

April 21, 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: MARCH 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 March 31, 2005, there were three open petitions that were accepted for review under the 2.206 process in the Office of Nuclear Reactor Regulation (NRR).

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 March 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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ADAMS Accession Number: ML050950340

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OFFICIAL AGENCY RECORD

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

Date: April 21, 2005

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Status of Open Petitions

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Report on Status of Public Petitions Under 10 CFR 2.206

Facility:	<u>Vermont Yankee Nuclear Power Station</u>
Petitioner:	Raymond Shadis, New England Coalition
Date of Petition:	April 22 and September 10, 2004
Director's Decision to be Issued by:	NRR
EDO Number:	G20040284
Proposed DD Issuance:	December 27, 2004
Final DD Issuance:	March 10, 2005
Last Contact with Petitioner:	March 10, 2005
Petition Manager:	Alan Wang

Issues/Actions requested:

That the Nuclear Regulatory Commission (NRC or the Commission) order a halt to all fuel movement at Vermont Yankee Nuclear Power Station (Vermont Yankee) until such time as Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (Entergy or 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 (SFP) 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 SFP 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 SFP was essentially complete. A camera search of the SFP did not detect the unaccounted for spent fuel rod segments.

The NRC 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 his 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 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 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 NRC staff called the licensee on May 11, 2004, 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.

On July 13, 2004, Entergy notified the NRC that the fuel rod segments had been located in the SFP. The pieces had been stored in a unique aluminum cylinder which was previously thought to be part of an existing in-pool structure.

The petitioner supplemented his petition on September 10, 2004. The supplement requested further verification of the current inventory of special nuclear material on site. The PRB held a second teleconference with the petitioner on September 22, 2004. Based on the new information in the supplement and additional requests for action, the NRC staff extended the expected completion date of its review to December 27, 2004.

On October 5, 2004, the NRC issued a letter to the licensee requesting specific information to assist in its review of the petition.

On October 25, 2004, the NRC issued a second acknowledgment letter to the petitioner in response to the supplement dated September 10, 2004, and subsequent teleconference.

On November 19, 2004, Entergy submitted a letter that provided information on its investigation in response to the NRC's request dated October 5, 2004.

The NRC issued a proposed Director's Decision for comment on December 27, 2004. The NRC received comments on the proposed Director's Decision from the petitioner on January 25, 2005.

Current Status:

The staff issued a final Decision on March 10, 2005.

Facility: All Boiling-Water Reactors (BWRs) with Mark I and II containments
Petitioner: Nuclear Security Coalition
Date of Petition: August 10, 2004, as supplemented on March 15, 2005
Director's Decision to be Issued by: NRR
EDO Number: G20040549
Proposed DD Issuance: June 10, 2005
Final DD Issuance: TBD
Last Contact with Petitioner: March 28, 2005
Petition Manager: Peter Tam
Case Attorney: Giovanna 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 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 at currently expected to be spring 2005.

Current Status:

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.

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:	TBD
Last Contact with Petitioner:	March 15, 2005
Petition Manager:	Donna Skay
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 Vermont Yankee 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 NRC staff is reviewing the issues addressed in the petition and expects to issue a proposed Director's Decision by May 17, 2005.

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 26, 2005
Final DD Issuance:	TBD
Last Contact with Petitioner:	March 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 NRC staff is reviewing the petition with assistance from the Federal Emergency Management Agency. A proposed Director's Decision is expected to be issued by May 26, 2005.

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, and February 23, 2005
EDO Number: GT 20050123, GT20050136, GT20050125
PRB meeting: To be scheduled

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 staff has scheduled a meeting with the petitioners for April 5, 2005. The purpose of the meeting is for the petitioners to provide any additional information and for the Petition Review Board to ask questions of the petitioners prior to making a determination of whether the request will be evaluated under the 2.206 process.

