

Report on Status of Public Petitions Under 10 CFR 2.206: April 30, 2001

May 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: APRIL 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 May 10, 2001. Since the last report, the petition on Atlas Corporation by Ms. Dagget (G19990011) was closed out on May 7, 2001. Currently, there is one open petition in the Office of Nuclear Reactor Regulation (NRR).

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 April 30, 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

Attachment 1

<u>Facility</u>	<u>Petitioner/EDO No.</u>	
Atlas Corporation	Dagget, et al./G19990011	2
Indian Point Unit 2	D. Katz/CAN/G20000568	5

I
1

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:	5/7/2001 (Completed)
Last Contact with Petitioner:	5/7/2001
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 reinitiate consultation with FWS under the ESA.

Earth justice 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 reinitiate 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. On May 7, 2001, the NRC wrote to the petitioners, closing the petition as moot because the plan to remediate the site and the biological opinion are no longer operative.

Facility:	<u>Indian Point, Unit 2</u>
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 Petition Review Board (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 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.

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.

Current Status:

The PRB re-convened on April 24, 2001, and the Petition Manager (PM) updated the members on the review of the condition reports (CRs) turned over to the staff by the petitioners during the January 24, 2001, public meeting. The PRB was informed that the licensee had not responded to the petition, but would be asked to voluntarily do so by the NRC. On May 3, 2001, the staff issued a formal letter to the licensee requesting their response to the issues identified in the petition. The review of the petition remains on track with a proposed director's decision scheduled to be issued by July 9, 2001.

**Attachment 2: Age and Resource Expenditures for Agency 2.206 Open Petitions
As of April 30, 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
NRR	G2000568	Indian Point Unit 2	2	7/9/2001	405	61	

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

*Age calculated from the date of the acknowledgment letter.

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
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.