June 26, 2000

MEMORANDUM TO: William D. Travers
Executive Director for Operations

THRU: Samuel J. Collins, Director ***/RA by RZimmerman for/***
Office of Nuclear Reactor Regulation

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

SUBJECT: MAY 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 31, 2000. During May 2000, two new petitions were received (See Attachment 1, Table of Contents). Thus, there are six open petitions: three in the Office of Nuclear Reactor Regulation (NRR), two in the Office of Nuclear Material Safety and Safeguards (NMSS), and one in the Office of Enforcement (OE).

Attachment 1 provides the status of petitions for NRR, NMSS, and OE. Attachment 2 shows the age and staff hours expended on open 2.206 petitions as of May 31, 2000, including a summary of the status of 2.206 petitions exceeding the 120-day scheduled completion goal. 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

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CONTACT: Ram Subbaratnam, NRR
415-1478

Accession Number ML003726613 DISTRIBUTION: See next page

OFFICE	PM:PDII	LA:PDII	SC:PDII D:PDII	NMSS/IMNS/IMOB	D:DLPM	ADPT:NRR	D: NRR
NAME	RSubbaratnam	Dunnington	RCorreia HBerkow	PGoldberg	JZwolinski/SBlack	BSheron	SCollins
	6/ 14 /2000*	6/ 19 /2000*	6/ 16/2000* 6/19 /2000	6/ 16 /2000*	6/19 /2000	6/20 /2000	6/26 /2000

* See Previous Concurrence **OFFICIAL RECORD COPY**

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J. Shea, OEDO
E. Adensam, NRR
J. Zwolinski, NRR
S. Black, NRR
H. Berkow, NRR
A. Kugler, NRR
OCA
OPA
Regional Administrators
PUBLIC w/att 1, 2, & 3

Report on Status of Public Petitions Under 10 CFR 2.206
May 31, 2000
(Table of Contents)

Attachment 1

* Denotes addition to the list from the previous month

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:	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:	6/1/2000
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 (PRB) 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 reinitiate 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 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 petitioners, acknowledging receipt of the supplement, denying immediate action, and notifying the petitioners that NRC was deferring action on the 2.206 petition, pending a decision by the ASLB on the petitioners' 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 petitioners. 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 petitioners. 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 petitioners' 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 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.

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. On February 17, 2000, the ASLB granted the petitioners' 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.

Current Status:

There is no change in status for this petition for the month. See the background section for current status.

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* Schedule for completion will be set following resolution of the litigation issues.

Facility:	**Indian Point Unit 3**
Petitioner:	D. Lochbaum, UCS
Date of Petition:	2/10/2000
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	2/10/2000
EDO Number:	G20000062
OGC Number:	-
Scheduled Completion Date:	7/24/2000
Last Contact with Petitioners:	5/24/2000
Petition Manager:	G. Wunder
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requests that the NRC order the licensee to conduct assessments of the Indian Point 3 (IP3) corrective action program and work environment and to take appropriate action in response to these assessments. The petitioner further requests that these orders be closed before the NRC allows the transfer of the IP3 license. As the basis for the requested action, the petitioner cited allegations by Ms. Rebecca Green, formerly a member of the licensee's Operations Review Group, that her work environment was not safety-conscious. The petitioner also cited various inspection reports, which identified shortcomings in the licensee's corrective action programs, as well as a letter informing the licensee of a potential violation of 10 CFR 50.7 involving discrimination against an employee.

Background:

A Petition Review Board (PRB) meeting was held on February 16, 2000. The petitioner was provided with an opportunity to address the PRB in an open session to articulate the petition, and did so with the licensee present.

The PRB concluded that the petition meets the threshold for processing under 10 CFR 2.206 and the PRB concluded that the details provided in the petitioner's request are found sufficient to warrant further inquiry. An acknowledgment letter and *Federal Register* notice on the petition were issued on March 24, 2000.

Current Status:

During the weeks of May 22, 2000, and June 5, 2000, the NRC conducted an inspection at IP3. The scope of the inspection included the areas of concern raised in the petition. This was a routine, scheduled baseline inspection of the Security Program at the IP3 site. The findings will be used in developing a Director's Decision (DD). The staff will work with Region I and ensure the Inspection Report is issued prior to the DD.

Facility:	**Indian Point Unit 2**
Petitioner:	David A. Lochbaum, Union of Concerned Scientists (UCS), on behalf of Nuclear Information & Resource Service, PACE Law School Energy Project, and Public Citizen's Critical Mass Energy Project
Date of Petition:	3/14/2000
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	3/14/2000
EDO Number:	G20000133
OGC Number:	-
Scheduled Completion Date:	8/5/2000 (Technical issues will be resolved prior to plant restart)
Last Contact with Petitioners:	5/2/2000
Petition Manager:	L. Wiens
Case Attorney:	J. Goldberg

Issues/Action Requested:

Petitioners request that the NRC issue an Order to ConEd Company of New York preventing the restart of Indian Point Unit 2 (IP2) until the following conditions are satisfied: (1) all four steam generators (SGs) are replaced; (2) the SG tube integrity concerns identified in Dr. Joram Hopenfeld's Differing Professional Opinion (DPO) and in generic safety issue GSI-163, "Multiple Steam Generator Tube Leakage," are resolved; and (3) Potassium Iodide (KI) tablets are distributed to residents and businesses within the 10-mile emergency planning zone or stockpiled in the vicinity of the IP2 facility. The petitioners also requested that a public meeting be held in the vicinity of the IP2 facility as soon as possible.

Background:

Petition Review Board (PRB) meetings were held on March 16, 2000, March 21, 2000, April 17, 2000, and April 27, 2000. The petitioners were provided with an opportunity to address the PRB in an open session during the initial March 16, 2000 meeting, and did so with the licensee present.

The PRB initially concluded that only the first issue (Steam Generator replacement) meets the threshold for processing under 10 CFR 2.206. An acknowledgment letter and *Federal Register* notice on the petition were issued on April 5, 2000. Dr. Hopenfeld issued a memo to Dr. Travers on April 5, 2000, which he characterized as a "supplement to my DPO regarding Multiple Steam Generator Leakage." The petitioners' request for a public meeting was granted and conducted on April 7, 2000. During that meeting the petitioners provided additional supporting information for the other issues contained in their petition. Further, by letter dated April 12, 2000, Public Citizen's Critical Mass Energy Project supplemented the petition with regard to the KI issue, and by letter dated April 14, 2000, the UCS supplemented the petition with regard to the DPO. Additional PRB meetings were held to address this additional information.

Current Status:

By a letter dated June 12, 2000, Public Citizen provided additional information and supplemented the petition. This letter will be considered at a future PRB meeting. An acknowledgment letter and *Federal Register* notice on the supplements to the petition will be issued in June 2000. The staff's final decision and recommendation to be made to the Office Director on steam generator replacement will be based on the staff's review of the licensee's operational assessment, which was docketed on June 2, 2000.

Facility:	**Envirocare of Utah & Snake River Alliance**
Petitioner:	L. Bickwit, Jr. and P. Alister
Date of Petition:	3/13/2000
Director's Decision To Be Issued by:	NMSS
Date Referred to Review Organization:	3/16/2000
EDO Number:	G20000138, G20000136
OGC Number:	-
Scheduled Completion Date:	8/25/2000
Last Contact with Petitioners:	4/12/2000
Petition Manager:	J. Lusher
Case Attorney:	J. Goldberg

Issues/Action Requested:

Snake River Alliance is requesting that the NRC: (1) take jurisdiction of 11e.(2) material; (2) take action to ensure the workers and the public are fully protected from radiation exposure; and (3) enforce the AEA and NRC's regulation governing disposal of mill tailings byproduct material as defined in section 11e.(2) of Uranium Mill Tailing Radiation Control Act of 1978 (UMTRCA). Envirocare of Utah contends that the Commission's current interpretation of UMTRCA is erroneous and that it should be revised as soon as possible. It also requests that the NRC recognize its authority over all section 11.e.(2) material, and should take appropriate enforcement action to ensure that all such material is disposed of at section 11e.(2)-licensed facilities.

Background:

The Executive Director for Operations has agreed in principle that the petitions from Snake River Alliance and Envirocare of Utah can be consolidated and handled as one petition because the requested actions are similar per Management Directive (MD) 8.11, Page 9. This was finalized in the Petition Review Board (PRB) meeting held on April 11, 2000. The petitioners, in accordance with MD 8.11, were provided with an opportunity to address the PRB in an open session to articulate the petition, with the owners of the facility present.

A PRB meeting on the petitions was held on April 11, 2000. The PM advised the petitioners by phone on April 12, 2000, that the petitions have been consolidated and accepted as a single petition for review under the 10 CFR 2.206 process. The acknowledgment letters and the *Federal Register* Notice on the petitions were issued on April 25, 2000.

Current Status:

During the month, additional information received from the petitioner and Envirosource Technologies was provided to the licensee for their input in addressing the petitioner's concerns. The Office of General Counsel and staff continued their review of the petition, and work on the Director's Decision is in progress.

Facility:	**Hatch Nuclear Units 1 & 2**
Petitioner:	David A. Lochbaum, Union of Concerned Scientists (UCS)
Date of Petition:	5/3/2000
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	5/4/2000
EDO Number:	G2000232
OGC Number:	-
Scheduled Completion Date:	TBD
Last Contact with Petitioners:	5/15/2000
Petition Manager:	L. Olshan
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requested that the NRC issue a demand for information to the owner of Hatch regarding the liquid and gaseous radwaste systems.

Background:

A PRB meeting on the petition was held on May 15, 2000. The petitioner was provided with an opportunity to address the PRB in an open session and did so with the licensee present.

Current Status:

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 petitioner's request were found sufficient to warrant further inquiry. The acknowledgment letter and the *Federal Register* Notice on the petition were issued on June 20, 2000.

Facility:	**Nine Mile Point Units 1 & 2**
Petitioner:	Robert T. Norway
Date of Petition:	5/10/2000
Director's Decision To Be Issued by:	OE
Date Referred to Review Organization:	5/18/2000
EDO Number:	G2000245
OGC Number:	-
Scheduled Completion Date:	TBD
Last Contact with Petitioners:	5/25/00
Petition Manager:	Dan Rich
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requested that individual enforcement action be taken against Nine Mile Point managers for willfully presenting falsified documents to the NRC during the May 10, 1996, Enforcement Conference for discrimination. He also requested: (1) immediate suspension of the Nine Mile Point 1 & 2 operating licenses unless Niagara Mohawk removes certain managers from duty; (2) that the NRC obtain the original copy of an Employee Worksheet used by the 1994 Review Board that terminated his employment; (3) that the NRC remove the same Employee Worksheet from the public record and inform all who have ever seen it of its fraudulent nature; and (4) placement of his May 10, 2000, petition in the public record.

Background:

Mr. Norway was fired from Nine Mile Point in 1994. The Department of Labor and the NRC both agreed that his termination was discriminatory and, in 1996, a Severity Level II violation was issued against Niagara Mohawk with a civil penalty. On April 5, 1999, Mr. Norway submitted a petition demanding individual enforcement action against Nine Mile Point managers, which was denied due to insufficient evidence (Director's Decision 99-13). His 1999 petition also raised a technical concern over the Nine Mile Point residual heat removal cooling system. This concern was addressed in a letter dated October 6, 1999, from the NRC staff to the petitioner.

The Petition Review Board (PRB) met on May 25, 2000. A supplementary PRB meeting was conducted on June 13, 2000. The petitioner was provided with an opportunity to address the PRB in an open session during the May 25, 2000 meeting, and did so with the licensee present.

Current Status:

The PRB concluded, after the June 13, 2000 meeting, that there was one new issue that was raised by the petitioner which was not included in his previous petition dated April 5, 1999, on the same subject -- an Employee Feedback Form that the petitioner claimed was fraudulent (Request 2). Even though other issues raised by the petitioner in the current petition dated May 10, 2000, were addressed in the earlier Director's Decision 99-13, the PRB concluded that this new issue requires further review by the staff. OE will write to the petitioner and the licensee to request more information. An extension until July 14, 2000 for acknowledgment of the petition has been obtained.

Attachment 2

AGE AND RESOURCE EXPENDITURES FOR AGENCY 2.206 OPEN PETITIONS

As of May 31, 2000

ASSIGNED ACTION OFFICE	PETITION NUMBER	OGC 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	P-99-02	ATLAS CORPORATION	15**	TBD[2]	5	65	Earthjustice filed a petition with the U.S. Court of Appeals for the 9th Circuit regarding the staff's de facto denial of the 2.206 petition. Staff action deferred pending resolution of the litigation before the 9th Circuit Court of Appeals and the petition before the ASLB
NRR	G20000062	-	INDIAN POINT UNIT 3	2	7/24/2000	50	1.0	
NMSS	G20000138,136		ENVIROCARE OF UTAH/SNAKE RIVER ALLIANCE	2	8/25/2000	75	24.5	
NRR	G20000133	-	INDIAN POINT UNIT 2	2	8/5/2000	521	18	
NRR	G20000232	-	Hatch 1/2	0	TBD	56		
OE	G20000245	-	Nine Mile Point 1/2	0	TBD	55		

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

[2] Projected completion date (Please see Attachment 1 for explanation).

*Age calculated from the date of the acknowledgment letter.

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

Attachment 3
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[1,2]	Comments
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
GT96919	NRR	Millstone 1, 2 & 3	11/25/96, as amended 12/23/96	2/16/2000	37	Partly Granted
G19990465	NRR	Indian Point Unit 2	9/15/99	4/13/2000	6	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.