

May 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: APRIL 2003 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 April 30, 2003, there were two open petitions, which were accepted for review under the 2.206 process: one in the Office of Nuclear Reactor Regulation and one in the Office of Nuclear Materials Safety and Safeguards. One Director's Decision (DD) regarding the Oyster Creek Independent Spent Fuel Storage Installation was issued on April 17, 2003.

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 April 30, 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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DISTRIBUTION FOR APRIL 2003 REPORT ON THE STATUS OF PUBLIC PETITIONS
UNDER TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*, SECTION 2.206

Dated: May 20, 2003

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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 (C)
Final DD issuance:	04/17/03 (C)
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. 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 were 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.

The staff received petitioners' comments on the proposed DD on March 5, 10, and 19, 2003.

Current Status:

The petition filed by the Jersey Shore Nuclear Watch to suspend the dry cask storage program at Oyster Creek was denied. The bases for the denial are given in Director's Decision DD-03-01 which was issued on April 17, 2003. No further action is required.

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:	06/20/03
Final DD issuance:	TBD
Last Contact with Petitioner:	05/01/03
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.

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.

At the March 6, 2003, closed PRB meeting, the staff agreed to accept the petition for review under 2.206.

There are several reasons why it took the staff 4 months to determine whether this petition met 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.

On March 13, 2003, a letter was sent to the petitioner and both licensees (Viacom and Westinghouse Electric Company) informing them that the petition met the acceptance criteria for review under 2.206 and would be reviewed in accordance with Management Directive 8.11. A *Federal Register* notice was published on March 27, 2003.

Westinghouse sent a letter to the NRC on March 26, 2003, indicating their intent to file a supplement to their December 20, 2002, response to the Viacom petition. Westinghouse stated in the letter that the supplement will be provided by May 5, 2003. Viacom sent a letter to the NRC on March 28, 2003, objecting to NRC consideration of this Westinghouse supplement.

Current Status:

NRC staff sent a letter to Westinghouse on April 14, 2003, asking for the supplemental information to be delivered no later than April 18, 2003.

The Westinghouse supplemental information was received by the NRC on April 15, 2003. Viacom transmitted comments on the Westinghouse supplemental information on April 22, 2003.

A proposed Director's Decision is being developed for review and issuance. The issuance of the proposed Director's Decision is scheduled for June 20, 2003.

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:	05/26/03
Final DD issuance:	TBD
Last Contact with Petitioner:	04/07/03
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.

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.

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.

The petitioner informed the staff on March 12, 2003, that a supplement would be issued in lieu of a presentation to the PRB.

The petitioner submitted a supplement to the original petition on March 27, 2003, to address the following additional concerns:

- a. boric acid dust may have corroded electrical systems & cable trays
- b. as-built design may not conform to design or licensing bases
- c. training of personnel may not meet licensing basis
- d. DBNPS does not have ability to detect 1 gpm leakage within 1 hour
- e. procedures instituted by NRC may not uncover or address other systems that may be degraded i.e., RCP seal gasket leakage
- f. The O350 Panel will end and the plant will return to normal monitoring under the ROP before Lessons Learned Task Force recommendations regarding the ROP are implemented

- g. The OI investigation must be completed before NRC allows DBNPS to restart

A closed PRB meeting was held on April 2, 2003, to discuss the additional information provided by the petitioner's March 27, 2003, supplement to the original petition. The staff decided that no immediate action was warranted, that the supplement should be consolidated with the existing petition, that no new allegations were presented by the petitioner, and that an acknowledgment letter was not necessary.

Laura Gerke of the Office of Congressional Affairs contacted the petitioner's staff and explained that we have received the supplement to the petition, understand the arguments being made and determined that a clarifying conference call is unnecessary. She also indicated that the proposed DD is scheduled to be issued within 120 days from the date of the original acknowledgment letter which was issued on February 10, 2003.

Current Status:

Licensee responded to the petitioner's March 27, 2003, supplement by letter dated April 11, 2003.

The DRAFT proposed DD is currently under internal NRC review and comment and is expected to be issued by May 26, 2003.

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: Indian Point Units 2 and 3
Petitioner: Richard Blumenthal, Attorney General of the State of Connecticut
Date of Letter: April 24, 2003
Responsible Office: NRR
PRB meeting: To be scheduled

Issues/Actions requested:

That the NRC take the following immediate actions:

1. Order the IP-2 licensee to conduct a full review of the facility's vulnerabilities, security measures and evacuation plans and to suspend operations, revoke the operating license, or adopt other measures resulting in a temporary shutdown of Units 2 and 3 per 10 CFR 2.202.
2. Require the licensee to provide information, as contemplated by 10 CFR 2.204(a), documenting the existing security measures which provide the Indian Point facilities with protection against terrorist attacks.
3. Immediately modify the licensee's operating license for Units 2 and 3 to mandate, at a minimum, a defense and security system sufficient to protect the entire facility, including the containment and spent fuel storage buildings, control room and electric equipment, from land or water based terrorist attack as required by 10 CFR 73.55.

4. Order the revision of licensee's Emergency Response Plan and the Radiological Emergency Response Plans of the State of New York and the nearby counties, in order to account and prepare for possible terrorist attacks. These revisions must encompass not only realistic and catastrophic effects of a terrorist attack on the Indian Point facilities, but also a comprehensive response to multiple attacks in the region which may impair the efficient evacuation of the area. Examples of such attacks include destruction of the regional road and bridge system, loss of power to passenger railroads, and other events that deny use of necessary infrastructure.
5. If, after conducting a full review of the facility's vulnerabilities, security measures and evacuation plans, the NRC cannot sufficiently ensure the security of the Indian Point facilities against terrorist threats, or cannot ensure the safety of New York and Connecticut citizens in the event of an accident or terrorist attack, the Commission should take prompt action to permanently retire the facility.

Resolution:

A closed PRB meeting will be held May 8, 2003 to discuss the petition prior to offering the petitioner an opportunity to address the PRB.

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	12/10/02 (C) 120	04/17/03 (C) 29	
NMSS	Waltz Mill Site	10/30/02	02/20/03	02/28/03 118	06/20/03 112	TBD	See Viacom petition in Attachment 1 for detailed explanation.
NRR	Davis-Besse	02/03/03	N/A	02/10/03 7	05/26/03 105	TBD	

- 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