Facility: FitzPatrick
Petitioner: Citizens Awareness Network
Date of Petition: October 27, 2004 as supplemented on
November 16, 2004
EDO Number: G20040743
PRB meeting: December 7, 2004

Issues/Actions requested:

That the NRC modify or suspend the operating license for FitzPatrick until the following actions are completed:

1. Conduct physical tests of the ventilation and heat-up rates of the pump rooms under simulated fire scenarios, with verification of the test results by an independent third party, followed by an open public meeting;
2. Seal floor/ceiling penetrations between the basement level pump rooms and the first floor;
3. Provide alternate cooling and ventilation for Emergency Service Water (ESW) and Fire Safety Related Pump rooms; and
4. Verify the adequacy of completed actions by NRC inspection team.

Background:

The petition states that the former and current licensees have failed to fulfill commitments to resolve inadequate fire protection and ventilation affecting the ESW and Fire Safety Related Pump rooms.

On December 7, 2004, the PRB held a teleconference with the petitioners to clarify the issues raised in the petition and to determine if the petitioners had any additional information to support the basis for the petition. During the call, the petitioners stated that information was provided separately to the OIG from one of the petitioners and that the petitioners would like this information included as a supplement to the petition.

On December 17, 2004, the information provided to the OIG was made available to the PRB. This information is being reviewed by the staff to determine if it contains substantive new information beyond that previously evaluated.

Current Status:

On March 18, 2005, the NRC issued a letter to the petitioner stating that the submittal does not meet the criteria for consideration under 10 CFR 2.206 because it raises issues that have already been the subject of staff review and evaluation at FitzPatrick and that have already been resolved. The staff found that the petitioner did not present any significant new information which would cause it to reconsider the prior resolution of the issues. The issues had been previously reviewed and evaluated by the NRC staff under its Allegation Review Process.

Facility: Pilgrim
Petitioner: Mary Lampert
Date of Petition: January 18, 2005
EDO Number: G20050032
PRB meeting: February 9, 2005

Issues/Actions requested:

That the NRC require Pilgrim to cease operations until proper notification equipment is installed throughout the Emergency Planning Zone (EPZ) to enable residents to transients to be notified within the required 15 minutes.

Background:

The petition provides the following as the basis for asserting that the public warning system at Pilgrim is ineffective:

1. The emergency sirens cannot be heard indoors; Pilgrim's EPZ should have an indoor warning system.
2. The emergency sirens have failed 12 times between 2000 and 2004.
3. Route notification takes considerably longer than 15 minutes and will not accomplish the task.
4. Sirens are not placed on major highways.

A teleconference with the petitioner was held on February 9, 2005. The petitioner provided additional information that was not contained in the January 18, 2005, letter during the teleconference.

Current Status:

On April 1, 2005, the NRC issued a letter to the petitioner stating that the issues raised in the petition are not appropriately addressed under the 10 CFR 2.206 process, because no violations of NRC regulations could be substantiated and the information provided was not sufficient to warrant further inquiry. Based on evaluations by the Federal Emergency Management Agency (FEMA) and the NRC's quarterly evaluations of siren reliability, the NRC finds reasonable assurance that the Pilgrim Nuclear Power Station public notification system has the capability to essentially complete the initial notification of the public within the plume exposure planning zone within about 15 minutes. The staff also noted that, if the petitioner believes that Federal requirements for sound levels or for the design of emergency alerting systems need to be revised, the appropriate process would be through a petition for rulemaking to the NRC as described in 10 CFR 2.802, or to FEMA as described in 44 CFR 1.18.

Facility:	<u>Byron Station, Unit 1</u>
Petitioners:	Barry Quigley
Date of Petition:	March 2, 2005
EDO Number:	G20050160
PRB meeting:	March 4, 2005

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.

Current Status:

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 is reviewing the information provided to determine if it will be reviewed under the 2.206 process.

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		Due to scheduling difficulties, a meeting with the petitioner and licensee was delayed to 9/23/04. The clock was stopped on this petition as of 10/19 until the NRC receives the report from NAS.
NRR	Vermont Yankee/ New England Coalition	4/22/04	5/11/04	5/28/04 36 10/25/04 45	9/27/04 12/27/04 63	03/10/05 complete	The clock was reset due to receipt of supplement on 9/10/04
NRR	Vermont Yankee/ Blanch & Gundersen	7/29/04	8/26/04	01/17/05 172	05/17/05	TBD	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	05/26/05	TBD	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.

- 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.