

August 11, 2004

MEMORANDUM TO: Luis A. Reyes  
Executive Director for Operations

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

SUBJECT: JULY 2004 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 July 31, 2004, there were four open petitions, which were accepted for review under the 2.206 process: two in the Office of Nuclear Reactor Regulation, and two in the Office of Nuclear Materials Safety and Safeguards.

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 July 31, 2004.

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 through openness.

Attachments: As stated

CONTACT: Donna Skay, NRR/DLPM  
415-1322

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DISTRIBUTION FOR JULY 2004 REPORT ON THE STATUS OF PUBLIC PETITIONS UNDER  
TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*, SECTION 2.206

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**Status of Open Petitions**

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Report on Status of Public Petitions Under 10 CFR 2.206

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Facility: Indian Point Units 2 and 3  
Petitioner: Richard Blumenthal, Attorney General of the State of Connecticut  
Date of Petition: April 23, 2003, as supplemented on June 3, 2003, and October 16, 2003  
Director's Decision to be Issued by: NRR  
EDO Number: G20030216  
Proposed DD Issuance: 05/17/04  
Final DD Issuance: 08/16/04  
Last Contact with Petitioner: 5/17/04  
Petition Manager: Harold Chernoff  
Case Attorney: Jack Goldberg

Issues/Actions requested:

That the Nuclear Regulatory Commission (NRC):

- a. 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.
- b. Require the licensee to provide sufficient information to document the existing security measures which provide protection against terrorist attacks.
- c. 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.
- d. 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.
- e. 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.

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.

The licensee submitted a response to the petitioner's first supplement (dated June 3, 2003) on October 15, 2003.

The petitioner filed a second supplement to his petition on October 16, 2003.

Based on the significant additional amount of information contained in the licensee's response and the supplement to the petition, the staff requested and was granted an extension of time to respond to the petition to January 9, 2004. The petition manager contacted the attorney general's staff on November 5, 2003, and offered him an opportunity to discuss the supplement with the PRB. This request was declined.

A letter acknowledging the petitioner's second supplement was issued on December 13, 2003.

The staff held a conference call with the Federal Emergency Management Agency (FEMA) on January 29, 2004, to discuss FEMA's comments on the proposed Director's Decision. On February 12, 2004, NRR received FEMA's comments and concurrence.

The staff made substantive changes to the proposed Director's Decision to reference the February 2004 Riverkeeper court decision (which upheld the NRC's conclusion in the Director's Decision related to Riverkeeper's petition) and to legally strengthen aspects of the proposed Director's Decision. Subsequent to these changes, the revised Director's Decision was sent back to FEMA for its review and comment.

Current Status:

On May 17, 2004, the staff issued the proposed Director's Decision. The petitioner submitted comments by letter dated June 18, 2004. The staff is reviewing the comments and plans to issue the final Decision by August 16, 2004.

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Facility:	<u>Vermont Yankee</u>
Petitioner:	Raymond Shadis, New England Coalition
Date of Petition:	April 22, 2004
Director's Decision to be Issued by:	NRR
EDO Number:	G20040284
Proposed DD Issuance:	September 27, 2004
Final DD Issuance:	TBD
Last Contact with Petitioner:	May 28, 2004
Petition Manager:	Alan Wang
Case Attorney:	Steven Lewis

Issues/Actions requested:

That the Nuclear Regulatory Commission (NRC) order a halt to all fuel movement at Vermont Yankee until such time as the licensee has rendered an accurate and NRC-verified account of the location, disposition, and condition of all irradiated fuel, including fuel currently loaded in the reactor core.

Background:

On April 21, 2004, Vermont Yankee formally notified the NRC that two short spent fuel rod segments were not in the spent fuel pool in the location specified in documents. The segments are described as about 7 inches long and 17 inches long, respectively. Both are approximately the diameter of a pencil. These segments had been placed in a special container at the bottom of the spent fuel pool in 1980. The licensee initiated an investigation to attempt to locate the missing segments. On May 19, 2004, Entergy reported to the NRC that the visual inspection of the spent fuel pool was essentially complete. A camera search of the spent fuel pool did not detect the unaccounted for spent fuel rod segments.

