

August 30, 2000

MEMORANDUM TO: William D. Travers
Executive Director for Operations

THRU: Samuel J. Collins, Director */RA by Roy P. Zimmerman Acting for/*
Office of Nuclear Reactor Regulation

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

SUBJECT: JULY REPORT ON THE STATUS OF PUBLIC PETITIONS UNDER
10 CFR 2.206

The attached monthly report gives the status of 10 CFR 2.206 petitions as of August 16, 2000. Since the last report, Director's Decision (DD-00-03) on Indian Point Unit 3 (G20000062) was issued and the petition was closed. Also, the petition on Nine Mile Point Units 1 & 2 (G2000245) was closed because it did not meet the threshold screening criteria for treating this under the 10 CFR 2.206 process. Thus, there are four open petitions: two in the Office of Nuclear Reactor Regulation (NRR), and two in the Office of Nuclear Material Safety and Safeguards (NMSS).

Attachment 1 provides the table of contents and detailed status of petitions for NRR, NMSS, and OE. Attachment 2 shows the age and staff hours expended on open 2.206 petitions as of July 31, 2000, including a summary of the status of 2.206 petitions exceeding the 120-day scheduled completion goal. Attachment 3 shows the statistics for the 2.206 petitions processed in the past 12 months.

This report and recently issued Director's Decisions are placed in the Agencywide Document Access and Management System (ADAMS), and on the NRC's external home page, making them readily accessible to the public. The URL address is <http://www.nrc.gov/NRC/PUBLIC/2206/index.html>.

Attachments: As stated

CONTACT: Ram Subbaratnam, NRR
415-1478

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415-1478

A:\22700 DISTRIBUTION: See next page *See previous concurrence.

Accession Number ML003745716

OFFICE	PM:PDII	LA:PDII	SC:PDII	D:PDII	NMSS/IMNS/IMOB	D:DLPM	ADPT:NRR	D: NRR
NAME	RSubbaratnam	Dunnington	Rcorreia/HB	HBerkow for	PGoldberg*	JZwolinski/SBlack	BSheron	SCollins
	8/16/2000	8/16/2000	8/24/2000	8/24/2000	8/2/2000	8/17/2000	8/28/2000	8/29/2000

* See Previous Concurrence

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H. Berkow, NRR
A. Kugler, NRR
OCA
OPA
Regional Administrators
PUBLIC w/att 1, 2, & 3

Report on Status of Public Petitions Under 10 CFR 2.206
July 31, 2000
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Attachment 1

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Attachment 1

Report on Status of Public Petitions Under 10 CFR 2.206

Facility:	Moab site of Atlas Corporation (Present Licensee, PricewaterhouseCoopers LLP, Trustee)
Petitioner:	Earth Justice Legal Defense Fund
Date of Petition:	1/11/99
Director's Decision To Be Issued by:	NMSS
Date Referred to Review Organization:	1/12/99
EDO Number:	G19990011
OGC Number:	P-99-02
Scheduled Completion Date:	TBD*
Last Contact with Petitioner:	7/21/2000
Petition Manager:	Myron Fliegel
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioners request NRC to take six immediate actions to halt impacts to and to ensure the conservation of the endangered species of fish in the Colorado River near the Atlas site.

Background:

On August 2, 1988, Atlas submitted an application for a license amendment to revise its site reclamation plan for uranium mill tailings at its no longer operating site near Moab, Utah. On March 30, 1994, a notice of intent to prepare an Environmental Impact Statement was published in the *Federal Register*. In January 1996, the Draft Environmental Impact Statement was published for public comment. On July 29, 1998, the U.S. Fish and Wildlife Service (FWS), in accordance with Section 7 of the Endangered Species Act (ESA), issued a final biological opinion for impacts to federally listed endangered species from the reclamation of the Atlas mill tailings site. On October 12, 1998, and November 13, 1998, the petitioners notified NRC of their intent to sue under the ESA. On December 16, 1998, the petitioners filed a Motion for Preliminary Injunction against NRC in the U.S. District Court, District of Utah.

A petition was filed on January 11, 1999, requesting the NRC to take six immediate actions related to potential impact on endangered fish in the Colorado River due to contaminants from the Atlas uranium mill tailings pile. A Petition Review Board (PRB) meeting was held on January 26, 1999, and the petitioners' requests for immediate action were denied by a letter of that date. In the letter, it was noted that none of the six items identified in the petition addresses a health, safety, or environmental concern that requires emergency steps before a complete review as provided for in 10 CFR 2.206. An acknowledgment letter for this petition was published in the *Federal Register* on February 12, 1999. On May 13, 1999, the staff received a supplement to the 2.206 petition requesting immediate action on several items: (1) to suspend the issuance of the license amendment to permit reclamation; (2) to initiate a supplemental National Environmental Policy Act process; and (3) to reinstate consultation with FWS under the ESA.

