

June 20, 2005

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

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

SUBJECT: MAY 2005 REPORT ON THE STATUS OF PUBLIC PETITIONS
UNDER TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*,
SECTION 2.206

The attached reports give the status of petitions submitted under Title 10 of the *Code of Federal Regulations*, Section 2.206. As of May 31, 2005, there were six open petitions that were accepted for review under the 2.206 process; five in the Office of Nuclear Reactor Regulation (NRR) and one in NMSS.

Attachment 1 provides a detailed status of the open petitions.

Attachment 2 provides the status of incoming letters that the staff is 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 May 31, 2005.

This report, Director's Decisions, and other 2.206-related documents are placed in the Agencywide Documents Access and Management System (ADAMS). In making these readily accessible to the public, the staff has identified another vehicle to address our performance goal of ensuring openness in our regulatory process.

Attachments: As stated

CONTACT: Donna Skay, NRR/DLPM
415-1322

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DISTRIBUTION: See next page

ADAMS Accession Number: ML051570006

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|--------|----------|----------|---------|---------|----------|
| OFFICE | PM:PDI-1 | LA:PDI-1 | D:PDII | DD:DLPM | ADPT:NRR |
| NAME | DSkay | SLittle | HBerkow | CHolden | BSheron |
| DATE | 6/08/05 | 6/08/05 | 6/10/05 | 6/13/05 | 6/16/05 |

OFFICIAL AGENCY RECORD

DISTRIBUTION FOR MAY 2005 REPORT ON THE STATUS OF PUBLIC PETITIONS UNDER
TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*, SECTION 2.206

Date:

PUBLIC

PDI-1 Reading File

MVirgilio, DEDMRS/EDO

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WDean, AO/EDO

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Regional Administrators

SLittle

Status of Open Petitions

| <u>Facility</u> | <u>Petitioner/EDO No.</u> | <u>Page</u> |
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| All BWRs with Mark I and II containments | Nuclear Security Coalition G20040549..... | 1 |
| Vermont Yankee Nuclear Power Station | Paul Blanch and Arnold Gundersen G20050008..... | 3 |
| Vermont Yankee Nuclear Power Station | New England Coalition G20040831..... | 5 |
| Byron Station, Unit 1 | Barry Quigley G20050160..... | 6 |
| Beaver Valley | Union of Concerned Scientists GT20050272..... | 7 |
| All Depleted Uranium Munition Licensees | James Salsman G20050242..... | 8 |

Report on Status of Public Petitions Under 10 CFR 2.206

| | |
|--------------------------------------|--|
| Facility: | <u>All Boiling-Water Reactors (BWRs) with Mark I and II Containments</u> |
| Petitioner: | Nuclear Security Coalition |
| Date of Petition: | August 10, 2004, as supplemented on March 15 and April 12, 2005 |
| Director's Decision to be Issued by: | NRR |
| EDO Number: | G20040549 |
| Proposed DD Issuance: | June 30, 2005 |
| Final DD Issuance: | TBD |
| Last Contact with Petitioner: | April 12, 2005 |
| Petition Manager: | Peter Tam |
| Case Attorney: | Giovonna Longo |

Issues/Actions requested:

That the NRC:

- (1) Issue a demand for information to the licensees for all Mark I and II BWRs and conduct a 6-month study of options for addressing structural vulnerabilities;
- (2) Present the findings of the study at a national conference attended by all interested stakeholders, providing for transcribed comments and questions;
- (3) Develop a comprehensive plan that accounts for stakeholder concerns and addresses structural vulnerabilities of all Mark I and II BWRs within a 12-month period;
- (4) Issue Orders to the licensees for all Mark I and II BWRs compelling incorporation of a comprehensive set of protective measures, including structural protections; and
- (5) Make future operation of each Mark I and II BWR contingent on addressing its structural vulnerability with participation and oversight by a panel of local stakeholders.

Background:

The petitioners requested a teleconference to address the Petition Review Board (PRB). Due to difficulties in coordinating the availability of the petitioners, the teleconference was not scheduled until September 23, 2004. The teleconference was subsequently changed to a public meeting to accommodate petitioners who requested to be present.

Following the meeting on September 23, 2004, the PRB met in a closed session and determined that the petition satisfied the criteria for review under the 2.206 process. An acknowledgment letter was issued to the petitioners on October 19, 2004.

