

August 17, 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: JULY 2005 REPORT ON THE STATUS OF PUBLIC PETITIONS
UNDER TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS*,
SECTION 2.206

The attached report gives the status of petitions submitted under Title 10 of the *Code of Federal Regulations*, Section 2.206. As of July 31, 2005, there were eight open petitions that were accepted for review under the 2.206 process; seven in the Office of Nuclear Reactor Regulation (NRR) and one in NMSS. Information that has changed since the last monthly report, is highlighted.

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, 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 Williams, NRR/DLPM
415-1322

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DATE	8/15/05	8/15/05	8/16/05	8/16/05	8/16/05	8/17/05

OFFICIAL AGENCY RECORD

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

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Status of Open Petitions

<u>Facility</u>	<u>Petitioner/EDO No.</u>	<u>Page</u>
All BWRs with Mark I and II containments	Nuclear Security Coalition G20040549.....	1
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Beaver Valley	Union of Concerned Scientists GT20050272.....	8
All Depleted Uranium Munition Licensees	James Salsman G20050242.....	9
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Report on Status of Public Petitions Under 10 CFR 2.206

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 and April 12, 2005
Director's Decision to be Issued by: NRR
EDO Number: G20040549
Proposed DD Issuance: June 29, 2005
Final DD Issuance: **September 12, 2005**
Last Contact with Petitioner: June 29, 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 Petition Review Board (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 NRC 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 currently expected to be spring 2005.

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.

The petitioner submitted additional information by letter dated April 12, 2005.

The proposed Director's Decision was issued on June 29, 2005, to the petitioner and the licensee for their review and comment.

Current Status:

Comments on the proposed Decision were due by July 29, 2005. On July 29, 2005, Mary Lampert of Pilgrim Security Watch submitted comments on the proposed Decision. The staff will address the comments in the final Director's Decision.

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:	August 29, 2005
Last Contact with Petitioner:	July 22, 2005
Petition Manager:	Rick Ennis
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 VY 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.

On May 13, 2005, the NRC issued a request for additional information to Entergy, asking that they provide information to determine if the VY Updated Final Safety Analysis Report was being maintained in conformance with 10 CFR 50.71(e).

On May 17, 2005, the proposed Director's Decision was issued to the petitioners and the licensee for their review and comment. On June 14, 2005, Entergy responded to the request for additional information issued on May 13, 2005.

Current Status:

The proposed Decision stated that comments should be submitted by June 16, 2005. On June 22, and July 7, 2005, the petition manager contacted the petitioners to inquire whether comments would be submitted. The petitioners confirmed that they received the proposed Decision but did not indicate whether they intended to provide comments. The petition manager again contacted the petitioners on July 22, 2005, and informed them that the comment period had closed and that he would proceed with issuing the final Decision. As of July 31, 2005, no comments had been received on the proposed Director's Decision and the petitioners had not requested an extension of time to comment. The staff is proceeding with preparing the final Director's Decision for issuance by August 29, 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 24, 2005
Final DD Issuance:	October 24, 2005
Last Contact with Petitioner:	July 22, 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."

The proposed Director's Decision was issued on May 24, 2005. Comments on the proposed Director's Decision were received from the petitioner on June 24, 2005. The licensee had no comments. The staff is evaluating the petitioner's comments and issues identified by FEMA during the emergency planning drill held at VY in May 2005. These will be addressed in the final Director's Decision.

Current Status:

FEMA identified several deficiencies, related to the issues in the 2.206 petition, during the emergency planning drill held at VY at the end of May (i.e., following issuance of the proposed Director's Decision). The final Director's Decision will need to address those deficiencies, their associated corrective actions, and FEMA's "reasonable assurance" conclusion regarding offsite emergency planning. FEMA intends to issue their report for the May exercise by September 9, 2005. The staff has extended its proposed date to issue the final Decision to October 24, 2005, to evaluate and address the information from the FEMA report. The petition manager informed the petitioner of this change in schedule.

Facility:	<u>Byron Station, Unit 1</u>
Petitioners:	Barry Quigley
Date of Petition:	March 2, 2005
Director's Decision to be Issued by:	NRR
EDO Number:	G20050160
Proposed DD Issuance:	August 3, 2005
Final DD Issuance:	TBD
Last Contact with Petitioner:	August 3, 2005
Petition Manager:	George Dick
Case Attorney:	Giovonna Longo

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.

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 determined that this request will be reviewed under the 2.206 process and issued an acknowledgment letter to the petitioner on April 5, 2005.

On May 5, 2005, the NRC issued a request for additional information to the licensee. The licensee responded by letter dated May 27, 2005.

Current Status:

The staff issued the proposed Director's Decision to the licensee and the petitioner on August 3, 2005, for comment. Comments are due by September 5, 2005.

