

April 11, 2001

MEMORANDUM TO: William D. Travers
Executive Director for Operations

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

SUBJECT: MARCH 2001 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 March 31, 2001. During the month, the petition on Haddam Neck by R. Bassilakis of Citizens Awareness Network (G20000462) was closed. Currently, there are two open petitions: one in the Office of Nuclear Reactor Regulation (NRR), and one in the Office of Nuclear Material Safety and Safeguards (NMSS).

Attachment 1 provides the detailed status of petitions for NRR and NMSS. Attachment 2 shows the age and staff hours expended on open 2.206 petitions as of March 31, 2001. Attachment 3 shows the statistics for the 2.206 petitions processed in the past 12 months.

This report and recently issued Director's Decisions are placed in the Agencywide Document Access and Management System (ADAMS), 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

Report on Status of Public Petitions Under 10 CFR 2.206
March 31, 2001
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Attachment 1

Report on Status of Public Petitions Under 10 CFR 2.206

Facility:	Moab site of Atlas Corporation (Present Licensee, PricewaterhouseCoopers LLP, Trustee)
Petitioner:	Earthjustice 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:	11/17/2000
Petition Manager:	Myron Fliegel
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requests 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 (FWS), 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, the petitioner notified NRC of its intent to sue under the ESA. On December 16, 1998, the petitioner 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 (PRB) meeting was held on January 26, 1999, and the petitioner's 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 FWS under the ESA.

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 groundwater, 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 petitioner, acknowledging receipt of the supplement, denying immediate action, and notifying the petitioner that NRC was deferring action on the 2.206 petition, pending a decision by the ASLB on the petitioner's request for a 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 9th 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 9th 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 petitioner's 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, Earthjustice requested the presiding officer to rule on whether the ASLB has jurisdiction with respect to determining whether NRC has complied with the ESA. On December 6, 1999, the staff filed a response arguing that the ASLB should deny the petitioner's 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. FWS 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.

On January 13, 2000, the petitioner filed a reply with the ASLB in support of its motion originally filed on November 16, 1999, for a preliminary ruling on jurisdiction. On February 17, 2000, the ASLB granted the petitioner's request for hearing. The PRB, in consultation with the Office of the General Counsel (OGC), deferred action on this 2.206 petition pending resolution of the litigation before the 9th Circuit Court of Appeals and of the petition before the ASLB.

On June 22, 2000, the petitioner wrote to NRC requesting it to reinstate consultation with FWS on two additional issues. On July 21, 2000, NRC wrote to the petitioner stating that it will consider the June 22, 2000, letter as a second supplement to the original petition, which is being held in abeyance, pending the hearing before the ASLB. On October 30, 2000, the President signed the Floyd B. Spence National Defense Authorization Act for Fiscal Year 2001. Section 3405 of that legislation transfers the Atlas site to the Department of Energy (DOE) with the stipulation that DOE remove the tailings from the Moab site. The legislation also terminates the NRC license no later than October 30, 2001.

On November 17, 2000, all parties to the ASLB hearing agreed to terminate the proceeding. Earthjustice agreed to file a motion withdrawing its petition to intervene. On December 13, 2000, Earthjustice filed a motion to withdraw its intervention petition. On December 20, 2000, the presiding officer granted the motion.

Current Status:

As a result of events during the past several months, the situation that was in place at the time of the original petition dated January 11, 1999, the first supplement dated May 13, 1999, and the second supplement dated June 22, 2000, has changed entirely. The petition was directed at activities that would be performed by the NRC licensee to remediate the former Atlas Corporation uranium mill site near Moab, Utah. Recent legislation transfers responsibility for the site to DOE. Also, the petition raises issues

regarding the final biological opinion on the onsite reclamation issued by the U.S. FWS on July 29, 1998. However, on February 8, 2001, the U.S. FWS withdrew the biological opinion. NMSS is evaluating this information and will decide how to deal with the petition by April 16, 2001.

