

September 17, 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: AUGUST 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 August 31, 2003, there was one open petition, which was accepted for review under the 2.206 process in the Office of Nuclear Reactor Regulation. Two final Director's Decision were issued, and one petition was withdrawn during the month of August.

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 August 31, 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: Donna Skay, NRR
415-1322

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TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*, SECTION 2.206

Dated: September 17, 2003

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Attachment 1

Status of Open Petitions

<u>Facility</u>	<u>Petitioner/EDO No.</u>	<u>Page No.</u>
Waltz Mill Pennsylvania Site	Viacom, Inc. G20020629.....	1
Davis-Besse Nuclear Power Station	Congressman Dennis Kucinich G20030048.....	3
Indian Point Units 2 and 3	Richard Blumenthal, Attorney General of the State of Connecticut G20030216.....	5
Watts Bar Nuclear Plant	David Lochbaum, Union of Concerned Scientists G20030298.....	7

Attachment 1

Report on Status of Public Petitions Under 10 CFR 2.206

Facility: Waltz Mill Pennsylvania Site
Petitioner: Viacom, Inc.
Date of Petition: October 30, 2002
Director's Decision to be Issued by: NMSS
EDO Number: G20020629
Proposed DD Issuance: 06/18/03
Final DD Issuance: 08/26/03
Last Contact with Petitioner: 08/26/03
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 the NRC which the 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. On February 20, 2003, a public PRB meeting was held in Rockville, Maryland with the petitioner and both licensees (Viacom and Westinghouse Electric Company). During 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. 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.

On May 20, 2003, Westinghouse submitted a supplement to its December 20, 2003, response to the Viacom Petition. This supplement informed the NRC that the radiological survey data referred to in the first of the requested actions in the Viacom Petition would be made available to Viacom on May 27, 2003. Although Viacom's letter dated May 23, 2003, complained that Westinghouse was not forthcoming with this data, the NRC staff determined that the availability of this data was immaterial to the decisions being made pursuant to the 2.206 process.

The proposed Director's Decision was transmitted to Viacom and Westinghouse on June 18, 2003. Comments were received from both Westinghouse and Viacom on the proposed Director's Decision.

Current Status:

The staff issued the final Director's Decision on August 26, 2003.

Facility:	<u>Davis-Besse Nuclear Power Station</u>
Petitioner:	Congressman Dennis Kucinich
Date of Petition:	February 3, 2003
Director's Decision to be Issued by:	NRR
EDO Number:	G20030048
Proposed DD Issuance:	06/05/03
Final DD Issuance:	9/12/03
Last Contact with Petitioner:	09/04/03
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:

In response to the licensee's identification of extensive corrosion to the pressure boundary material of the reactor pressure vessel (RPV) head on March 5, 2002, the NRC dispatched an Augmented Inspection Team (AIT), issued a Confirmatory Action Letter (CAL) , and enhanced monitoring of corrective actions as described in NRC Inspection Manual Chapter 0350, "Oversight of Operating Reactor Facilities in a Shutdown Condition with Performance Problems."

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, the 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 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 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 and 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 the ability to detect 1 gpm leakage within 1 hour
- e. procedures instituted by the NRC may not uncover or address other systems that may be degraded (i.e., RCP seal gasket leakage)
- f. The 0350 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. 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.

On April 11, 2003, the staff received the licensee's response to the Petitioner's supplement dated March 27, 2003. The information provided supported the staff's early conclusion that the supplement should be consolidated with the existing petition, and that no new allegations were presented by the Petitioner. The proposed DD was issued on June 6, 2003.

Current Status:

The staff received comments on the proposed Director's Decision from the licensee, the petitioner, and two members of the public. The staff issued a final Director's Decision on September 12, 2003.

