

MEMORANDUM TO: William D. Travers  
Executive Director for Operations

THRU: Samuel J. Collins, Director  
Office of Nuclear Reactor Regulation

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

SUBJECT: JANUARY 2000 REPORT ON THE STATUS OF PUBLIC PETITIONS  
UNDER 10 CFR 2.206

The attached monthly report gives the status of 10 CFR 2.206 petitions as of January 31, 2000. A new petition on San Onofre Nuclear Generating Station (SONGS) 2 & 3, (G20000027) was received. The Petition Review Board (PRB), which met on this petition on January 24, 2000, decided that it did not meet the threshold screening criteria for a 2.206 petition and was closed with a one-step acknowledgment/denial letter. Thus, there are three open petitions: two in NRR and one in NMSS.

Attachment 1 provides the status of petitions for the Offices of Nuclear Material Safety and Safeguards (NMSS) and Nuclear Reactor Regulation (NRR). Attachment 2 gives the status of petitions that are in a confidential status and for internal distribution only. Attachment 3 shows the age and staff hours expended on open 2.206 petitions as of January 31, 2000, including a summary of the status of 2.206 petitions exceeding the 120-day scheduled completion goal. Attachment 4 shows the statistics for the 2.206 petitions processed in the past 12 months.

Those parts of the monthly report not of a sensitive nature, and recently issued Director's Decisions, are placed in the Public Document Room and on the NRC's external home page, making them readily accessible to the public. The URL address is <http://www.nrc.gov/NRC/PUBLIC/2206/index.html>.

Attachments: As stated

CONTACT: Ram Subbaratnam, NRR  
415-1478

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CONTACT: Ram Subbaratnam, NRR, 415-1478

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	/ /2000	/ /2000	/ /2000	/ /2000	/ /2000	/ /2000	/ /2000

\* See Previous Concurrence

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Report on Status of Public Petitions Under 10 CFR 2.206  
January 31, 2000  
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**Attachment 1**

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\* Denotes new addition to the list

## Attachment 1

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

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Facility:	Moab site of Atlas Corporation (Present Licensee PricewaterhouseCoopers LLP, Trustee)
Petitioner:	Earth Justice Legal Defense Fund
Date of Petition:	1/11/99
Director's Decision To Be Issued by:	NMSS
Date Referred to Review Organization:	1/12/99
EDO Number:	G19990011
OGC Number:	P-99-02
Scheduled Completion Date:	TBD*
Last Contact with Petitioner:	1/6/2000
Petition Manager:	Myron Fliegel
Case Attorney:	J. Goldberg

#### Issues/Action Requested:

The petitioners request NRC to take six immediate actions to halt impacts to and to ensure the conservation of the endangered species of fish in the Colorado River near the Atlas site.

#### Background:

On August 2, 1988, Atlas submitted an application for a license amendment to revise its site reclamation plan for uranium mill tailings at its no longer operating site near Moab, Utah. On March 30, 1994, a notice of intent to prepare an Environmental Impact Statement was published in the Federal Register. In January 1996, the Draft Environmental Impact Statement was published for public comment. On July 29, 1998, the U.S. Fish and Wildlife Service, in accordance with Section 7 of the Endangered Species Act (ESA), issued a final biological opinion for impacts to federally listed endangered species from the reclamation of the Atlas mill tailings site. On October 12, 1998, and November 13, 1998, petitioners notified NRC of their intent to sue under the ESA. On December 16, 1998, petitioners filed a Motion for Preliminary Injunction against NRC in the U.S. District Court, District of Utah.

A petition was filed on January 11, 1999, requesting the NRC to take six immediate actions related to potential impact on endangered fish in the Colorado River due to contaminants from the Atlas Uranium mill tailings pile. A Petition Review Board meeting was held on January 26, 1999, and the petitioners' requests for immediate action were denied by a letter of that date. In the letter, it was noted that none of the six items identified in the petition addresses a health, safety, or environmental concern that requires emergency steps before a complete review as provided for in 10 CFR 2.206. An acknowledgment letter for this petition was published in the Federal Register on February 12, 1999. On May 13, 1999, the staff received a supplement to the 2.206 petition requesting immediate action on several items: (1) to suspend the issuance of the license amendment to permit reclamation; (2) to initiate a supplemental National Environmental Policy Act process; and (3) to reinstate consultation with Fish and Wildlife Services under the Endangered Species Act.

Earthjustice had, on January 27, 1999, petitioned the Atomic Safety and Licensing Board (ASLB) to intervene on the Atlas Corporation's proposal to reclaim the Moab mill tailings and on the

cleanup of contaminated ground water, citing the impacts to the endangered fish in the Colorado River and its belief that the biological opinion was erroneous. On May 27, 1999, the NRC wrote to the petitioners, acknowledging receipt of the supplement, denying immediate action, and notifying petitioners that NRC was deferring action on the 2.206 petition, pending a decision by the ASLB on the petitioners' request for hearing on similar issues.

On September 17, 1999, the staff filed responses to the ASLB presiding officers' questions of July 30, 1999. On September 29, 1999, the staff provided the ASLB with a copy of its September 29, 1999, letter to Dames & Moore, notifying that organization that it had been selected to become the Trustee for the Atlas Moab site, since the Atlas Corporation is in bankruptcy. Copies of both filings were sent to the petitioner. Dames & Moore subsequently withdrew as trustee and PricewaterhouseCoopers LLP was chosen to be the trustee.

On October 18, 1999, Earthjustice filed a petition with the U.S. Court of Appeals for the 9<sup>th</sup> Circuit, arguing that the May 27, 1999, letter and a May 28, 1999, license amendment constitute final agency action and a de facto denial of the 2.206 petition. On November 3, 1999, OGC filed a motion to dismiss for lack of jurisdiction with the 9<sup>th</sup> Circuit Court of Appeals. A copy of the motion was sent to the petitioner. On November 23, 1999, the petitioner filed a response to the NRC motion to dismiss arguing that the rejection of its request for immediate action and subsequent lack of action on the part of the NRC in issuing a final Director's Decision constitutes a final agency action. NRC filed its reply with the court to the petitioners' response on December 2, 1999.

On October 28, 1999 the ASLB presiding officer found the Earthjustice petition of January 27, 1999 to be timely, and entertained further argument on the issue of petitioner's standing. On November 16, 1999 Earth-Justice requested the presiding officer to rule on whether the ASLB has jurisdiction with respect to determining whether NRC has complied with the Endangered Species Act. On December 6, 1999, the staff filed a response arguing that the ASLB should deny the petitioners' November 16, 1999, motion.

On December 27, 1999, an Order transferring source material license SUA-917 from Atlas Corporation to the Maob Mill Reclamation Trust was signed. The Order transfers the license to the Trust and orders the Trust and the Trustee (PricewaterhouseCoopers LLP) to perform reclamation of the uranium mill tailings site in accordance with the terms and conditions of the license. The terms and conditions of the license include reasonable and prudent measures in the U.S. Fish and Wildlife Service's final biological opinion, as well as mitigative measures developed by the NRC staff. The Order was effective December 30, 1999, and was published in the *Federal Register* on January 3, 2000.

#### Current Status:

On January 13, 2000, the petitioners filed a reply with the ASLB in support of their motion originally filed on November 16, 1999, for a preliminary ruling on jurisdiction. The staff is awaiting an ASLB ruling on the jurisdiction.

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\*The schedule for issuance of the Director's Decision will be set following the ASLB's decision.

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Facility: **Connecticut Yankee and Millstone Units  
1, 2, and 3**

Petitioners: D. Katz, Citizens Awareness Network (CAN)  
and P. Gunter, Nuclear Information and  
Resource Service

Date of Petition: 11/25/96, as amended 12/23/96

Director's Decision To Be Issued by: NRR

Date Referred to Review Organization: 12/20/96

EDO Number: GT96919

OGC Number: P-96-026

Scheduled Completion Date: 2/15/2000

Last Contact with Petitioners: 11/26/99

Petition Manager: J. Zimmerman

Case Attorney: R. Hoefling

Issues/Action Requested:

The petitioners request the staff to take the following actions: (1) immediately suspend or revoke Northeast Utilities' (NU's) license to operate the Connecticut Yankee (CY) (Haddam Neck) and Millstone reactors due to chronic mismanagement; (2) investigate the possibility that NU made material misrepresentations to the NRC concerning engineering calculations and other information or actions relied upon to assure the adequacy of safety systems at CY and Millstone; (3) if an investigation determines that NU deliberately provided insufficient and/or false or misleading information to the NRC, revoke NU's operating licenses for CY and Millstone, or, if not, keep the reactors off-line pending a Department of Justice independent investigation; (4) if the reactors remain operating, petitioners request that they remain on the NRC's "watch list"; (5) keep CY and Millstone off-line until NU's chronic mismanagement has been analyzed, remedial management programs put into effect and the NRC has evaluated and approved the effectiveness of NU's actions; (6) in the event NU decides to decommission any or all of the reactors at issue, petitioners request the NRC not to permit any decommissioning activity to take place until the above issues are resolved; and (7) commence an investigation into how the staff allowed the illegal situation at NU's Connecticut reactors to exist and continue over a decade.

Background:

A partial Director's Decision (DD-97-21) addressing most of the issues was issued to the petitioners on September 12, 1997. DD-97-21 partially granted some of the petitioner's requests. Request (3) above was partially deferred for the Millstone plants and will be addressed in a subsequent final Director's Decision. The licensee recently pleaded guilty to felony counts and accepted fines that are the largest penalty, civil or criminal, in the history of the commercial nuclear power industry. Although there are continuing investigations, they are viewed as beyond the scope of concerns that would affect the facility license.

Because the outcome of the investigations is not expected to influence the NRC's decision concerning NNECO's future operation of the Millstone reactors, the staff proposed to the Petition Review Board (PRB) to finalize and issue the Director's Decision by February 15, 2000. The PRB met on November 24, 1999, and affirmed the proposed course of action.

Current Status:

The final Director's Decision is in the concurrence chain and is on track for the proposed completion date.

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Facility:	<b><u>Indian Point Unit 2</u></b>
Petitioner:	D. Lochbaum Union of Concerned Scientists
Date of Petition:	September 15, 1999
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	9/15/99
EDO Number:	G19990465
OGC Number:	-
Scheduled Completion Date:	2/18/2000
Last Contact with Petitioners:	1/31/2000
Petition Manager:	J. Harold
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requests that the NRC modify or suspend Indian Point Unit 2's operating license to prevent restart until the five identified issues are resolved. In lieu of license modification or suspension, the petitioner requests issuance of a Confirmatory Action Letter or Order requiring the petitioner's identified issues be addressed prior to restart. Additionally, the petitioner requests a public hearing on the petition be conducted in the vicinity of the plant prior to restart. The petition identified five issues, which are as follows: (1) Apparent Violation of Station Battery Design and Licensing Basis; (2) Apparent Failure to Adequately Correct Circuit Breaker Problems; (3) Apparent Unreliability of Emergency Diesel Generators; (4) Potential Unjustified License Amendment for Under-Voltage and Degraded Voltage Relay Surveillance Intervals; and (5) Apparent Errors and Non-Conservatism in Individual Plant Examination. A telephone conference was held on September 22, 1999, between the Petitioner and the Petition Review Board offering the Petitioner an opportunity to articulate, in more detail, the basis for the petition and to allow the staff to ask the Petitioner clarifying questions. There were two additional issues provided during the telephone conference call. They are: (1) Indian Point Nuclear Generating Unit No. 2's (IP2) ability to cope with a station blackout scenario with current procedures, and (2) the incorporation of licensing commitments into plant procedures.

Background:

In a public meeting held in Region I on September 14, 1999, to discuss a plant trip at IP-2 from full power on August 31, 1999, ConEd described the complications of the events that led to the trip and provided a copy of their recovery plan. This plan detailed actions that ConEd viewed as necessary to complete prior to plant restart. On September 15, 1999, the staff received a 10 CFR 2.206 petition from the Union of Concerned Scientists (UCS) on IP2. A Petition Review Board (PRB) meeting on the petition was held on September 22, 1999. An acknowledgment letter and Federal Register notice on the petition were issued on October 8, 1999. The PRB accepted the petition as a valid one pursuant to 10 CFR 2.206. The PRB determined that the petitioner's issues had been identified by the licensee in their September 14, 1999, meeting and plant restart was contingent upon implementation of the recovery plan which would resolve the petitioner's issues. The PRB concurred that several issues in the petition as well as others not addressed need to be resolved prior to restart, thereby partially granting the petition. The PRB also made a decision to request a licensee response to the issues raised in the petition to aid the staff in preparing the acknowledgment letter to the petitioner. The licensee's response dated September 24, 1999, provided information, on the docket, which the staff had already acquired through its ongoing inspection effort. An additional request for additional information was issued on October

1, 1999, and the licensee responded by letter dated October 6, 1999. The staff used this information in part to prepare the acknowledgment letter which was issued on October 8, 1999. The staff determined the immediate enforcement actions the petitioner requested were not appropriate because the short-term actions in the licensee's recovery plan adequately addressed some of the petitioner's issues and all of the restart issues. However, had the licensee not adequately addressed these issues, the staff would have considered enforcement actions. The unit was restarted on October 13, 1999.

