

March 20, 2003

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: FEBRUARY 2003 REPORT ON THE STATUS OF PUBLIC PETITIONS
UNDER 10 CFR 2.206

The attached report gives the status of petitions submitted under 10 CFR 2.206. As of February 28, 2003, there were three open petitions, which were accepted for review under the 2.206 process: two in the Office of Nuclear Materials Safety and Safeguards and one in the Office of Nuclear Reactor Regulation.

Attachment 1 provides a detailed status of the open petitions.

Attachment 2 provides the status of incoming letters that the staff has been reviewing to determine if they meet the criteria for review under the 2.206 process.

Attachment 3 shows the age statistics for the open 2.206 petitions as of February 28, 2003.

Attachment 4 shows the age trend of closed petitions for the last 3 years.

This report, Director's Decisions, and other 2.206-related documents are placed in the Agencywide Documents Access and Management System. In making these readily accessible to the public, the staff has identified another vehicle to address one of our performance goals, i.e., to enhance public confidence.

Attachments: As stated

CONTACT: Robert Clark, NRR
415-2297

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Accession No.: ML030640623

*See previous concurrence

OFFICE	PM:PDI-1	LA:PDI-1	D:PDII*	D:DLPM*	NMSS*	ADPT:NRR
NAME	RClark	SLittle	HBerkow	JZwolinski	PGoldberg	BSheron
DATE	3/19/03	3/19/03	03/05/03	03/10/03	03/11/03	3/19/03

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Attachment 1

Status of Open Petitions

<u>Facility</u>	<u>Petitioner/EDO No.</u>	<u>Page No.</u>
Oyster Creek Generating Station	Edith Gbur for Jersey Shore Nuclear Watch/ G20020385.....	1
Waltz Mill Pennsylvania Site	Viacom, Inc. G20020629.....	3
Davis-Besse Nuclear Power Station	Congressman Dennis Kucinich G20030048.....	5

Attachment 1

Report on Status of Public Petitions Under 10 CFR 2.206

Facility:	<u>Oyster Creek Generating Station</u>
Petitioner:	Jersey Shore Nuclear Watch
Date of Letter:	6/21/2002, as supplemented on July 18, 2002
Director's Decision to Be Issued by:	NMSS
EDO Number:	G20020385
Proposed DD issuance:	12/10/2002
Last Contact with Petitioner:	02/24/03
Petition Manager:	Steve O'Connor
Case Attorney:	Jack Goldberg

Issues/Actions requested:

The petitioner requests that the NRC issue an order to the licensee, suspending the dry cask storage program at Oyster Creek.

Background:

As a basis for the above requests, the petitioner raised concerns with: the location of the Oyster Creek independent spent fuel storage installation relative to local roads and communities; the ability of the NUHOMS dry spent fuel storage system to survive a sabotage attack; the adequacy of Oyster Creek security measures for fuel handling activities; the adequacy of the Oyster Creek emergency evacuation plan; and the quality of the NUHOMS systems planned for use at Oyster Creek.

The petitioner participated in a telephone call with the Petition Review Board on July 18, 2002. In response to the PRB discussion, the petitioner provided additional information on July 18, 2002, to supplement the petition request. This information is also being considered in the review of the petition.

The petitioner's request for NRC to immediately suspend the license for the NUHOMS dry spent fuel storage system and halt transfer of spent fuel from wet pool storage to dry storage modules at Oyster Creek was denied because the safety concerns were reviewed and determined not to pose an undue risk to public health and safety. The Commission does not believe that immediate action is required because the licensee for Oyster Creek is not planning to load additional fuel canisters until 2003.

An acknowledgment letter and *Federal Register* notice were issued on August 7, 2002. On October 30, 2002, a teleconference was held with the petitioner and her counsel regarding the status of the proposed Director's Decision (DD). The petitioner asked that we specifically address certain accident scenarios discussed in the petition in our response. She also asked if there was any way that the petitioners could get a hearing for the Oyster Creek ISFSI issues. An additional teleconference with the petitioner was held with a member of OGC present on November 4, 2002, to further discuss the issue of a hearing. The staff prepared a proposed DD

that was sent to the petitioners and the licensee for comment on December 10, 2002. Since the petitioner did not receive the proposed DD, it was re-sent on January 7, 2003, and the comment period extended to February 6, 2003.

