

December 12, 2000

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: NOVEMBER 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 November 30, 2000. During this reporting period, the petition by Mr. Marvin Lewis on all nuclear power plants using steam generator tubing (G20000494) was closed. Currently, there are four open petitions: one in the Office of Nuclear Reactor Regulation (NRR), and three 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 November 30, 2000. 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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Accession Number ML003777027 DISTRIBUTION: See next page *See previous concurrence.

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DATE	12/07/00	12/07/00	12/07/00 12/07/00	12/07/00	12/12/00 12/12/00	12/11/00

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Report on Status of Public Petitions Under 10 CFR 2.206
November 30, 2000
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Attachment 1

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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

* Schedule for completion will be set following the filing of Earthjustice's motion withdrawing its petition.

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.

Current Status:

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.

Facility:	<u>Envirosafe of Idaho</u>
Petitioner:	Envirocare and Snake River Alliance
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:	12/21/2000
Last Contact with Petitioners:	11/16/2000
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 Atomic Energy Act of 1954 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 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 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 Petition Manager 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.

On October 5, 2000, the Petition Manager was informed by Mr. Bickwit, representing Envirocare, that a response was filed with the Document Control Desk on August 30, 2000, on behalf of Envirocare of Utah to reply to: (1) the joint supplemental response filed by Envirocare Services of Idaho, Inc. and the Environmental Technology Council; and (2) the letter response filed by the U.S. Army Corps of Engineers, both submitted in opposition to petitions filed under 10 CFR 2.206 by the Snake River Alliance and Envirocare relating to the Commission's interpretation of the UMTRCA.

Current Status:

On November 16, 2000, the petitioner was informed of the status of the petition. A draft Director's Decision (DD) had been prepared. On November 22, 2000, OGC requested an extension to move the completion date to December 21, 2000. The DD is expected to be issued by the revised completion date.

Facility: **US Department of Defense and all services/users of depleted uranium (DU)**
Petitioner: Doug Rokke
Date of Petition: 6/1/00
Director's Decision To Be Issued by: NMSS
Date Referred to Review Organization: 7/18/00
EDO Number: G20000345
OGC Number: ---
Scheduled Completion Date: 1/8/2001
Last Contact with Petitioner: 11/28/2000
Petition Manager: Roberto J. Torres
Case Attorney: J. Goldberg

Issues/Action Requested:

The petitioner requested a formal NRC hearing to consider: (1) the revocation of the master DU license for the US Department of Defense (DOD) and all services; (2) implementation of fines and consideration of personal criminal liability; (3) formal protection under the whistleblower statutes for him and all others who are trying to obtain medical care for all DU casualties; and (4) completion of environmental remediation of all DU contamination.

Background:

The petitioner served as a health physicist for the depleted uranium team in Operation Desert Storm (i.e., Gulf War), and after the Gulf War served as the DOD/Army Depleted Uranium Project Director. The petitioner alleges that he became sick from DU exposure and subsequently was denied medical care. The US Navy has a master material license issued by NRC Region II. On February 19, 1999, during a training exercise, DU ammunition was expended on the Live Impact Area of the Vieques Naval Range, on Vieques Island, Puerto Rico. The NRC was notified of the incident by the Naval Radiation Safety Committee (NRSC) Executive Secretary on March 5, 1999. The NRSC identified the issuance of the DU ammunition and the subsequent firing of it as a Severity Level IV violation of the Navy's Master Material License (MML); specifically, a violation of Naval Radioactive Material Permit Number 13-00164-L1NP.

A team of Navy Health Physicists was deployed to Vieques between March 10 and 19, 1999. The team performed visual and radiological surveys and recovered a total of 57 DU ammunition penetrators. NRC conducted an inspection on March 22-23, 2000, of the NRSC actions as a result of this incident. Based on the results of this inspection, the NRC determined that the NRSC properly identified a Severity Level IV violation and appropriately issued a Notice of Violation to the responsible command. NRC Inspection Manual Chapter 2810, "Master Material License Inspection Program," states that the NRC will not take any further enforcement action, to cite or to pursue escalation for Severity Level IV violations by permittees that have already been identified and adequately corrected by the MML's Radiation Safety Committee. The petitioner was contacted on July 25, 2000, and was informed of the 10 CFR 2.206 process. Subsequent attempted contacts, including a letter dated August 8, 2000, offering him an opportunity for a presentation to the PRB, received no response.

The PRB met on August 29, 2000, and accepted the petition. An acknowledgment letter and a *Federal Register* notice on the petition were issued on September 8, 2000.

Current Status:

On November 28, 2000, a letter was sent to the petitioner on the current status of the petition.

A PRB meeting is scheduled for December 19, 2000, to consolidate the licensee responses (Army, Navy, Air Force) received on October 30, 2000, and to gather input from PRB members on the Director's Decision.

Facility:	Haddam Neck Nuclear Generating Station
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:	3/9/2001
Last Contact with Petitioners:	11/9/2000
Petition Manager:	E. Pogue
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. (5) The petitioners also claim that the radiological control and protection program and procedures at Haddam Neck lacked defense-in-depth, and cite three specific instances: not posting a "High Radiation Area" sign at the workers' entrance, an unplanned worker exposure at a High Integrity Container, and contamination outside of a Radiological Controlled Area.

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.

Current Status:

The acknowledgment letter and the *Federal Register* Notice on the petition were issued on November 9, 2000. The draft Director's Decision (DD) is being prepared.

Facility:	All Nuclear Power Plants Using Steam Generator (SG) Tubing
Petitioner:	Marvin I. Lewis
Date of Petition:	10/16/2000
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	10/19/2000
EDO Number:	G20000494
OGC Number:	-
Scheduled Completion Date:	11/17/2000 (Closed)
Last Contact with Petitioners:	10/24/2000
Petition Manager:	R. Laufer
Case Attorney:	J. Goldberg

Issues/Action Requested:

That (1) "the NRC cease all operations of all nuclear power plants using steam generator tubing" until the questions raised in his letter are answered; and (2) the NRC answer specific technical questions related to "NRC Special Inspection Report - Indian Point Unit 2 [IP2] Steam Generator Tube Failure - Report No. 05000247/2000-010," dated August 31, 2000.

Background:

A PRB meeting on the petition was held on October 26, 2000. The petitioner was invited to participate in a teleconference prior to the PRB meeting, but declined. The PRB concluded that the petition did not meet the threshold for processing under 10 CFR 2.206 [Part III of Management Directive 8.11, pages 11 and 12] because the petitioner raises no new issues or safety concerns. The petitioner raises issues that have already been the subject of NRC staff review and evaluation at both IP2 and Salem, for which resolution has been achieved.

Current Status:

The denial letter addressing each of the petitioner's questions was issued on November 17, 2000, and the petition was closed out.

Attachment 2
AGE AND RESOURCE EXPENDITURES FOR AGENCY 2.206 OPEN PETITIONS
As of November 30, 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	3**	TBD ²	5	65	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.
NMSS	G20000138,136		ENVIROSAFE OF IDAHO	7	12/21/2000	158	28	Due to late submittal (August 30, 2000) of information from Envirocare of Utah legal counsel L. Bickwit, OGC needs time for review of information presented. An extension to the completion date requested to permit OGC review of the DD.
NMSS	G20000345	-	DEPARTMENT OF DEFENSE	2	1/8/2001	109	2	-
NRR	G20000462	-	HADDAM NECK	1	3/9/2001	89	4	-

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

² 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
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
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
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	10/18/200	4	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.