12:00 p.m.)

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