* Schedule for completion will be set following resolution of the litigation issues.

Earthjustice had, on January 27, 1999, petitioned the Atomic Safety and Licensing Board (ASLB) to intervene on the Atlas Corporation's proposal to reclaim the Moab mill tailings and on the cleanup of contaminated groundwater, citing the impacts to the endangered fish in the Colorado River and its belief that the biological opinion was erroneous. On May 27, 1999, the NRC wrote to the petitioners, acknowledging receipt of the supplement, denying immediate action, and notifying the petitioners that NRC was deferring action on the 2.206 petition, pending a decision by the ASLB on the petitioners' request for a hearing on similar issues.

On September 17, 1999, the staff filed responses to the ASLB presiding officers' questions of July 30, 1999. On September 29, 1999, the staff provided the ASLB with a copy of its September 29, 1999, letter to Dames & Moore, notifying that organization that it had been selected to become the Trustee for the Atlas Moab site, since the Atlas Corporation is in bankruptcy. Copies of both filings were sent to the petitioners. Dames & Moore subsequently withdrew as trustee and PricewaterhouseCoopers LLP was chosen to be the trustee.

On October 18, 1999, Earthjustice filed a petition with the U.S. Court of Appeals for the 9th Circuit, arguing that the May 27, 1999, letter and a May 28, 1999, license amendment constitute final agency action and a de facto denial of the 2.206 petition. On November 3, 1999, OGC filed a motion to dismiss for lack of jurisdiction with the 9th Circuit Court of Appeals. A copy of the motion was sent to the petitioners. On November 23, 1999, the petitioner filed a response to the NRC motion to dismiss, arguing that the rejection of its request for immediate action and subsequent lack of action on the part of the NRC in issuing a final Director's Decision constitutes a final agency action. NRC filed its reply with the court to the petitioners' response on December 2, 1999.

On October 28, 1999, the ASLB presiding officer found the Earthjustice petition of January 27, 1999, to be timely, and entertained further argument on the issue of petitioners' standing. On November 16, 1999, Earthjustice requested the presiding officer to rule on whether the ASLB has jurisdiction with respect to determining whether NRC has complied with the ESA. On December 6, 1999, the staff filed a response arguing that the ASLB should deny the petitioners' November 16, 1999, motion.

On December 27, 1999, an Order transferring source material license SUA-917 from Atlas Corporation to the Maob Mill Reclamation Trust was signed. The Order transfers the license to the Trust and orders the Trust and the Trustee (PricewaterhouseCoopers LLP) to perform reclamation of the uranium mill tailings site in accordance with the terms and conditions of the license. The terms and conditions of the license include reasonable and prudent measures in the U.S. FWS final biological opinion, as well as mitigative measures developed by the NRC staff. The Order was effective December 30, 1999, and was published in the *Federal Register* on January 3, 2000.

On January 13, 2000, the petitioners filed a reply with the ASLB in support of their motion originally filed on November 16, 1999, for a preliminary ruling on jurisdiction. On February 17, 2000, the ASLB granted the petitioners' request for hearing. The PRB, in consultation with the Office of the General Counsel (OGC), deferred action on this 2.206 petition pending resolution of the litigation before the 9th Circuit Court of Appeals and of the petition before the ASLB.

Current Status:

On June 22, 2000, the petitioners wrote to NRC requesting it to reinstate consultation with FWS on two additional issues. On July 21, 2000, NRC wrote to the petitioners that it will consider the June 22, 2000, letter as a second supplement to the original petition, which is being held in abeyance, pending the hearing before the ASLB.

Facility:	Indian Point Unit 3
Petitioner:	D. Lochbaum, UCS
Date of Petition:	2/10/2000
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	2/10/2000
EDO Number:	G20000062
OGC Number:	-
Scheduled Completion Date:	7/26/2000 (Completed)
Last Contact with Petitioners:	7/28/2000
Petition Manager:	G. Wunder
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requests that the NRC order the licensee to conduct assessments of the Indian Point 3 (IP3) corrective action program and work environment and to take appropriate action in response to these assessments. The petitioner further requests that these orders be closed before the NRC allows the transfer of the IP3 license. As the basis for the requested action, the petitioner cited allegations by Ms. Rebecca Green, formerly a member of the licensee's Operations Review Group, that her work environment was not safety-conscious. The petitioner also cited various inspection reports, which identified shortcomings in the licensee's corrective action programs, as well as a letter informing the licensee of a potential violation of 10 CFR 50.7 involving discrimination against an employee.

