

NO. 19-72670

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In re PUBLIC WATCHDOGS

PUBLIC WATCHDOGS,

Petitioners,

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION,

Respondent.

**SUPPLEMENTAL DECLARATION IN SUPPORT OF
EMERGENCY PETITION FOR WRIT OF MANDAMUS TO THE
NUCLEAR REGULATORY COMMISSION**

CHARLES G. LA BELLA
ERIC J. BESTE
BARNES & THORNBURG LLP
655 WEST BROADWAY, SUITE 900
SAN DIEGO, CA 92101
TELEPHONE: 619-321-5000
FACSIMILE: 310-284-3894
Attorneys for Public Watchdogs

COMES NOW Petitioner Public Watchdogs and hereby submits this Supplemental Declaration in Support of Emergency Petition for Writ of Mandamus (“Emergency Petition”). This Supplemental Declaration

provides updated information about the status of the administrative proceeding before the Nuclear Regulatory Commission (“NRC”), which is the subject of the Emergency Petition. Specifically, on October 23, 2019—two days after the Emergency Petition was filed with this Court—the NRC acknowledged receipt of the Petition filed on September 24, 2019, pursuant to 10 C.F.R. § 2.206 (“2.206 Petition”). On October 25, 2019, the NRC notified Petitioner of its decision to deny the request for immediate relief, but to continue evaluating the 2.206 Petition to determine whether it meets the “acceptance criteria for review.” The NRC provided no timeline for making that “initial determination,” and made clear that it had not even reviewed the exhibits submitted in support of the Petition.¹ Copies of the email communications with the NRC are attached as Exhibit A to the Supplemental Declaration.

As the NRC has denied Petitioner’s request to immediately suspend the movement and burial of spent nuclear fuel at San Onofre Nuclear

¹ The more than 1500 pages of exhibits were submitted to the NRC by way of an electronic file sharing platform on the same day the 2.206 Petition was submitted (September 24, 2019). The NRC contends that such a submission was not “in writing,” and asked for the documents to be resubmitted via email. The laborious process of resubmitting the exhibits in separate emails was completed on October 30, 2019.

Generating Stations (“SONGS”), the justification for seeking immediate relief through the Emergency Petition is even greater. Indeed, now that the NRC has said it will not even *consider* stopping the dangerous activities at SONGS until some unspecified point in the future when its “initial review” is complete, extraordinary mandamus relief from this Court is warranted.

Dated: October 30, 2019

Respectfully submitted,
BARNES & THORNBURG LLP

By: /s/ Eric J. Beste
Charles G. La Bella
Eric J. Beste
Attorneys for Plaintiff
PUBLIC WATCHDOGS

DECLARATION OF ERIC J. BESTE

I, Eric J. Beste, do hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

1. I am an attorney licensed in the State of California and admitted to practice before the United States Court of Appeals for the Ninth Circuit. I am one of the attorneys at Barnes & Thornburg LLP representing Petitioner Public Watchdogs in connection with the Emergency Petition for Writ of Mandamus filed in *In Re Public Watchdogs*, Case No. 19-72670 (9th Cir. Oct. 21, 2019).

2. On September 24, 2019, a colleague at Barnes & Thornburg sent emails to the Nuclear Regulatory Commission (“NRC”) attaching a petition under 10 C.F.R. §2.206 (“2.206 Petition”) on behalf of Public Watchdogs, and a link to the exhibits in support, which spanned more than 1,500 pages. A true and correct copy of these emails are attached.

3. On October 23, 2019, the NRC sent counsel for Public Watchdogs an email acknowledging receipt of the 2.206 Petition. This email did not indicate that the exhibits referenced throughout the 2.206 Petition had not be received by the NRC; however, out of an abundance

of caution, I responded the same day to remind the NRC that exhibits were available for download by the NRC. On October 25, 2019, the NRC emailed again, notifying us that Petitioner's request for injunctive relief "does not warrant immediate action," and that the merits of the petition were under review. The NRC also advised that it had not considered any exhibits to the 2.206 Petition because they were not submitted "in writing," and that such documents should be submitted via email. True and correct copies of the emails described above are attached hereto.

4. On October 30, 2019, a colleague at Barnes & Thornburg resubmitted the exhibits to the 2.206 Petition as attachments in separate emails to the NRC.