Facility:	<u>Beaver Valley Power Station, Units 1 and 2</u>
Petitioner:	Union of Concerned Scientists
Date of Petition:	April 12, 2005
Director's Decision to be Issued by:	NRR
EDO Number:	G20050272
Proposed DD Issuance:	September 19, 2005
Final DD Issuance:	TBD
Last Contact with Petitioner:	May 20, 2005
Petition Manager:	Tim Colburn
Case Attorney:	Giovonna Longo

Issues/Actions requested:

That the NRC either impose a civil penalty of at least \$55,000 or move the license renewal application for Beaver Valley to the end of the current queue.

Background:

The NRC determined that the February 9, 2005, application for license renewal was not complete and accurate in all respects. The petitioner believes this is a violation of 10 CFR 50.9 paragraph (a) and the NRC should take appropriate enforcement action.

The NRC offered the petitioner an opportunity to address the PRB which the petitioner declined.

The NRC issued a letter to the petitioner on May 20, 2005, informing them that the petition has been accepted for review under the 10 CFR 2.206 process.

Current Status:

The staff is continuing to review the petition and plans to issue a proposed Director's Decision by September 19, 2005.

Facility:	<u>All Depleted Uranium Munition Licensees</u>
Petitioners:	James Salsman
Date of Petition:	April 3, 2005
Director's Decision to be Issued by:	NMSS
EDO Number:	G20050242
Proposed DD Issuance:	September 23, 2005
Final DD Issuance:	TBD
Last Contact with Petitioner:	May 17, 2005
Petition Manager:	Joe DeCicco
Case Attorney:	Giovanna Longo

Issues/Actions requested:

That all licenses allowing the possession, transport, storage, or use of pyrophoric uranium munitions be modified to impose enforceable conditions on all such licensees in order to rectify their misconduct and any other corrective action as deemed proper.

The petition requests immediate action to correct the alleged misconduct on the part of uranium munitions licensees, for the protection of the health and safety of the public and the environment. This petition alleges gross negligence and other serious misconduct including fraud, willful wrongdoing, and a serious breach of the public trust, on the part of uranium munitions licensees and their officers, employees, contractors, and agents. This petition requests specific and identical modifications to all NRC licenses for the use, storage, transportation, or possession of pyrophoric uranium munitions, intended to correct uranium munitions licensees' misconduct. In particular, the petition requests:

- That all the provisions modifying said licenses be constructed with strict enforcement provisions, imposing substantial fines to fullest extent allowed by law, and immediate license suspensions or revocations if the uranium munitions licensees do not conform to the requirements of the corrective modifications to their licenses within short lengths of time;
- Immediate and sustained remediation and mitigation of conditions resulting from warfare and peacetime activities;
- The suspension of uranium munitions licenses, as modified, until licensees become compliant with the provisions of the modified licenses; and
- Any other corrective action as the Commission may deem proper.

Background:

The petitioner provided, as a basis for his request, negligence on the part of the licensees. Specifically, the licensees were unaware of the fact that uranium reacts with nitrogen, and there has been no attempt to detect hexavalent uranium, including uranium trioxide (UO₃), in the combustion products of depleted uranium ordnance by the Army. Because of this omission, the petitioner requests that all contemporary uranium ordnance safety studies be redone in order to determine the extent of uranyl nitrate combustion product emissions.

The petitioner submitted an original petition dated April 3, 2005, via email. The last supplement to the petition was submitted May 4, 2005, immediately after discussing the petition with the Petition Review Board in a public meeting via teleconference.

The NRC issued a letter to the petitioner on May 26, 2005, informing him that his concerns will be addressed through the 2.206 process. The letter also informs the petitioner that the NRC did not see a need to take the immediate action requested in the petition.

The Notification of Receipt of a 2.206 Petition was published in the *Federal Register* on June 6, 2006 (70 FR 32661). The NRC notified the licensees, via a letter, of the receipt of the 2.206 petition on June 10, 2005, inviting the licensees to respond to the safety concerns, expressed by the petitioner, within their organization's area of responsibility.

Current Status:

The staff has received responses to the June 10, 2005, letter from two licensees which address issues in the petition. The staff is reviewing these responses.

Facility:	<u>Vermont Yankee</u>
Petitioner:	Ray Shadis, representing New England Coalition
Date of Petition:	May 3, 2005
Director's Decision to be Issued by:	NRR
EDO Number:	G20050360
Proposed DD Issuance:	October 13, 2005
Final DD Issuance:	TBD
Last Contact with Petitioner:	June 15, 2005
Petition Manager:	Stew Bailey
Case Attorney:	Giovonna Longo

Issues/Actions requested:

That the NRC:

- Require Entergy to conduct a review at Vermont Yankee (VY) to determine the type, amount, application, and placement of Hemyc fire barrier material; and an assessment of the safety significance of each application;
- Require Entergy to promptly provide justification for operation in non-conformance with 10 CFR Part 50, Appendix R;
- Upon a finding that VY is operating in an unanalyzed condition, order a power reduction until such time as it can be demonstrated that VY is operating in conformance with Appendix R and all other applicable regulations.