Background:

A Petition Review Board (PRB) meeting was held on February 16, 2000. The petitioner was provided with an opportunity to address the PRB in an open session to articulate the petition, and did so with the licensee present.

The PRB concluded that the petition meets the threshold for processing under 10 CFR 2.206 and the PRB concluded that the details provided in the petitioner's request are found sufficient to warrant further inquiry. An acknowledgment letter and *Federal Register* notice on the petition were issued on March 24, 2000.

During the weeks of May 22, 2000, and June 5, 2000, the NRC conducted an inspection at IP3. The scope of the inspection included the areas of concern raised in the petition. This was a routine, scheduled baseline inspection of the Security Program at the IP3 site. The findings were used in developing a Director's Decision (DD). The staff worked with Region I and ensured that the Inspection Report was issued prior to the DD.

Current Status:

The Director's Decision (DD-00-03) on this petition was issued on July 26, 2000, and the petition was closed. The DD concluded that the issues the petitioner raised had merit; however, the issues have already been addressed by the staff, and the licensee has been generally effective in identifying and correcting defects in their corrective action program, and having employees feel comfortable in raising safety concerns. Because the petitioner's concerns have effectively been addressed, enforcement action to order the licensee to conduct the requested audits was not necessary to provide reasonable assurance in the effectiveness of the licensee's corrective action program and safety-conscious work environment. With the exception of issuing an Order, the actions requested by the petitioner have essentially been implemented. If the Commission does not act within 25 days of the date of issuance of the DD, it will become a final agency action. The petitioner was notified by telephone on July 28, 2000, of the issuance of the DD.

Facility:	Indian Point Unit 2
Petitioner:	David A. Lochbaum, Union of Concerned Scientists (UCS), on behalf of Nuclear Information & Resource Service, PACE Law School Energy Project, and Public Citizen's Critical Mass Energy Project
Date of Petition:	3/14/2000
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	3/14/2000
EDO Number:	G20000133
OGC Number:	-
Scheduled Completion Date:	10/5/2000 (Technical issues will be resolved prior to plant restart)
Last Contact with Petitioners:	7/20/2000
Petition Manager:	L. Wiens
Case Attorney:	J. Goldberg

Issues/Action Requested:

Petitioners request that the NRC issue an Order to ConEd Company of New York preventing the restart of Indian Point Unit 2 (IP2) until the following conditions are satisfied: (1) all four steam generators (SGs) are replaced; (2) the SG tube integrity concerns identified in Dr. Joram Hopenfeld's Differing Professional Opinion (DPO) and in generic safety issue GSI-163, "Multiple Steam Generator Tube Leakage," are resolved; (3) Potassium Iodide (KI) tablets are distributed to residents and businesses within the 10-mile emergency planning zone or stockpiled in the vicinity of the IP2 facility; (4) concerns as to the adequacy of emergency preparedness at the IP2 site are addressed; and (5) the requirement to conduct biennial emergency plan exercises is satisfied. The petitioners also requested that a public meeting be held in the vicinity of the IP2 facility as soon as possible.

Background:

Petition Review Board (PRB) meetings were held on March 16, March 21, April 17, April 27, June 22, and July 20, 2000. The petitioners were provided with an opportunity to address the PRB in open sessions during the March 16, June 22, and July 20, 2000 meetings, and did so with the licensee present.

The PRB initially concluded that only the first issue (Steam Generator replacement) met the threshold for processing under 10 CFR 2.206. An acknowledgment letter and *Federal Register* notice on the petition were issued on April 5, 2000. The petitioners' request for a public meeting was granted and conducted on April 7, 2000. During that meeting the petitioners provided additional supporting information for the other issues contained in their petition. Further, by letter dated April 12, 2000, Public Citizen's Critical Mass Energy Project supplemented the petition with regard to the KI issue, and by letter dated April 14, 2000, the UCS supplemented the petition with regard to the DPO. A supplemental acknowledgment letter dated June 26, 2000, was issued, which accepted the KI issue as meeting the 2.206 criteria; however, the DPO issue was determined to still not meet the criteria.