Current Status:

The petitioner did not meet the February 6, 2003, date to respond to the proposed DD. The staff called the petitioner on February 6, 2003, to determine when to expect comments to proposed DD. The petitioner stated that they are still working on the response. The petitioner was contacted again on February 24, 2003, to check on status of their response. Petitioner agreed to provide comments by February 28, 2003.

Update:

Comments were not received on February 28, 2003 as promised, but were received on March 5, 2003, and March 10, 2003. The staff is currently reviewing petitioner's comments.

Facility:	<u>Waltz Mill Pennsylvania Site</u>
Petitioner:	Viacom, Inc.
Date of Letter:	October 30, 2002
Director's Decision to be Issued by:	NMSS
EDO Number:	G20020629
Proposed DD issuance:	TBD
Last Contact with Petitioner:	02/20/03
Petition Manager:	Patrick Isaac (NRR) / Derek Widmayer (NMSS)
Case Attorney:	Jack Goldberg

Issues/Actions requested:

That the NRC issue an order to Westinghouse Electric Company LLC, the holder of license SNM-770 on the Waltz Mill, Pennsylvania Site, which would require Westinghouse's cooperation in the decommissioning of the Westinghouse Test Reactor (WTR) license TR-2. In particular, the order would require Westinghouse to:

(1) provide certain radiological survey data to NRC which NRC has requested. The survey data in question determines what residual radioactivity remains in-situ.

(2) accept under SNM-770 certain residual byproduct materials now held under Viacom license TR-2 and located at the WTR.

Background:

Viacom is the current holder of NRC facility license TR-2 which authorizes possession, but not operation, of the WTR. To complete the Final Decommissioning Plan, two provisions still need to be accomplished. These are determining the residual radioactivity remaining in-situ and preparing the necessary amendments for and requesting the transfer of the remaining residual radioactivity and WTR facilities to the SNM-770 license.

At the time the decommissioning plan was approved, Westinghouse was the NRC licensee under both TR-2 and SNM-770, and so the transfer of the residual radioactive material from one materials license to another, held by the same licensee on the same site, was straightforward. Viacom now holds the TR-2 license while Westinghouse holds the SNM-770 license. Westinghouse's and Viacom's decommissioning responsibilities to each other at the Waltz Mill Site are set forth in an Asset Purchase Agreement. By refusing to accept the transfer to the SNM-770 license, Viacom alleges that Westinghouse is in violation of 10 CFR 50.5.

Westinghouse submitted a response to the petition on December 20, 2002. Viacom has indicated that they will not respond to the Westinghouse response at this time.

Current Status:

On February 20, 2003, a public PRB meeting was held in Rockville, Maryland with the petitioner and both licensees (Viacom and Westinghouse Electric Company). At the meeting, lawyers and staff personnel from both companies provided additional information to support their position.

The PRB was scheduled to meet March 6, 2003, to determine if this petition meets the acceptance criteria for review under 2.206.

Update:

There are several reasons why it took the staff 4 months to determine whether this petition meets the criteria for review under 2.206. First, the petition involves complex legal and contractual issues. Second, the staff had to await both parties' responses to the petition, which took the parties several months, and then had to review and evaluate the responses prior to engaging in the public PRB meeting. The petitioners were not available to meet with the PRB until February 20, 2003. Following the public PRB meeting, there was still some uncertainty among the cognizant staff groups and management regarding acceptance of these issues as a petition. Finally, at the March 6, 2003, closed PRB meeting, agreement was reached to accept the petition for review under 2.206.

Facility:	<u>Davis-Besse Nuclear Power Station</u>
Petitioner:	Congressman Dennis Kucinich
Date of Letter:	February 3, 2003
Director's Decision to be Issued by:	NRR
EDO Number:	G20030048
Proposed DD issuance:	TBD
Last Contact with Petitioner:	2/14/03
Petition Manager:	Dan Collins (NRR)
Case Attorney:	Jack Goldberg

Issues/Actions requested:

That the Nuclear Regulatory Commission (NRC) immediately revoke FirstEnergy Nuclear Operating Company's (FirstEnergy) license to operate the Davis-Besse Nuclear Power Station (DBNPS) for the reasons given in the background.

Background:

On March 5, 2002 during a refueling outage, FirstEnergy performed inspection of the DBNPS reactor pressure vessel head penetration (VHP) nozzles in accordance with NRC Bulletin 2001-01. During this inspection, the licensee discovered cracks in several VHP nozzles. Subsequent to the machining process to repair VHP Nozzle 3, the nozzle was observed to displace, or tip in the downhill direction as the machining apparatus was withdrawn. The displacement led DBNPS personnel to examine the region adjacent to VHP Nozzle 3. The licensee discovered a cavity with a surface area of approximately 20-30 square inches. Upon further examination, the licensee identified that the cavity extended completely through the 6.63 inch-thick carbon steel reactor pressure vessel (RPV) head down to a thin internal liner of stainless steel cladding. Although the exposed cladding withstood the primary system pressure during previous plant operation, it was not designed to be a reactor coolant system pressure boundary. Boric acid corrosion of the carbon steel RPV head was the primary contributor to the RPV head degradation.

In response to the licensee's identification of extensive damage to the pressure boundary material of the RPV head on March 5, 2002, the NRC dispatched an Augmented Inspection Team (AIT) to Davis-Besse on March 12, 2002, to examine conditions that led to the head degradation. The NRC also issued a Confirmatory Action Letter (CAL) to the licensee on March 13, 2002, which stated that NRC approval is required for restart DBNPS. The CAL also documented a number of actions that the licensee must implement before the NRC will approve a restart. The NRC also enhanced monitoring of corrective actions at Davis-Besse, as described in NRC Inspection Manual Chapter 0350, "Oversight of Operating Reactor Facilities in a Shutdown Condition with Performance Problems," to provide the required oversight throughout the plant's shutdown and restart. The AIT follow-up special inspection report (50-346/02-08) dated October 2, 2002, cited a number of violations of the Davis-Besse operating license and NRC regulations.

Using information from various publicly available documents (such as NRC inspection reports, newspaper articles, and reports published by the Union of Concerned Scientists) to support his case, the Petitioner offers the following five basic arguments, in various forms, on why the Davis-Besse operating license must be revoked:

1. NRC regulations and guidelines require revocation of the Davis-Besse license.
2. Revocation of the Davis-Besse license is necessary to hold FirstEnergy accountable for its violations of NRC regulations and its own operating license.
3. If the NRC doesn't revoke the Davis-Besse license, NRC isn't appropriately using the authority granted it by Congress.
4. Revocation of the Davis-Besse license is necessary in order to ensure that FirstEnergy is complying with all NRC regulations and guidelines.
5. Revocation of the Davis-Besse license is required in order for there to be consistency in the manner that the NRC enforces its regulations.

Current Status:

- a. The staff issued an acknowledgment letter on February 10, 2003, to inform the Congressman that the PRB has determined that the petition meets the acceptance criteria for review under 2.206. The acknowledgment letter also informed the Petitioner that, pending completion of the NRC's investigative process, the NRC does not have sufficient basis to immediately revoke the Davis-Besse operating license. Thus, the Petitioner's request for immediate revocation of the license was denied.
- b. The staff called the Petitioner's staff on February 14, 2003, to explain the 2.206 process and to offer an opportunity to address the PRB. The Congressman's staff indicated that they do wish to address the PRB but need more time to prepare for the presentation.
- c. The PRB is waiting to hear back from Congressman's staff to establish a date for its presentation to the PRB.