The staff contacted the petitioner on April 28, 2004, to discuss the 2.206 process. Following this call, the NRC sent a letter to the petitioner notifying him that all fuel movements had been completed for the current refueling outage prior to the NRC's receipt of their petition. The staff concluded that the petitioner had not identified a safety concern that would prevent the plant from restarting.

The Petition Review Board (PRB) held a teleconference with the petitioner on May 5, 2004. During this teleconference, the petitioner clarified his request to exclude fuel movements associated with locating the missing fuel pin segments from the scope of his request. Following the teleconference, the PRB met in closed session and determined that the petition satisfied the criteria for review under the 2.206 process. An acknowledgment letter was issued to the petitioner on May 28, 2004.

The NRC determined that its Director's Decision would be based partly on the actions taken by the licensee to locate the missing fuel. The staff called the licensee on May 11, and discussed with them a request to document the actions they are taking and the results of these actions. The requests discussed in this phone call are described in a letter to Entergy dated May 21, 2004. By letter dated June 8, 2004, Entergy submitted its response to the NRC's request.

Current Status:

On July 13, 2004, Entergy notified the NRC that the fuel rod segments had been located in the spent fuel pool. The pieces had been stored in a unique aluminum cylinder which was previously thought to be part of an existing in-pool structure. The staff is continuing to review the petitioner's request since the recovery of the missing fuel segments did not fully resolve the petitioner's concerns. The NRC's inspection of the search for the fuel pins is continuing. The results of this inspection, and completion of the licensee's actions, are needed for the staff to complete its review.



Facility:	<u>Sequoyah Fuels</u>
Petitioner:	Kelly Hunter Burch, State of Oklahoma and Julian Fite, representing Cherokee Nation
Date of Petition:	November 19, 2003
Director's Decision to be Issued by:	NMSS
EDO Number:	G20030704
Proposed DD Issuance:	12/31/06
Final DD Issuance:	TBD
Last Contact with Petitioner:	03/02/04
Petition Manager:	Myron Fliegel
Case Attorney:	Antonio Fernandez

Issues/Actions requested:

That the NRC deny the request for an amendment to the materials license of Sequoyah Fuels Corporation. The amendment seeks approval of a proposed ground water corrective action plan and a proposed ground water monitoring plan.

Background:

This petition was originally submitted as a hearing request to the Atomic Safety and Licensing Panel in response to a notice of a license amendment request by Sequoyah Fuels. The petitioners each submitted a hearing request after the published deadline. Therefore, the ASLB dismissed the hearing requests and referred them to the Executive Director for Operations under the provisions of 10 CFR 2.1205(i)(2) for appropriate disposition under 10 CFR 2.206. Subsequently, the Cherokee Nation appealed the ASLB's decision to the Commission.

The Commission reaffirmed the ASLB decision on January 15, 2004. The Petition Review Board held a meeting with representatives of the two petitioners and the licensee on January 28, 2004.

The staff issued acknowledgment letters to the petitioners on March 2, 2004.

Current Status:

The staff anticipates that completion of the licensing action (review of the groundwater monitoring and corrective action plans) will take approximately 2 years. During this time, the staff will be working with the petitioners to understand their concerns and will consider the petitioners' issues while they evaluate the licensing action request. A decision regarding the 2.206 petition will be made before the staff makes a final decision on the license amendment request. Because of the time period anticipated to resolve his petition, the staff has informed the petitioner that status updates will be provided as necessary, but not necessarily be every 60 days as called for by NRC guidance.