Executed on October 30, 2019

s/ *Eric J. Beste*
Eric J. Beste
Attorney for Petitioner
Public Watchdogs

EXHIBIT A

Beste, Eric

From: Gordon, Randy
Sent: Tuesday, September 24, 2019 4:25 PM
To: Petition.Resource@nrc.gov
Cc: Wohlford, Luke; La Bella, Chuck; Beste, Eric; Heller, Zachary
Subject: NRC 2.206 Petition
Attachments: Public Watchdogs - NRC 2.206 Petition.pdf

Dear Executive Director for Operations,

Please find attached a 10 C.F.R. Section 2.206 Petition. You will receive the accompanying appendix in a separate email with a link for download.

Sincerely,

Randy Gordon

Randy Gordon | Partner
Barnes & Thornburg LLP
2121 North Pearl Street, Suite 700, Dallas, TX 75201-2469
Direct: (214) 258-4148 | Mobile: (214) 236-8723 | Fax: (214) 258-4199



Atlanta | California | Chicago | Delaware | Indiana | Michigan | Minneapolis | Ohio | Texas | Washington, D.C.

Beste, Eric

From: BTFileshare@btlaw.com
Sent: Tuesday, September 24, 2019 4:25 PM
To: petition.resource@nrc.gov
Cc: Beste, Eric; Heller, Zachary; Wohlford, Luke; La Bella, Chuck
Subject: FW: Public Watchdogs - NRC 2.206 Petition and Exhibits



You received [2 files](#) from rgordon@btlaw.com via BTFileshare

Dear Executive Director for Operations,

Please find attached a duplicate copy of a 10 C.F.R. Section 2.206 Petition filed via email. The accompanying Appendix is available for download below.

Sincerely,

Randy Gordon

[Public Watchdogs - NRC 2.206 Petition.pdf](#)

618.05 KB

[Public Watchdogs - NRC 2.206 Petition Exs. 1-38.pdf](#)

75.73 MB

File links expire: Oct 24, 2019

[Access files](#)

Secured by **Accellion**

Beste, Eric

From: Gordon, Randy
Sent: Wednesday, October 30, 2019 8:09 AM
To: Cruz Perez, Zahira; Beste, Eric
Cc: Mattingly, Andrea; La Bella, Chuck; Heller, Zachary; Wohlford, Luke; Herten-Greaven, Keli
Subject: RE: RE: 2.206 Petition status

Dear Project Manager Cruz,

In our 9/24/19 email, which you note below, we indicated that we would be providing the NRC with an appendix via an ftp site since the documents are extensive and, as such, too large for attachment to an email as a single document. We immediately, i.e., also on 9/24/19, provided a link to our ftp site for an easy download of the appendix documents. We believed that this submission was "in writing," and, hearing nothing further from the NRC until your email of October 25, assumed that all was in order. In any event, to speed things along, my assistant, Keli Herten-Greaven, will shortly be emailing the appendix documents to you (at the addresses you set forth below), as attachments in pdf form. We were able to consolidate the pdfs into four ZIP files, so you will receive four separate emails.

Please confirm receipt of the appendix documents at your earliest convenience.

Sincerely,

Randy Gordon

Randy Gordon

Direct (214) 258-4148



From: Cruz Perez, Zahira <Zahira.CruzPerez@nrc.gov>
Sent: Friday, October 25, 2019 2:13 PM
To: Beste, Eric <Eric.Beste@btlaw.com>
Cc: Mattingly, Andrea <Andrea.Mattingly@btlaw.com>; La Bella, Chuck <CLaBella@btlaw.com>; Heller, Zachary <ZHeller@btlaw.com>; Wohlford, Luke <LWohlford@btlaw.com>; Gordon, Randy <RGordon@btlaw.com>
Subject: [EXTERNAL]RE: RE: 2.206 Petition status

Good Afternoon Everyone,

You submitted a petition requesting action under 10 C.F.R. 2.206 that included a request that the NRC immediately suspend all decommissioning operations at the San Onofre Nuclear Generating Station (SONGS) and require the Licensee to submit an amended decommissioning plan to account for spent nuclear fuel being placed in storage at SONGS. You also requested that the NRC prepare a supplemental environmental impact statement that evaluates site-specific environmental issues not addressed in the decommissioning Generic Environmental Impact Statement.