The staff determined that the response to the specific requests in the petition will be dependent on the NRC's response to a National Academy of Sciences (NAS) report on fuel pool vulnerabilities. The PRB decided to suspend review of this petition, as of October 19, 2004, until the NAS report is issued publicly. The petitioner was notified of this action on November 22, 2004.

On November 29 and December 6, 2004, the petitioners submitted, via e-mail, supplemental information for their petition. The supplemental information consisted of media reports of potential terrorist targets.

On December 1, 2004, the NRC staff issued a letter to the petitioners stating that the NRC staff's effort to prepare a Director's Decision would proceed in parallel with NRC's efforts to respond to an NAS public report on the same subject. NRC is required by the FY 2005 Congressional appropriations language to respond to the NAS report. To do that, the NAS must first publish such a report. At that time, NAS was expected to issue a publicly available version of its report by December 31, 2004. However, as stated in a letter from the NRC to NAS on December 2, 2004, the publication of such a report was delayed due to differences between the NRC and NAS determination of the releasability of potential safeguards information in the report.

On February 15, 2005, the Petition Manager notified the petitioner that the public version of the NAS report was not published on December 31, 2004, as originally projected, and that the publication date is currently expected to be spring 2005.

On March 14, 2005, Chairman Diaz signed a report (made publicly available on March 17, 2005) to Senator Domenici, communicating information that was previously not available to the public regarding spent fuel security.

NAS released an unclassified version of its fuel security study on April 6, 2005. The issuance of the Chairman's letter, along with the release of the NAS report, will assist the staff in determining the information that can be made publicly available in response to the petition.

The petitioner submitted additional information by letter dated April 12, 2005.

Current Status:

The proposed Director's Decision has been drafted and is in concurrence. The planned issuance date is June 30, 2005.

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|--------------------------------------|--|
| Facility: | <u>Vermont Yankee Nuclear Power Station</u> |
| Petitioner: | Paul Blanch and Arnold Gundersen |
| Date of Petition: | July 29, 2004, as supplemented on December 8, 2004 |
| Director's Decision to be Issued by: | NRR |
| EDO Number: | G20050008 |
| Proposed DD Issuance: | May 17, 2005 |
| Final DD Issuance: | August 1, 2005 |
| Last Contact with Petitioner: | May 17, 2005 |
| Petition Manager: | John Boska |
| Case Attorney: | Giovonna Longo |

Issues/Actions requested:

That the NRC issue a Demand for Information requiring Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. to provide the NRC with information that describes how Vermont Yankee (VY) complies with the General Design Criteria.

Background:

By letter dated August 20, 2004, the NRC staff notified the petitioners that this request would not be treated under 2.206 because it involves a licensing action which is currently open for members of the public to request a hearing. Per the NRC's procedures, a request will not be treated under 2.206 if it can be resolved through the hearing process. Subsequent to being notified of this decision, the petitioners requested an opportunity to address the Petition Review Board. This teleconference was held on August 26, 2004.

In addition, on August 30, 2004, the New England Coalition filed a request for hearing on the VY power uprate. Among the contentions submitted was a contention that the licensee failed to maintain adequate documentation to determine design basis conformance.

On December 8, 2004, the petitioners sent a letter to Chairman Diaz requesting that he personally intervene in Entergy's application for an extended power uprate (EPU) amendment at VY. The letter discusses issues related to the recent VY engineering inspection and concerns related to VY regulatory compliance. In an e-mail dated December 9, 2004, Mr. Blanch requested that this letter be considered as a supplement to his and Mr. Gundersen's 10 CFR 2.206 petition dated July 29, 2004. The Director, NRR, responded on December 29, 2004, stating that the December 8 letter would be treated as a supplement to the 2.206 petition and that answers to questions regarding the engineering inspection were provided during a public meeting on December 16, 2004. Because this issue is being addressed through the 2.206 process, Chairman Diaz did not intervene as requested by the petitioners. After a Decision is issued, the Commission, at its discretion, may determine to review the Decision and direct the staff to take another action.

On November 22, 2004, the Atomic Safety and Licensing Board ruled that the hearing contention related to this issue from the New England Coalition (supported by declaration from Mr. Blanch) was not admissible. The PRB held a meeting on December 14, 2004, and determined that the petition met the criteria of 10 CFR 2.206. The staff contacted the petitioners on December 16, 2004, and notified them that the petition had been accepted. An acknowledgment letter was sent to the petitioners on January 17, 2005.

Current Status:

The proposed Director's Decision was issued on May 17, 2005. Comments are due by June 17, 2005.

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| Facility: | <u>Vermont Yankee Nuclear Power Station</u> |
| Petitioner: | Raymond Shadis, New England Coalition |
| Date of Petition: | December 7, 2004 |
| Director's Decision to be Issued by: | NRR |
| EDO Number: | G20040831 |
| Proposed DD Issuance: | May 24, 2005 |
| Final DD Issuance: | August 8, 2005 |
| Last Contact with Petitioner: | May 24, 2005 |
| Petition Manager: | Rick Ennis |
| Case Attorney: | Giovonna Longo |

Issues/Actions requested:

That the NRC order the shutdown of VY and/or take other such action as is within the NRC's discretion to restore reasonable assurance of adequate protection until such time as the licensee has provided a workable emergency warning or alert system and the NRC has verified its operability.

Background:

The petitioners state that the public warning system is inoperable and the licensee has established an extremely poor record in the area of emergency response.

In October 2004, the NRC conducted an inspection of the emergency preparedness program at VY and issued a preliminary white finding based on the failure to maintain the alert notification system.

The NRC held a teleconference with the licensee on January 6, 2005. Following this teleconference, the NRC determined that the petition met the criteria of 10 CFR 2.206 and sent an acknowledgment letter to the petitioner on January 26, 2005. The PRB determined that, based on a recently completed inspection of the VY emergency preparedness program, as documented in an inspection report dated November 12, 2004, the proposed immediate action was not necessary. As discussed in the inspection report, the NRC identified an apparent violation associated with emergency planning standard 10 CFR 50.47(b)(5) because the licensee's method of distributing tone alert radios to members of the public outside of siren coverage was not meeting the intent of the design basis for the alert and notification system. However, the report concluded that this preliminary finding "does not present an immediate safety concern because the licensee has informed the towns to be prepared to do route alerting to ensure that those residents outside of siren coverage are notified in the event of an emergency."

Current Status:

The proposed Director's Decision was issued on May 24, 2005. Comments are due by June 24, 2005.

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| Facility: | <u>Byron Station, Unit 1</u> |
| Petitioners: | Barry Quigley |
| Date of Petition: | March 2, 2005 |
| Director's Decision to be Issued by: | NRR |
| EDO Number: | G20050160 |
| Proposed DD Issuance: | August 3, 2005 |
| Final DD Issuance: | TBD |
| Last Contact with Petitioner: | April 14, 2005 |
| Petition Manager: | George Dick |
| Case Attorney: | Giovonna Longo |

Issues/Actions requested:

That the NRC take enforcement action against Exelon Nuclear for failure to comply with 10 CFR Part 50, Appendix B, Criterion XVI. In particular, the petition claims that the 1C Reactor Coolant System Cold Leg Loop Stop Isolation Valve has been broken for at least 6 years and has not been repaired.

Background:

At the time the petition was submitted, Byron Station was in a refueling outage. The petition states that a repair to the valve was scheduled for the current outage but was subsequently cancelled, in part, based on the high dose that would be incurred by the work. Due to the small time window available to repair the valve, the petitioner requested immediate action.

The NRC staff held a teleconference with the petitioner on March 4, 2005. The petitioner provided additional information that was not contained in the March 2, 2005, letter during the teleconference. The staff determined that additional information was needed from the licensee. Exelon submitted information on March 5, 2005, and the staff held teleconferences with the licensee on March 16 and March 18, 2005. On March 21, 2005, the NRC staff met with the licensee in the Region III offices. The petitioner was present at the meeting. The staff determined that immediate action was not necessary prior to the unit restarting from its refueling outage.

The staff determined that this request will be reviewed under the 2.206 process and issued an acknowledgment letter to the petitioner on April 5, 2005.

Current Status:

The staff is continuing to review the petition and plans to issue a proposed Director's Decision by August 3, 2005.

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| Facility: | <u>Beaver Valley Power Station, Units 1 and 2</u> |
| Petitioner: | Union of Concerned Scientists |
| Date of Petition: | April 12, 2005 |
| Director's Decision to be Issued by: | NRR |
| EDO Number: | G20050272 |
| Proposed DD Issuance: | September 19, 2005 |
| Final DD Issuance: | TBD |
| Last Contact with Petitioner: | May 20, 2005 |
| Petition Manager: | Tim Colburn |
| Case Attorney: | Giovonna Longo |

Issues/Actions requested:

That the NRC either impose a civil penalty of at least \$55,000 or move the license renewal application for Beaver Valley to the end of the current queue.