Current Status:

Two supplements have been received since the last status report. The June 29 supplement provided comments on the IP2 steam generator operational assessment and stated that the regulations require each licensee at a site to conduct a biennial full-participation emergency exercise. The July 13 supplement requested the PRB include the resolution of the Dr. Hopenfeld DPO in the 2.206 process. Of the five issues listed above, the requests for resolution of Dr. Hopenfeld's DPO (second request) and the request that a new emergency exercise be conducted due to alleged inadequate emergency preparedness at IP2 (fourth request) were determined not

to meet the criteria for review under 2.206. Additionally, on August 8, 2000, ConEd announced that it will replace the IP2 SGs during the current outage.

Facility:	Envirosafe of Idaho
Petitioner:	L. Bickwit, Jr. and P. Alister
Date of Petition:	3/13/2000
Director's Decision To Be Issued by:	NMSS
Date Referred to Review Organization:	3/16/2000
EDO Number:	G20000138, G20000136
OGC Number:	-
Scheduled Completion Date:	9/25/2000
Last Contact with Petitioners:	7/28/2000
Petition Manager:	J. Lusher
Case Attorney:	J. Goldberg

Issues/Action Requested:

Snake River Alliance is requesting that the NRC: (1) take jurisdiction of 11e.(2) material; (2) take action to ensure the workers and the public are fully protected from radiation exposure; and (3) enforce the Atomic Energy Act of 1954 and NRC's regulation governing disposal of mill tailings byproduct material as defined in section 11e.(2) of Uranium Mill Tailing Radiation Control Act of 1978 (UMTRCA). Envirocare of Utah contends that the Commission's current interpretation of UMTRCA is erroneous and that it should be revised as soon as possible. It also requests that the NRC recognize its authority over all section 11.e.(2) material, and should take appropriate enforcement action to ensure that all such material is disposed of at section 11e.(2)-licensed facilities.

Background:

The Executive Director for Operations has agreed in principle that the petitions from Snake River Alliance and Envirocare of Utah can be consolidated and handled as one petition because the requested actions are similar per Management Directive (MD) 8.11, Page 9. This was finalized in the Petition Review Board (PRB) meeting held on April 11, 2000. The petitioners, in accordance with MD 8.11, were provided with an opportunity to address the PRB in an open session to articulate the petition, with the owners of the facility present.

A PRB meeting on the petitions was held on April 11, 2000. The Petition Manager advised the petitioners by phone on April 12, 2000, that the petitions have been consolidated and accepted as a single petition for review under the 10 CFR 2.206 process. The acknowledgment letters and the *Federal Register* Notice on the petitions were issued on April 25, 2000.

Current Status:

The Petition Manager received two documents this month: one from the U.S. Army Corps of Engineers (USACE) dated June 29, 2000; and one from the National Mining Association dated July 18, 2000. These documents were forwarded to the petitioners and others involved in the petition with follow-up telephone calls to the petitioners on July 12, and July 28, 2000, to ensure that they received copies of the information. Mr. Leonard Bickwit, Jr., representing Envirocare of Utah, indicated that a response to USACE would be provided sometime during the week of August 28, 2000. The Office of the General Counsel and staff continued their review of the additional information, and work on the Director's Decision is in progress.

Facility:	Hatch Nuclear Units 1 & 2
Petitioner:	David A. Lochbaum, Union of Concerned Scientists (UCS)
Date of Petition:	5/3/2000
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	5/4/2000
EDO Number:	G2000232
OGC Number:	-
Scheduled Completion Date:	10/20/2000
Last Contact with Petitioners:	6/20/2000
Petition Manager:	L. Olshan
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requested that the NRC issue a demand for information to the owner of Hatch regarding the liquid and gaseous radwaste systems.

Background:

A PRB meeting on the petition was held on May 15, 2000. The petitioner was provided with an opportunity to address the PRB in an open session, and did so with the licensee present.

Current Status:

The PRB concluded that the petition meets the threshold for processing under 10 CFR 2.206 and also concluded that the details provided in the petitioner's request were found sufficient to warrant further inquiry. The acknowledgment letter and the *Federal Register* Notice on the petition were issued on June 20, 2000. A request for additional information was sent to the licensee on June 27, 2000, and the response was received on July 26, 2000.

Facility:	Nine Mile Point Units 1 & 2
Petitioner:	Robert T. Norway
Date of Petition:	5/10/2000
Director's Decision To Be Issued by:	OE
Date Referred to Review Organization:	5/18/2000
EDO Number:	G2000245
OGC Number:	-
Scheduled Completion Date:	8/15/2000 (Completed)
Last Contact with Petitioners:	6/21/2000
Petition Manager:	J. Luehman
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requested that individual enforcement action be taken against Nine Mile Point managers for willfully presenting falsified documents to the NRC during the May 10, 1996, Enforcement Conference for discrimination. He also requested: (1) immediate suspension of the Nine Mile Point 1 & 2 operating licenses unless Niagara Mohawk removes certain managers from duty; (2) that the NRC obtain the original copy of an Employee Feedback Form used by the 1994 Review Board that terminated his employment; (3) that the NRC remove the same Employee Feedback Form from the public record and inform all who have ever seen it of its fraudulent nature; and (4) placement of his May 10, 2000, petition in the public record.