The NRC staff reviewed the petition's immediate action request and has concluded, in accordance with Section II.B.1 of Management Directive (MD) 8.11 (ML18176A147), that the request does not warrant immediate action. The NRC staff has determined that the decommissioning activities at SONGS do not constitute an immediate threat to public health and safety. The NRC has continued to perform inspection and oversight of

NRC-licensed activities at SONGS and taken regulatory actions as necessary, including appropriate enforcement of NRC regulations regarding the safety of spent fuel storage.

Consistent with the 2.206 process, the Staff is proceeding with its evaluation of whether the petition meets the MD 8.11 acceptance criteria for review. We will contact you once the Staff has made that initial determination.

We also note that the NRC has only received a 9/24/19 e-mail with the initial petition and a 9/25/19 e-mail with a 'Notice of Appearance.' Consistent with the 10 CFR 2.206 petition process, all information related to the petition (including exhibits) must be submitted in writing. If there are additional materials that you believe the Staff should consider, please provide them via email to me at Zahira.Cruz@nrc.gov or to Petition.Resource@nrc.gov as attachments.

Thank You,

Zahira Cruz

Zahira Cruz

Project Manager
U.S. Nuclear Regulatory Commission
Office of Nuclear Material Safety and Safeguards
Reactor Decommissioning Branch
Rockville, MD 20852

From: Beste, Eric <Eric.Beste@btlaw.com>
Sent: Wednesday, October 23, 2019 8:30 PM
To: Cruz Perez, Zahira <Zahira.CruzPerez@nrc.gov>
Cc: Mattingly, Andrea <Andrea.Mattingly@btlaw.com>; La Bella, Chuck <CLaBella@btlaw.com>; Heller, Zachary <ZHeller@btlaw.com>; Wohlford, Luke <LWohlford@btlaw.com>; Gordon, Randy <RGordon@btlaw.com>
Subject: [External_Sender] RE: 2.206 Petition status

Dear Project Manager Cruz:

Thank you for acknowledging the 2.206 Petition filed on behalf of our client, Public Watchdogs. Please ensure that the exhibits to the Petition are also reviewed. According to our records, the NRC has yet to download these supporting items.

Very truly yours,

Eric J. Beste | Partner
Barnes & Thornburg LLP
655 West Broadway, Suite 900, San Diego, CA 92101-8484
Direct: (619) 321-5015 | Fax: (310) 284-3894



Atlanta | California | Chicago | Delaware | Indiana | Michigan | Minneapolis | Ohio | Texas | Washington, D.C.

From: Cruz Perez, Zahira <Zahira.CruzPerez@nrc.gov>
Sent: Wednesday, October 23, 2019 1:25 PM
To: La Bella, Chuck <CLaBella@btlaw.com>; Heller, Zachary <ZHeller@btlaw.com>; Gordon, Randy

<RGordon@btlaw.com>; Wohlford, Luke <LWohlford@btlaw.com>; Beste, Eric <Eric.Beste@btlaw.com>

Subject: [EXTERNAL]2.206 Petition status

Good Afternoon,

Thank you for submitting your 2.206 Petition on September 24, 2019. Apologies for not getting back to you sooner.

The initial screening of your submittal began soon after the petition was received and you will be contacted again in the near future with the screening results.

Thank You,

Zahira Cruz

Zahira Cruz

Project Manager

U.S. Nuclear Regulatory Commission

Office of Nuclear Material Safety and Safeguards

Reactor Decommissioning Branch

Rockville, MD 20852

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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9th Cir. Case Number(s)

19-72670

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Service on Case Participants Who Are Registered for Electronic Filing:

I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is submitted as an original petition or other original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

Service on Case Participants Who Are NOT Registered for Electronic Filing:

I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants (*list each name and mailing/email address*): via FEDEX

Attorney General of the United States U.S. Department of Justice
950 Pennsylvania Avenue
NW Washington, DC 20530-0001;
United States Attorney's Office for the Southern District of California
Attn: Assistant U.S. Attorney Valerie Torres
880 Front Street, Room 6293
San Diego, CA 92101

Description of Document(s) (required for all documents):

SUPPLEMENTAL DECLARATION IN SUPPORT OF EMERGENCY PETITION
FOR WRIT OF MANDAMUS TO THE NUCLEAR REGULATORY COMMISSION

Signature /s/ Eric Beste

Date Oct 30, 2019

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov