

January 25, 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: DECEMBER 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 January 11, 2001. Since the last report, two Director's Decisions, one on EnviroSAFE of Idaho (G20000138 and G20000136) and another on US Department of Defense (G20000345) were issued and the petitions were closed. Currently, there are two open petitions: one in the Office of Nuclear Reactor Regulation (NRR), and one 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 December 31, 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

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Report on Status of Public Petitions Under 10 CFR 2.206
December 31, 2000
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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. There is no change in status for the month of December.

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|---------------------------------------|-------------------------------------|
| 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: | 12/13/2000 |
| 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:

The Director's Decision (DD-00-06) on the petition was issued on December 13, 2000. The DD denied the petition and stated that, the NRC does not have authority over pre-UMTRCA mill tailings from Formerly Utilized Sites Remedial Action Program (FUSRAP) sites. The agency believes that the Resource Conservation and Recovery Act (RCRA) and state-permitted facilities that the Corps is using for disposal of that material, provided sufficient health and safety protection for both workers and the public. The NRC will continue to refrain from imposing disposal requirements for the mill tailings generated at FUSRAP sites because this material is outside of the agency's jurisdiction. However, if Congress determines that the disposal of such material warrants NRC oversight, the NRC stands ready to implement new legislative directives in that regard.

The Commission, by an order dated January 5, 2001, extended its period for review of the DD to January 12, 2001. The decision after Commission review became a final agency action on January 12, 2001.

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: 1/9/2001
Last Contact with Petitioner: 1/9/2001
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:

The Director's decision(DD-01-01) on this petition was issued on January 9, 2001. The NRC staff has considered the issues raised by the petitioner, and has determined that a significant portion of those issues fall outside NRC-regulated activities because they relate to military activities outside U.S. territories. With respect to the issues that fall within NRC jurisdiction, the Petitioner did not substantiate any significant health or safety concerns or significant violations of NRC requirements. The DD is

currently with the Commission for review, and if the Commission does not act within 25 days of the date of issuance of the DD, it will become a final agency action.

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| Facility: | <u>Haddam Neck Nuclear Generating Station</u> |
| 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: | 12/19/2000 |
| 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. (Upon further review, the staff notes the Item (5) examples are in the petition to characterize the licensee's performance history and are not a part of any of the actions requested by the petition. Also, all three examples cited in Item (5) were problems that have been inspected by the NRC staff and addressed in an inspection report which concluded the licensee's corrective actions were satisfactory. As a result, Item (5) will be deleted from future updates.)

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. The acknowledgment letter and the *Federal Register* Notice on the petition were issued on November 9, 2000.

Current Status:

A proposed Director's Decision (DD) was issued on December 19, 2000. The proposed DD is based primarily on the findings of an NRC inspection of the licensee's garment laundering practices conducted in response to the petition. The NRC inspector concluded that adequate controls were in place to assure that CYAPCO training materials did not become contaminated, and that CYAPCO's garment laundering practices are in compliance with NRC regulations and do not endanger the health and safety of the public. A copy of the proposed DD was provided to both the petitioner and the licensee. On January 4, 2001, the petitioners provided comments on the proposed DD which are currently under review with the staff.

Attachment 2
AGE AND RESOURCE EXPENDITURES FOR AGENCY 2.206 OPEN PETITIONS
As of December 31, 2000

| ASSIGN ED 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 |
|----------------------------------|--------------------|-------------------|------------------|---------------------------------|--|---|---|
| NMSS | G19990011 | ATLAS CORPORATION | 3** | TBD ² | 5 | 66 | 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. |
| NRR | G20000462 | Haddam Neck | 2 | 3/9/2001 | 124 | 4 | Proposed DD issued and comments have been received from petitioners. |

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 |
|-----------------|------------------------|--------------------------|-------------------------------|------------|--|----------------|
| 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 | 10/18/2000 | 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 |

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.