Facility:	<u>Indian Point Units 2 and 3</u>
Petitioner:	Richard Blumenthal, Attorney General of the State of Connecticut
Date of Petition:	April 23, 2003
Director's Decision to be Issued by:	NRR
EDO Number:	G20030216
Proposed DD Issuance:	10/31/03
Final DD Issuance:	TBD
Last Contact with Petitioner:	August 29, 2003
Petition Manager:	John Eads (NRR)
Case Attorney:	Jack Goldberg

Issues/Actions requested:

That the Nuclear Regulatory Commission (NRC):

1. Order the licensee to conduct full review of vulnerabilities, security measures, and evacuation plans and to suspend operations, revoke the operating license, or adopt other measures resulting in temporary shutdown of Indian Point Units 2 and 3.
2. Require the licensee to provide sufficient information to document the existing security measures which provide protection against terrorist attacks.
3. Modify the licensee's operating license to mandate specifically a defense and security system sufficient to protect the entire facility, including electric equipment, containment, spent fuel storage, and the control room from a land or water based terrorist attack.
4. Order the revision of the licensee's Emergency Response Plan and the Radiological Emergency Response Plans of the State of New York and nearby counties to account and prepare for terrorist attacks. These revisions must contemplate not only the full range of realistic effects of a terrorist attack on the Indian Point facility, but also a comprehensive response to multiple attacks on the region's infrastructure that could affect execution of the evacuation plans.
5. If, after taking the above actions, the NRC cannot adequately ensure the security of the Indian Point facility against terrorist threats, or cannot ensure the safety of New York and Connecticut citizens from terrorist attacks, that it take prompt action to permanently retire the facility.

Background:

A closed PRB meeting was held on May 8, 2003, to discuss whether the petition satisfies the criteria for review under 10 CFR 2.206.

During this meeting the PRB decided that no immediate action was necessary. The PRB also recommended that security issues regarding potential terrorist attacks be handled separately from the issues associated with the emergency response plan by addressing the security issues in a partial Director's Decision.

By letter dated June 3, 2003, the Petitioner filed a Supplement to his original 2.206 Petition. The supplement provided additional information in support of the petition in three major areas: (1) shadow evacuation effects, (2) family separation, and (3) recent design basis threat changes.

On June 19, 2003, the PRB held a conference call with the Petitioner's representative (Assistant Attorney General, Robert Snook) to afford the Petitioner the opportunity to provide additional information or clarification with regards to the original petition and the recently submitted supplement.

Following the conference call, the PRB determined that the petition satisfied the criteria for review under 10 CFR 2.206. An acknowledgment letter was sent to the Petitioner on July 3, 2003, stating that the petition has met the criteria for evaluation under 10 CFR 2.206

Current Status:

The petition is currently under review by the staff.

Facility:	<u>Watts Bar Nuclear Power Plant</u>
Petitioner:	David Lochbaum, Union of Concerned Scientists
Date of Letter:	May 30, 2003
EDO Number:	G20030298
Proposed DD Issuance:	N/A
Final DD Issuance:	N/A
Last Contact with Petitioner:	08/28/03
Petition Manager:	Margaret Chernoff (NRR)
Case Attorney:	Jack Goldberg

Issues/Actions requested:

That the NRC issue a Demand for Information that would require the Tennessee Valley Authority (TVA) to provide the NRC with information regarding possible corrosion of the reactor coolant pressure boundary at the Watts Bar Nuclear Power Plant due to defects in the stainless steel cladding applied to the interior surface of the carbon steel reactor pressure vessel.

Background:

The interior of the reactor pressure vessel at Watts Bar is clad with stainless steel to protect the carbon steel from corrosion due to borated water. However, as the photographs included in the petition illustrate, there are defects in the stainless steel cladding in the area of the cold leg nozzles which permit constant exposure of the carbon steel to borated water. The NRC was aware of these cladding defects and issued a Safety Evaluation Report in June of 1982. The Safety Evaluation concluded that inservice inspection was not required because experience, to date, indicated that the corrosion rates in this reactor coolant environment would not be of concern. Other cladding defects were later found in the No. 3 Safety Injection Accumulator near a sample line nozzle. The defect was repaired by adding at least one layer of stainless steel cladding over the carbon steel components that made up the reactor coolant pressure boundary.