Facility:	<u>Haddam Neck Nuclear Generating Station</u>
Petitioner:	R. Bassilakis, et al. (CAN)
Date of Petition:	9/26/2000
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	9/29/2000
EDO Number:	G20000462
OGC Number:	-
Scheduled Completion Date:	3/20/2001(Completed)
Last Contact with Petitioners:	1/4/2001
Petition Manager:	E. Pogue/D. Wheeler
Case Attorney:	J. Goldberg

Issues/Action Requested:

(1) A full investigation of Connecticut Yankee Atomic Power Company's (CYAPCO's) protective clothing laundering practices and specifically of the September 20, 2000, incident at a public laundry facility in which petitioners contend that the licensee may have been laundering radioactively contaminated clothing. (2) That NRC revoke CYAPCO's license or suspend it until such time that an investigation is completed and any contamination found at the public laundry facility as a result of the incident is remediated. (3) That "this violation of regulation should be referred to the Department of Justice for investigation." (4) That an informal hearing be conducted.

Background:

A PRB meeting on the petition was held on October 10, 2000. The petitioners were provided with an opportunity to address the PRB in an open session, and did so with the licensee present. The PRB concluded that the petition meets the threshold for processing under 10 CFR 2.206 and also concluded that the details provided in the petitioners' request were sufficient to warrant further inquiry. The acknowledgment letter and the *Federal Register* Notice on the petition were issued on November 9, 2000. A proposed Director's Decision (DD) was issued on December 19, 2000. A copy of the proposed DD was provided to both the petitioner and the licensee. On January 4, 2001, the petitioners provided comments on the proposed DD.

Current Status:

The staff reviewed the petitioners' comments and documented their resolution in a staff memorandum dated March 6, 2001. The petitioners' letter, the licensee's letter and the staff memorandum were made enclosures to the final DD (DD-01-02), which was issued on March 20, 2001. The DD stated that the first request was granted by an NRC inspection. This inspection concluded that CYAPCO did not launder contaminated materials at a public laundry facility, that adequate controls were in place to assure that CYAPCO training materials did not become contaminated, and that CYAPCO's laundering practices were in compliance with NRC regulations and did not endanger the health and safety of the public. In response to the second request, NRC took no immediate action because inspection findings demonstrated that there were no immediate safety concerns. Based on the conclusions of the inspection report, no violations of NRC regulations were identified, and therefore NRC has no basis to take action to

suspend or revoke CYAPCO's license. Similarly, since no violations of NRC regulations were identified, the third request was considered not to warrant any action. Finally, the fourth request was granted in principle to the extent that the petitioners were provided opportunities to interact with the NRC staff during its review of the petition, and the record of the NRC staff review was available to the public. Since the issues of public health and safety and regulatory compliance submitted in the petition were resolved in a process open to the public, the NRC staff does not plan to take any further action on this petition. The DD is currently with the Commission for review, and if the Commission does not act within 25 days of the date of issuance of the DD, it will become a final agency action.

Facility:	Indian Point, Unit 2
Petitioner:	Deborah Katz, et al. (CAN)
Date of Petition:	12/4/2000
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	12/11/2000
EDO Number:	G20000568
Scheduled Completion Date:	7/9/2001
Last Contact with Petitioners:	2/9/2001
Petition Manager:	C. Gratton
Case Attorney:	J. Goldberg

Issues/Action Requested:

(1) That the licensee, ConEd, have its license suspended for the Indian Point Unit 2 (IP2) facility due to persistent and pervasive negligent management, which has endangered the public health and safety and the environment due to significant safety problems existent at the site for decades. (2) Specifically, that NRC investigate the apparent misrepresentation of material fact by the utility to determine whether the significantly insufficient engineering calculations relied on to ensure adequacy of design of key systems, including the steam generator (SG) analysis and the electric bus analysis at the IP2 reactor, were due to a lack of rigor and thoroughness or a result of deliberately misleading information. (3) Should the investigation determine that ConEd deliberately provided insufficient and false information, the petitioners specifically request that ConEd's operating license be revoked for its IP2 reactor. (4) Should NRC not revoke the license, and the IP2 reactor returns to operation, the petitioners specifically request that it remain on the list of agency focus reactors to oversee the operation of the reactor until such time as its management demonstrates that it can fulfill its regulatory requirements and commitments. (5) No license transfer requests should be approved for IP2 until such time that its management can demonstrate that the Updated Final Safety Analysis Report (UFSAR) backlog and the maintenance requirements are up-to-date and workers have been retrained to the complete and revised UFSAR. (6) NRC should keep IP2 off-line until the fundamental breakdown in management is analyzed and corrected.

Background

With the SG replacement having been completed at IP2, and the licensee in the process of restart, the PRB convened a meeting on December 20, 2000, to consider the Immediate Action request related to plant restart (item 6). The PRB concluded that there was insufficient information provided and that the petitioners did not substantiate any safety concerns to justify delaying unit restart. The petitioners were, in accordance with Management Directive (MD) 8.11, offered an opportunity to address the Petition Review Board (PRB) in an open meeting. This meeting was conducted on January 24, 2001, at NRC headquarters. A PRB meeting to consider the petitioners' issues (items 1 thru 5) was held on February 7, 2001. The PRB recommended accepting the petition.

Current Status:

On March 9, 2001, the staff issued an acknowledgment letter to the petitioners and a summary of the public meeting held on January 24, 2001. MD 8.11 specifies that the staff respond to the petition by issuing a proposed Director's Decision (DD) within 120 days from the date of the acknowledgment letter.

At its February 7, 2001 meeting, the PRB recommended issuing a partial DD to address the transfer issue (item 5) by May 2001. The PRB has reconsidered this recommendation and the current plan is to include item 5 in the proposed DD scheduled for issuance on July 9, 2001. Should the staff conclude that the IP2 license transfer order is ready for issuance prior to the July 9, 2001, proposed DD issuance, the staff will convene a meeting of the PRB to consider item 5 as an immediate action request, and the petitioners will be notified of the staff decision.

Attachment 2
AGE AND RESOURCE EXPENDITURES FOR AGENCY 2.206 OPEN PETITIONS
As of March 31, 2001

ASSIGNED ACTION OFFICE	PETITION NUMBER	FACILITY	AGE (months)*	Scheduled Completion Date	Resources Expended by Action Office (HOURS) ¹	Resources Expended by OGC (HOURS) ¹	Comments if not meeting the Agency's 120-day Completion Goal
NMSS	G19990011	ATLAS CORPORATION	3**	TBD	5	78	NRC is considering recent legislation that transfers responsibility for the site to DOE and recent U. S. FWS actions.
NRR	G20000568	Indian Point Unit 2	1	7/9/2001	289	57	

¹ Staff professional time only; does not include management or administrative time.

*Age calculated from the date of the acknowledgment letter.

** The clock on this petition stopped as of May 27, 1999.

Attachment 3
Table 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 ^{1,2} (Months)	Comments
G19990465	NRR	Indian Point Unit 2	9/15/99	4/13/2000	6	Denied
G20000062	NRR	Indian Point Unit 3	2/10/2000	7/26/2000	4	Partly Granted
G20000133	NRR	Indian Point Unit 2	3/14/2000	10/6/2000	6	Partly Granted
G20000232	NRR	Hatch Units 1 & 2	5/3/2000	10/18/2000	4	Denied
G20000138, 136	NMSS	Envirosafe, Idaho	3/13/2000	12/13/2000	8	Denied
G20000345	NMSS	US Department of Defense	6/1/2000	1/9/2001	3	Denied
G20000462	NRR	Haddam Neck	9/26/2000	12/19/2000	2	Partly Granted

1) Age calculated from the date of the acknowledgment letter to the proposed Director's Decision issuance.

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