Facility: Radiac Research Corporation  
Petitioner: Michael Gerrard, representing Neighbors Against Garbage  
Date of Petition: November 4, 2003, as supplemented on February 27, 2004  
Director's Decision to be Issued by: NMSS  
EDO Number: G20030681  
Proposed DD Issuance: 6/14/04  
Final DD Issuance: 8/27/04  
Last Contact with Petitioner: 6/14/04  
Petition Manager: Antonio Fernandez  
Case Attorney:

Issues/Actions requested:

That the NRC close the Radiac Research Corporation because a threat to the common defense and security exists at the facility that is not being considered by the local licensing agency. The petitioner claims that this threat exists because the facility is located in a major population center; security at the facility is poor; and an adjoining hazardous waste storage facility is permitted to handle flammable liquids, reactives, and oxidizers, and has inadequate fire prevention and suppression systems.

Background:

The staff held internal PRB meetings to address the question of immediate action and has concluded that there is no need for immediate action. The petitioner was informed of this decision. Due to scheduling difficulties, a meeting with the petitioner and licensee was delayed to February 20, 2004. At this meeting, the petitioner and licensee indicated that they would submit supplemental information that addresses the applicability of their petition to the 2.206 criteria. On February 27, 2004, the licensee submitted a letter requesting that the NRC dismiss the petition as not meeting the criteria of 2.206. The petitioner also submitted a letter on February 27, 2004, that addressed the question of whether the petition meets the criteria for a 2.206 petition. After considering the petition and supplemental letters, the staff accepted the petition for review under 2.206.

On February 19, 2004, a separate letter was submitted to the NRC by Community Board No. 1 of the City of New York with similar concerns regarding Radiac Research Corporation. The staff issued a letter to the Community Board on March 30, 2004, indicating that it will consider the board's comments in its review of the application.

Representative Velacquez, in whose district Radiac is located, wrote a letter to Chairman Diaz on December 10, 2003, citing concerns similar to those in the petition. Chairman Diaz replied by letter dated February 24, 2004, stating that the NRC would consider his concerns as part of the review of the petition.

The staff sent a letter to the petitioners on April 27, 2004, stating that the petition meets the criteria for review under 10 CFR 2.206.

On June 14, 2004, the staff issued a proposed Director's Decision to the petitioners.

Current Status:

Comments on the proposed Decision were submitted by the petitioner on July 13, 2004. The staff is preparing the final Director's Decision.

## Status of Potential Petitions Under Consideration

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Facility:	All operating nuclear power plants
Petitioner:	David Lochbaum, Union of Concerned Scientists
Date of letter:	May 14, 2004 (G20040350) and May 24, 2004
Responsible Office:	NRR
PRB meeting:	May 25, 2004

### Issues/Actions requested:

That the Nuclear Regulatory Commission issue Confirmatory Orders to the licensees of all operating nuclear power reactors for all regulatory commitments placed on dockets between January 1, 2000, and June 30, 2004.

### Status:

The petitioner supplemented his initial petition by letter dated May 24, 2004. The Petition Review Board held a conference call with the petitioner on May 25, 2004. The NRC determined that the request did not meet the criteria of 10 CFR 2.206 and informed the petitioner of this decision on June 7, 2004. The reasons for this decision will be documented in a letter to the petitioner which is scheduled to be issued in August.

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Facility:	Turkey Point, Unit 3
Petitioner:	Thomas Saparito
Date of letter:	June 10, 2004 (G20040393)
Responsible Office:	NRR
PRB meeting:	June 24, 2004

### Issues/Actions requested:

That the Nuclear Regulatory Commission order the shutdown of Turkey Point, Unit 3, and reinstate all safety inspection requirements in Order EA-03-009 in its entirety.

### Status:

The PRB held a conference call with the petitioner on June 24, 2004. During this call, the petitioner provided additional information and indicated that he would supplement his petition.

The petitioner submitted a supplement on June 30, 2004. The Petition Review Board met on July 13, 2004, to review the additional information and concluded that the petition does not meet the criteria of 10 CFR 2.206. The petitioner was informed of this on July 19, 2004.