Background:

The Petition Review Board held a teleconference with the petitioner on May 17, 2005. In this teleconference, the petitioner stated that he wished to expand the scope of his request to include all fire protection systems at VY, not only Hemyc.

The NRC issued a letter to the petitioner on June 15, 2005, informing him that the petition has been accepted for review under the 10 CFR 2.206 process. In its letter, the staff stated that the petitioner had not provided sufficient basis for the staff to expand the scope of the petition beyond that documented in the May 3, 2005, letter. In addition, the staff denied the request for immediate action, stating that continued plant operation, while corrective actions are being implemented, will not pose an undue risk to public health and safety.

Current Status:

The staff is evaluating the licensee's plans with regard to the Hemyc fire barrier material at VY. The staff plans to issue a proposed Decision by October 13, 2005.

Facilities: Shearon Harris; H.B. Robinson, Unit 2; McGuire, Units 1 and 2; Catawba, Units 1 and 2; Ginna; FitzPatrick; Indian Point, Units 2 and 3; Vermont Yankee; Waterford; and Arkansas Nuclear One, Units 1 and 2

Petitioners: Nuclear Information and Resource Service and others

Date of Petition: May 12, 2005

Director's Decision to be Issued by: NRR

EDO Number: G20050379

Proposed DD Issuance: October 25, 2005

Final DD Issuance: TBD

Last Contact with Petitioner: June 27, 2005

Petition Manager: Chandu Patel

Case Attorney: Giovonna Longo

Issues/Actions requested:

That the NRC:

- Issue a generic communication to the named reactor sites to determine the extent of condition of inoperable fire barriers;
- The generic communication should require that the named sites provide justification for operation in non-compliance with all applicable fire protection regulations; and
- With the determination that any of the named sites are operating in an unanalyzed condition or that assurance of public health and safety is degraded, NRC will order a suspension of the license or a power reduction of the affected reactors until it can be demonstrated that the licensees are operating in conformance with all applicable fire protection regulations.

Background:

The Petition Review Board held a meeting with the petitioners on June 1, 2005, in which the petitioners provided additional information to support their requests.

The NRC issued a letter to the petitioner on June 27, 2005, informing them that the petition has been accepted for review under the 10 CFR 2.206 process. In its letter, the staff denied the request for immediate action, stating that continued plant operation, while corrective actions are being implemented, will not pose an undue risk to public health and safety.

Current Status:

The NRC has issued for public comment a draft Generic Letter regarding the Hemyc fire barriers. The staff is evaluating whether the draft Generic Letter addresses all of the petitioners concerns. Issuance of a proposed Director's Decision is planned by October 25, 2005.

Status of Potential Petitions Under Consideration

Facility: BWRs with Mark I containments
PWRs with ice-condenser containments
Special Circumstance reactors
Nuclear Fuel Services
Paducah Gaseous Diffusion Plant

Petitioners: Pamela Blockey-O-Brien
Date of Petition: June 22, 2005
EDO Number: G20050462
PRB meeting: July 28, 2005

Issues/Actions requested:

The petitioner is requesting that the NRC order the shutdown of the named facilities, cleanup of the surrounding area, removal of spent fuel from the sites, and worker compensation.

Current Status:

The Petition Review Board held a teleconference with the petitioner on July 28, 2005. Prior to the teleconference, the petition manager had provided a list of specific information that the Board needed to determine if the petition meets the criteria of 10 CFR 2.206. The staff is evaluating the petition, and the information received during the teleconference to determine if it will be accepted into 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	06/29/05 107	9/12/05	The clock was stopped on this petition on 10/19/05 because a public version of the NAS report was not available for the staff to reference. The clock was restarted on 3/14/05 when the Chairman's letter was issued.
NRR	Vermont Yankee/ Blanch & Gundersen	7/29/04	8/26/04	01/17/05 172	05/17/05 120	08/29/05	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	05/24/05 118	10/24/05	The date of the final DD was extended to address issues that will be included in FEMAs drill report (expected to be issued in Sept. 2005)
NRR	Byron Station Barry Quigley	3/02/05	3/21/05	4/05/05 34	8/03/05 120	TBD	
NRR	Beaver Valley Union of Concerned Scientists	4/12/05	N/A	5/20/05 38	9/19/05	TBD	
NMSS	<u>All Depleted Uranium Munition Licensees</u> James Salsman	4/03/05	5/04/05	5/26/05 52	9/23/2005	TBD	
NRR	Vermont Yankee	5/03/05	5/17/05	6/15/05 43	10/13/05	TBD	
NRR	All plants that use Hemyc fire barrier	5/12/05	6/01/05	6/27/05	10/25/05	TBD	

- 4) Goal is to hold a PRB meeting, which the petitioner is invited to participate in, within 2 weeks of receipt of petition.
- 2) Goal is to issue acknowledgment letter within 35 days 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.