Attachment 2

Status of Potential Petitions Under Consideration

Facility: Maine Yankee
Petitioner: Randall Speck, Special Counsel for the State of Maine
Date of Letter: November 15, 2002
Responsible Office: NMSS
PRB meeting: To be scheduled

Issues/Actions requested:

That the NRC conduct a hearing on the efficacy of indefinite, long-term spent fuel storage at Maine Yankee.

Resolution:

The petitioner has also requested a hearing, pursuant to 10 CFR 2.202, regarding the October 16, 2002, safeguards order and interim compensatory measures. On December 10, 2002, the staff sent a letter to the petitioner stating that a decision on the acceptability of the 2.206 petition will be held in abeyance until the staff makes a determination on the hearing request.

Facility: Palo Verde
Petitioner: Thomas Saporito representing the National Environmental Protection Center
Date of Letter: January 17, 2003
Responsible Office: NRR
Public PRB meeting: N/A

Issues/Actions requested:

That the NRC issue a civil penalty against Arizona Public Service (APS) and against the licensee's law firm; that the NRC cause an investigation through extensive interviews to determine if employees feel free to raise environmental safety concerns to the licensee or to the NRC without fear of reprisal, harassment or intimidation; that the NRC take actions to cause an investigation of APS to determine through extensive interviews whether employees are knowledgeable and aware of how to file a discrimination complaint under 10 CFR 50.7, and under OSHA EPA statutes; that the NRC investigate through extensive interviews to determine if employees are provided training by the licensee with respect to employee protection provisions under 10 CFR 50.7 and OSHA EPA statutes.

Resolution:

The staff was unable to contact the petitioner by phone or by e-mail. The staff, therefore, issued an interim letter to the petitioner dated February 27, 2003, explaining that his petition did

not meet the acceptance criteria for review under 2.206. The petitioner's concerns will be addressed in future correspondence.

Facility: Indian Point 2
Petitioner: Raymond Shadis representing the New England Coalition on Nuclear Pollution (NECNP)
Date of Letter: February 17, 2003
Responsible Office: NRR
Public PRB meeting: To be scheduled

Issues/Actions requested:

That the Nuclear Regulatory Commission (NRC) investigate if the IP2 Security Superintendent revealed Safeguards Information (SGI) to the public.

If SGI was released to the public, that the NRC take appropriate enforcement action immediately. The petitioner also requests that such enforcement action be taken not only with respect to the individual, but also with respect to the handling of SGI by the licensee and the NRC, in general, so that such revelations as may compromise adequate protection of the public health and safety, and which may be inimical to the common defense, are prevented in the future.

Resolution:

- a. NRC staff (NSIR) will determine whether SGI was released to the public.
- b. If NSIR determines that SGI was released, the petitioner will be informed that the issues raised in the petition will be treated as an allegation. The allegation will be investigated by the Office of Investigations for potential civil and criminal actions against those who publicly disclosed SGI.
- c. PRB will reconvene after receiving a response from NSIR.

Attachment 3

AGE STATISTICS FOR AGENCY 2.206 PETITIONS

ASSIGNED ACTION OFFICE	FACILITY	Incoming petition	PRB meeting ¹	Acknowledgment letter / days from incoming ²	Proposed DD issuance Date/ age ³	Scheduled date for final DD/ age ⁴	Comments if not meeting the Agency's Completion Goals
NMSS	Oyster Creek	6/21/02	7/18/02	8/07/02 47	12/10/2002 120	---	
NMSS	Waltz Mill Site	10/30/02	02/20/03	02/28/03	TBD	---	
NRR	Davis-Besse	02/03/03	TBD	02/10/03 7	03/07/03 33	04/18/03 75	

- 1) Goal is to hold a PRB meeting, which the petitioner is invited to participate in, within 2 weeks of receipt of petition (there is often a delay of up two weeks from the date that the letter is issued until it is received by the reviewing organization).
- 2) Goal is to issue acknowledgment letter within 5 weeks of the date of incoming petition.
- 3) Goal is to issue proposed DD within 120 days of the acknowledgment letter.
- 4) Goal is to issue final DD within 45 days of the end of the comment period.

Attachment 4

Average Days to Issuance of Proposed Directors Decisions