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Facility:	Turkey Point, Unit 3
Petitioner:	Thomas Saporito
Date of letter:	July 1, 2004 (G20040393), supplemented July 4
Responsible Office:	NRR
PRB meeting:	July 13, 2004 and August 2, 2004

Issues/Actions requested:

That the NRC take immediate enforcement action against Florida Power and Light for the alleged failure of licensee to adhere to the requirements of 10 CFR 50.7, Employee Protection, which prohibits discrimination against employees for engaging in protected activities.

Status:

The Petition Review Board met on July 13, 2004, and determined that the letters raise issues that have already been the subject of NRC staff review and a resolution has been achieved. Therefore, the Petition Review Board proposed to reject the submittals for review under 10 CFR 2.206. On August 2, 2004, the Petition Review Board held a teleconference with the petitioner to provide an opportunity for the petitioner to provide any new information or additional explanations. Following the teleconference, the PRB reviewed the information provided and determined that no significant information was provided. The PRB concluded that the issues raised by the petitioner are more properly addressed through the allegation review process and will forward the information to the Allegation Review Board. The petitioner will be notified of this decision.

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Facility:	Pilgrim
Petitioner:	Mary Lampert
Date of letter:	June 12, 2004 (G20040422)
Responsible Office:	NRR
PRB meeting:	July 1, 2004

Issues/Actions requested:

That the Nuclear Regulatory Commission require Pilgrim Nuclear Power Station to cease operations during a strike of its workers if a strike occurs.

Resolution:

The petitioner was contacted on June 29, 2004, and accepted an opportunity to address the PRB. This tele-conference was conducted on July 1, 2004. On July 15, 2004, a new contract was signed by the Union, averting a strike. Therefore, no further action will be taken on this petition. The staff is preparing a response to the petitioner documenting this decision.

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Facility: Pilgrim  
Petitioner: Mary Lampert  
Date of letter: June 18, 2004 (G20040435)  
Responsible Office: NRR  
PRB meeting: July 1, 2004

Issues/Actions requested:

That the Nuclear Regulatory Commission require Pilgrim Nuclear Power Station to cease operations over a sufficient period of time bracketing the July 4<sup>th</sup> National Holiday and the Democratic National Convention.

Resolution:

The staff considered the immediate nature of the requests related to the July 4<sup>th</sup> holiday. The staff determined that there was no credible or specific threat to Pilgrim that warranted an immediate shutdown. The staff informed the petitioner of this determination on July 1. The staff also concluded that this petition does not meet the criteria of 10 CFR 2.206 and is drafting a letter explaining this position.

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Facility: Pilgrim  
Petitioner: Mary Lampert, Pilgrim Watch and Sandra Gavutis, C-10  
Education and Research Foundation  
Date of letter: June 25, 2004 (G20040436)  
Responsible Office: NRR  
PRB meeting: July 1, 2004

Issues/Actions requested:

That the Nuclear Regulatory Commission require Pilgrim and Seabrook Nuclear Power Stations to cease operations over a sufficient period of time bracketing the July 4<sup>th</sup> National Holiday and the Democratic National Convention, place both reactors on the highest alert status and increase security with a special focus on protecting spent fuel.

Resolution:

The staff considered the immediate nature of the requests related to the July 4<sup>th</sup> holiday. The staff determined that there was no credible or specific threat to either Pilgrim or Seabrook that warranted their immediate shutdown or an increase in their security posture. The staff informed the lead petitioner, Ms. Lampert, of this determination. The Petition Review Board (PRB) determined that this petition was very similar to Ms. Lampert's petition submitted June 19, 2004 (G20040435) and recommended consolidation. The staff concluded that this petition does not meet the criteria for review under 2.206

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Facility: Pilgrim  
Petitioner: Scott Strauss, Spiegel & McDiarmid for the Utility Workers Union of America, Local 369  
Date of letter: July 9, 2004 (G20040469)  
Responsible Office: NRR  
PRB meeting: July 13, 2004

Issues/Actions requested:

That the Nuclear Regulatory Commission require Pilgrim Nuclear Power Station to shutdown in the event of a work stoppage and to maintain it in a shutdown condition unless and until the members of Local 369 return to work at Pilgrim.