In a closed PRB meeting on June 9, 2003, the PRB determined that the petition met the criteria for review under 10 CFR 2.206. The Petitioner declined the opportunity to address the PRB. TVA indicated that it would respond formally to the petition.

The staff issued an acknowledgment letter to the Petitioner on July 2, 2003, stating that the petition met the criteria for processing under 10 CFR 2.206. The licensee submitted its response to the petition on July 30, 2003.

Current Status:

By letter dated August 5, 2003, the Petitioner stated that he had reviewed the licensee's letter of July 30, 2003, and found it fully responsive such that the Demand for Information was no longer necessary. Consequently, the Petitioner withdrew his petition. By letter dated August 28, 2003, the NRC closed its review of the petition.

Attachment 2

Status of Potential Petitions Under Consideration

Facility: Davis Besse
Petitioner: J. Riccio (Greenpeace), Paul Gunter (Nuclear Information & Resource Service), and David Lochbaum (Union of Concerned Scientists)
Date of Letter: August 25, 2003
Responsible Office: NRR
PRB meeting: September 17, 2003

Issues/Actions requested:

That the NRC:

1. Take enforcement action against FirstEnergy Nuclear Operating Company for failure to live up to its commitments made in response to the NRC's October 1996 10 CFR 50.54(f) letter. Since the 50.54(f) letter was issued, in direct response to the problems at Millstone that netted its owner a record \$2.1 million fine from the NRC, failure to heed the Millstone warning should carry at least an equivalent sanction.
2. Take enforcement action against First Energy for the numerous design basis violations dating back to the date of licensing, with penalties for each day that the licensee was out of compliance with NRC regulations.
3. Suspend the license and prohibit restart of the Davis-Besse reactor unless, and until, FirstEnergy has adequately addressed all 1,000 design basis deficiencies identified in 1997.
4. Suspend the license and prohibit restart of the Davis-Besse reactor unless, and until FirstEnergy has updated its Probabilistic Risk Assessment to reflect the flaws in its design and licensing basis.
5. Suspend the license and prohibit restart of the Davis-Besse reactor with any systems in a "degraded but operable" condition.

Resolution:

The NRC staff has offered, and the Petitioner has accepted, an opportunity to address the staff. This meeting is scheduled for September 17, 2003.

Facility: Crystal River
Petitioner: Louis D. Putney, on behalf of William A. Hunt
Date of Letter: August 14, 2003
Responsible Office: NRR

Issues/Actions requested:

That the NRC thoroughly investigate the allegations regarding training of radiological first responders and, upon a determination that the allegations are founded, suspend or revoke the operating license of Florida Power Corporation's Crystal River nuclear plant.

Resolution:

Because the basis of the petition consists of allegations that have not been investigated by the NRC staff, the PRB has determined that the Petitioner's request would be better served by evaluating it through the allegation process as opposed to the 2.206 process. The petition manager has contacted the Petitioner to inform him of this decision and will transfer the incoming letter to the Allegation Review Board for its evaluation. A closeout letter was sent to the Petitioner on September 12, 2003.

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.

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	Waltz Mill Site	10/30/02	02/20/03	02/28/03 118	06/18/03 110	8/26/03 complete	PRB meeting couldn't be held until 2/20/03 due to submittal and evaluation of petitioner's and licensee's responses and availability of both parties for a meeting.
NRR	Davis-Besse	02/03/03	02/05/03	02/10/03 7	06/06/03 116	09/12/03 complete	
NRR	Indian Point	04/23/03	05/08/03	07/03/03 70	10/31/03 scheduled	TBD	Staff delayed issuing acknowledgment letter until receipt of a supplement by the petitioner (received on June 3). Due to scheduling conflicts a teleconference with the petitioner was not completed until June 19.
NRR	Watts Bar	05/30/03	06/09/03	7/02/03 32	N/A	N/A	Petition was withdrawn

- 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