The petitioner, in a letter dated October 12, 1999, expressed dissatisfaction that the acknowledgment letter failed to address his safety concerns on the station battery design and licensing basis and the adequate correction of breaker problems. The staff responded to those concerns by letter dated October 25, 1999. The staff determined that the issues raised in the petitioner's October 12, 1999, letter did not change the conclusion of the October 8, 1999, acknowledgment letter. However, the staff plans to factor the supplemental information into the final decision on the petition.

Current Status:

The Region I AIT follow-up inspection report was received on December 21, 1999. The Director's Decision is in the concurrence chain and is on track for issuance by February 18, 2000.

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Facility:	San Onofre Nuclear Generating Station (SONGS), Units 2 & 3
Petitioner:	Glen R. Mills
Date of Petition:	December 4, 1999
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	1/14/2000
EDO Number:	G20000027
OGC Number:	-
Scheduled Completion Date:	2/4/2000(completed)
Last Contact with Petitioners:	1/24/2000
Petition Manager:	L. Raghavan
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requests that the NRC order the licensee to backfit SONGS with an emergency power supply to the spent fuel pools (SFPs) that would be independent of the emergency diesel generators (EDGs). As the basis for this request, the petitioner states that the EDGs at nuclear power plants, including SONGS, in the opinion of the petitioner, were proven to be unreliable. In support of this basis, the petitioner refers to an experience of February 1999, when the EDGs started but could not supply power to the buses because of a relay lockout, and another experience in June 1999, when the EDGs were inoperable in excess of the allowed outage time as a result of operator incompetence.

Background:

A PRB meeting was held on January 24, 2000.

Current Status:

This is a new petition. The petitioner's request did not present any plant-specific information nor anything substantial or new over previous agency considerations given to the issues. The petitioner raised issues that already have been the subject of NRC staff review and evaluation at SONGS and the issues have been dispositioned. The incoming correspondence did not provide sufficient facts to support the petition and, hence, the PRB ruled that it did not meet the screening criteria (MD 8.11 Pages 8 & 9). A one-step acknowledgment/closeout letter was issued on February 4, 2000 and the petition was closed.

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**Attachment 2**

Report on Status of Public Petitions Under 10 CFR 2.206 with  
Petitions Involving the Office of Enforcement (OE),  
the Office of Investigations (OI), the Inspector General (IG), and  
the Department of Justice (DOJ), and Other Sensitive Information

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**DELETED**

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END OF STATUS REPORT

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**Attachment 3**  
**AGE AND RESOURCE EXPENDITURES FOR AGENCY 2.206 OPEN PETITIONS**  
**As of January 31, 2000**

**DELETED**

**Attachment 4**  
**Report on Status of Public Petitions**  
**Under 10 CFR 2.206 for DDs Issued and/or Closed During the Last 12 Months**

Petition Number	Assigned Action Office	Facility	Petition Date	DD Date	Age at Closure <sup>1,2</sup>	Comments
G980568	NRR	Haddam Neck	9/11/98	1/12/99	3	Partly Granted
G19980547	NMSS	Atlas Corporation	9/10/98	1/20/99	2	Denied
GT977724	NRR	D.C.Cook	10/9/97	2/11/99	14	Partly Granted
G980233	NRR	Vermont Yankee	4/10/98	2/10/99	8	Denied
G199980707	NRR	Diablo Canyon	11/24/98	3/12/99	2	Denied
G980199	NRR	Browns Ferry	4/5/98	3/29/99	11	Denied
G19980622	NMSS	FUSRAP	10/15/98	3/26/99	3	Denied
G19980678	NRR	Perry	11/9/98	4/18/99	4	Denied
G980592	NRR	River Bend	9/25/98	4/18/99	5	Denied
603	NRR	Millstone	8/21/95	7/27/99	45	Partly Granted
G19990173	OE	Seabrook	3/31/99	8/3/99	3	Denied
GT97181	NRR	Connecticut Yankee	3/11/97	9/9/99	29	Partly Granted
G19980767	NMSS	Enviro Care of Utah	12/30/98	7/12/99	5	Granted
G19990201	NRR	Millstone	3/31/99	9/28/99	4	Denied
G19990224	NRR	Nine Mile Point 1 & 2	4/5/99	10/28/99	4	Denied
G19990268	NRR	Nine Mile Point 1	5/24/99	11/28/99	5	Denied

1) Age calculated from the date of the acknowledgment letter.

2) Goals: Acknowledgment letter issued within 5 weeks from date of receipt; DD issued within 4 months of acknowledgment letter.