Resolution:

The Petition Review Board (PRB) determined that this petition was very similar to Ms. Lampert's petition submitted June 12, 2004 (G20040422) and recommended consolidation. A new contract was signed on July 15, 2004, averting a strike. On July 16, 2004, the petitioner withdrew the petition. No further action will be taken on this petition.

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Facility: Vermont Yankee  
Petitioner: Michael Mulligan  
Date of letter: June 17, 2004 (G20040418)  
Responsible Office: NRR  
PRB meeting: June 29, 2004

Issues/Actions requested:

That the Nuclear Regulatory Commission ask for the resignation of Entergy CEO or the shutdown of all of Entergy's nuclear power plants.

Status:

The Petition Review Board met internally and determined that this request is more appropriately handled under the allegation process. The petitioner was contacted and offered an opportunity to address the Board prior to its final determination. The petitioner did not request to address the Board. A closure letter was issued on July 27, 2004.

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Facility: Massachusetts Institute of Technology  
Petitioner: Kathryn Elizabeth Adams  
Date of letter: June 28, 2004  
Responsible Office: NRR  
PRB meeting: July 13, 2004

Issues/Actions requested:

That the Nuclear Regulatory Commission take immediate action to require the Massachusetts Institute of Technology (MIT) Research Reactor to cease operations during the Democratic National Convention (DNC). The basis for the request relates to safety concerns about the heightened threat of terrorism during the DNC.

Resolution:

Due to the immediacy of the DNC, the NRC's Petition Review Board (PRB) viewed this petition as a request for immediate action. The PRB reviewed the petition, and determined that there was no need for immediate action to shutdown the MIT Research Reactor because there is no specific intelligence or threat against the facility. The petitioner was informed of this decision on July 13, 2004.

The PRB also concluded that the submittal does not meet the criteria for consideration under 10 CFR 2.206. The petitioner raises issues that have already been the subject of NRC staff review and evaluation for which a resolution has been achieved. In addition, the petitioner has not provided any additional information that supports the assertion that the MIT Research Reactor is specifically targeted for a terrorist action. It should be noted that the licensee had previously determined to shut down the facility for the duration of the DNC.

The NRC issued a letter to the petitioner on July 27, 2004, documenting these conclusions.

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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.

Status:

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. This letter remains as a potential 2.206 petition but the staff cannot consider whether it will be treated as a 2.206 petition until the Licensing Board settles the issues before it. The State of Maine has advised the staff that it will withdraw the petition and the staff is awaiting a letter of withdrawal.

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**AGE STATISTICS FOR AGENCY 2.206 PETITIONS**

ASSIGN ED ACTION OFFICE	FACILITY	Incoming petition	PRB meeting <sup>1</sup>	Acknowledgment letter / days from incoming <sup>2</sup>	Proposed DD issuance Date/ age <sup>3</sup>	Scheduled date for final DD/ age <sup>4</sup>	Comments if not meeting the Agency's Completion Goals
NRR	Indian Point	04/23/03	05/08/03	(1) 07/03/03 70 (2) 12/15/03	<del>40/31/03</del> <del>01/09/04</del> <del>2/26/04</del> 5/17/04 147	8/16/04	<sup>2</sup> Staff delayed issuing acknowledgment letter pending submittal 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. <sup>3</sup> Age of petition is calculated from date of second acknowledgment letter, less the time that the petition was with FEMA for review.
NMSS	Sequoyah Fuels	11/19/03	01/28/04 <sup>1</sup>	2/26/04 97	12/31/06	TBD	<sup>1,2</sup> Commission action delayed initiation of petition review until 01/15/04.
NMSS	Radiac Corp.	11/04/03	2/20/04	4/27/04	6/14/04 49	8/27/04	Due to scheduling difficulties, a meeting with the petitioner and licensee was delayed to 2/20/04.
NRR	Vermont Yankee	4/22/04	5/11/04	5/28/04 36	9/27/04	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.

# Average Days to Issuance of Proposed Directors