Background:

The NRC determined that the February 9, 2005, application for license renewal was not complete and accurate in all respects. The petitioner believes this is a violation of 10 CFR 50.9 paragraph (a) and the NRC should take appropriate enforcement action.

The NRC offered the petitioner an opportunity to address the PRB which the petitioner has declined.

Current Status:

The NRC issued a letter to the petitioner on May 20, 2005, informing him that the petition has been accepted for review under the 10 CFR 2.206 process.

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| Facility: | <u>All Depleted Uranium Munition Licensees</u> |
| Petitioners: | James Salsman |
| Date of Petition: | April 3, 2005 |
| Director's Decision to be Issued by: | NMSS |
| EDO Number: | G20050242 |
| Proposed DD Issuance: | September 23, 2005 |
| Final DD Issuance: | TBD |
| Last Contact with Petitioner: | May 17, 2005 |
| Petition Manager: | Joe DeCicco |
| Case Attorney: | Giovanna Longo |

Issues/Actions requested:

That all licenses allowing the possession, transport, storage, or use of pyrophoric uranium munitions be modified to impose enforceable conditions on all such licensees in order to rectify their misconduct and any other corrective action as deemed proper.

The petition requests immediate action to correct the alleged misconduct on the part of uranium munitions licensees, for the protection of the health and safety of the public and the environment. This petition alleges gross negligence and other serious misconduct including fraud, willful wrongdoing, and a serious breach of the public trust, on the part of uranium munitions licensees and their officers, employees, contractors, and agents. This petition requests specific and identical modifications to all NRC licenses for the use, storage, transportation, or possession of pyrophoric uranium munitions, intended to correct uranium munitions licensees' misconduct. In particular, the petition requests:

- That all the provisions modifying said licenses be constructed with strict enforcement provisions, imposing substantial fines to fullest extent allowed by law, and immediate license suspensions or revocations if the uranium munitions licensees do not conform to the requirements of the corrective modifications to their licenses within short lengths of time;
- Immediate and sustained remediation and mitigation of conditions resulting from warfare and peacetime activities;
- The suspension of uranium munitions licenses, as modified, until licensees become compliant with the provisions of the modified licenses; and
- Any other corrective action as the Commission may deem proper.

Background:

The petitioner provided, as a basis for his request, negligence on the part of the licensees. Specifically, the licensees were unaware of the fact that uranium reacts with nitrogen, and there has been no attempt to detect hexavalent uranium, including uranium trioxide (UO₃), in the combustion products of depleted uranium ordnance by the Army. Because of this omission, the petitioner requests that all contemporary uranium ordnance safety studies be redone in order to determine the extent of uranyl nitrate combustion product emissions.

The petitioner submitted an original petition dated April 3, 2005 via email. The last supplement to the petition was submitted May 4, 2005, immediately after discussing the petition with the Petition Review Board in a public meeting via teleconference.

Current Status:

The NRC issued a letter to the petitioner on May 26, 2005, informing him that his concerns will be addressed through the 2.206 process. The letter also informs the petitioner that the NRC did not see a need to take the immediate action requested in the petition.

Status of Potential Petitions Under Consideration

Facility: All Operating Power Reactors
Petitioners: Legislature of Rockland County, Westchester County Board, Paul Gunter
Date of Petition: February 10, February 22, February 23, and April 22, 2005
EDO Number: GT 20050123, GT20050136, and GT20050125
PRB meeting: April 5, 2005

Issues/Actions requested:

1. Issue generic communications to all licensed commercial nuclear power station operators to ascertain whether operators currently provide emergency power backup system to significant elements of their required Emergency Notification Systems (ENS).
2. Modify all operating licenses to require that operators provide and maintain emergency backup electrical power to notification sirens, etc.

Background:

The petitioners provided the following basis for their request:

- Nuclear power stations are not required to have emergency power backup for the ENS to assure the operation of public notification systems in the event of an accident or an act of sabotage associated with the simultaneous or subsequent failure of the electrical grid.
- An attack disabling offsite electrical power sources is assumed as part of the NRC Operational Safeguard Response Evaluations. Such an attack on the grid would disable the ENS at the reactors.
- NRC Daily Event Reports demonstrate how a variety of electrical grid failure modes have resulted in significant degradation of ENS.

Current Status:

The NRC issued a letter on May 18, 2005, stating that the staff had determined that the petition would not be reviewed under 10 CFR 2.206 because other actions were already underway, primarily by FEMA, to revise the requirements regarding power supplies to emergency sirens.

Facility: Vermont Yankee
Petitioners: New England Coalition
Date of Petition: May 3, 2005
EDO Number: G20050360
PRB meeting: 5/17/05

Issues/Actions requested:

That the NRC:

- Require Entergy to conduct a review at Vermont Yankee to determine the type, amount, application, and placement of Hemyc fire barrier material; and an assessment of the safety significance of each application;
- Require Entergy to promptly provide justification for operation in non-conformance with 10 CFR Part 50, Appendix R;
- Upon a finding that Vermont Yankee is operating in an unanalyzed condition, order a power reduction until such time as it can be demonstrated that Vermont Yankee is operating in conformance with Appendix R and all other applicable regulations.

Background:

The Petition Review Board held a teleconference with the petitioner on May 17, 2005. In this teleconference, the petitioner stated that he wished to expand the scope of his request to include all fire protection systems at Vermont Yankee, not only Hemyc.

Current Status:

The NRC staff is evaluating the information submitted in the petition and provided in the May 17, 2005, teleconference to determine if the request meets the criteria for review under 10 CFR 2.206.

Facility: Shearon Harris; H.B. Robinson, Unit 2; McGuire, Units 1 and 2; Catawba, Units 1 and 2; Ginna; FitzPatrick; Indian Point, Units 2 and 3; Vermont Yankee; Waterford; and Arkansas Nuclear One, Units 1 and 2

Petitioners: Nuclear Information and Resource Service; Indian Point Safe Energy Coalition; Citizens Awareness Network; NC Waste Action & Reduction Network; Alliance for Affordable Energy; and the Blue Ridge Environmental Defense

Date of Petition: May 12, 2005

EDO Number: G20050379

PRB meeting: June 1, 2005

Issues/Actions requested:

That the NRC:

- Issue a generic communication to the named reactor sites to determine the extent of condition of inoperable fire barriers;
- The generic communication should require that the named sites provide justification for operation in non-compliance with all applicable fire protection regulations; and
- With the determination that any of the named sites are operating in an unanalyzed condition or that assurance of public health and safety is degraded, NRC will order a suspension of the license or a power reduction of the affected reactors until it can be demonstrated that the licensees are operating in conformance with all applicable fire protection regulations.

Current Status:

The Petition Review Board held a meeting with the petitioners on June 1, 2005, in which the petitioners provided additional information to support their requests. The staff is reviewing the petition and the information provided in the meeting to determine if it meets the criteria for review under 10 CFR 2.206.

AGE STATISTICS FOR AGENCY 2.206 PETITIONS

| ASSIGNED ACTION OFFICE | FACILITY/ Petitioner | Incoming petition | PRB meeting ¹ | Acknowledgment letter/days from incoming ² | Proposed DD issuance Date/age ³ | Date for final DD/age ⁴ | Comments if not meeting the Agency's Completion Goals |
|------------------------|--|-------------------|--------------------------|---|--|------------------------------------|---|
| NRR | All BWRs with Mark I and II containments | 8/10/04 | 9/23/04 | 10/19/04 70 | 06/10/05 | TBD | Due to scheduling difficulties, a meeting with the petitioner and licensee was delayed to 9/23/04. The clock was stopped on this petition on 10/19/05 because a public version of the NAS report was not available for the staff to reference. The clock was restarted on 3/14/05 when the Chairman's letter was issued. |
| NRR | Vermont Yankee/ Blanch & Gundersen | 7/29/04 | 8/26/04 | 01/17/05 172 | 05/17/05 120 | 08/01/05 | The PRB could not enter this petition into the 2.206 process until the ASLB ruled on the admissibility of a related hearing contention. |
| NRR | Vermont Yankee/ New England Coalition | 12/07/04 | 01/06/05 | 01/26/05 50 | 05/24/05 118 | 8/08/05 | Due to scheduling conflicts, the PRB meeting with the petitioners could not be held until 4 weeks after the date of the petition. Following the meeting, the staff waited for the transcription of the meeting to be completed before issuing the acknowledgment letter. |
| NRR | Byron Station Barry Quigley | 3/02/05 | 3/21/05 | 4/05/05 34 | 8/03/05 | TBD | |
| NRR | Beaver Valley Union of Concerned Scientists | 4/12/05 | N/A | 5/20/05 38 | 9/19/05 | TBD | |
| NMSS | All Depleted Uranium Munition Licensees James Salsman | 4/03/05 | 5/04/05 | 5/26/05 52 | 9/23/2005 | TBD | |

- 4) 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.