Background:

Mr. Norway was fired from Nine Mile Point in 1994. The Department of Labor and the NRC both agreed that his termination was discriminatory and, in 1996, a Severity Level II violation was issued against Niagara Mohawk with a civil penalty. On April 5, 1999, Mr. Norway submitted a petition demanding individual enforcement action against Nine Mile Point managers, which was denied due to insufficient evidence (Director's Decision 99-13). His 1999 petition also raised a technical concern over the Nine Mile Point residual heat removal cooling system. This concern was addressed in a letter dated October 6, 1999, from the NRC staff to the petitioner.

The Petition Review Board (PRB) met on May 18, 2000. Supplementary PRB meetings were conducted on May 25, June 13, and July 20, 2000. The petitioner was provided with an opportunity to address the PRB in an open session during the March 25, 2000 meeting, and did so with the licensee present.

Current Status:

The PRB had earlier concluded, after the June 13, 2000 meeting, that there was potentially one new issue that was raised by the petitioner that was not included in his previous petition dated April 5, 1999, on the same subject -- an Employee Feedback Form that the petitioner claimed was fraudulent (Request 2). Even though other issues raised by the petitioner in the current petition dated May 10, 2000, were addressed in the earlier Director's Decision 99-13, the PRB previously concluded that this new discovery requires further review by the staff. By its letter dated June 21, 2000, OE wrote to the petitioner and the licensee requesting more information on this one issue, i.e., whether the petitioner or the licensee can provide the PRB with a custodial copy of the Employee Feedback Form. Since neither one of them was able to provide the form (responses dated July 3, 2000, and June 30, 2000, respectively), the PRB, in its July 20, 2000 meeting, concluded that there is no merit in pursuing this issue and recommended that the petition be closed because it does not meet the threshold screening criteria for review under the 10 CFR 2.206 process (Management Directive 8.11, Part II, pages 8 and 9, second bullet). A letter was prepared and sent to the petitioner on August 10, 2000, explaining why the request does not meet the criteria for review under 10 CFR 2.206, and the petition was closed.

**Attachment 2
AGE AND RESOURCE EXPENDITURES FOR AGENCY 2.206 OPEN PETITIONS
As of July 31, 2000**

ASSIGNED ACTION OFFICE	PETITION NUMBER	OGC NUMBER	FACILITY	AGE (months) ¹	Scheduled Completion Date	Resources Expended by Action Office (HOURS) ¹	Resources Expended by OGC (HOURS) ¹	Comments if not meeting the Agency's 120-day Completion Goal
NMSS	G19990011	P-99-02	ATLAS CORPORATION	3**	TBD ²	8	65	Earthjustice filed a petition with the U.S. Court of Appeals for the 9 th Circuit regarding the staff's de facto denial of the 2.206 petition. Staff action deferred pending resolution of the litigation before the 9th Circuit Court of Appeals and the petition before the ASLB
NMSS	G20000138,136		ENVIROSAFE OF IDAHO	3	9/25/2000	135.2	24.5	
NRR	G20000133, Supplements	-	INDIAN POINT UNIT 2	3	10/5/2000	674.5	23	
NRR	G20000232	-	HATCH UNITS 1 & 2	1	10/20/2000	98	5.5	

¹ Staff professional time only; does not include management or administrative time.

² Projected completion date (Please see Attachment 1 for explanation).

* Age calculated from the date of the acknowledgment letter.

** The clock on this petition stopped as of May 27, 1999.

Attachment 3
Table on Status of Public Petitions
Under 10 CFR 2.206 for DDS Issued and/or Closed During the Last 12 Months

Petition Number	Assigned Action Office	Facility	Petition Date	DD Date	Age at Closure ^{1,2}	Comments
G19990173	OE	Seabrook	3/31/99	8/3/99	3	Denied
GT97181	NRR	Connecticut Yankee	3/11/97	9/9/99	29	Partly Granted
G19990201	NRR	Millstone	3/31/99	9/28/99	4	Denied
G19990224	NRR	Nine Mile Point 1 & 2	4/5/99	10/28/99	4	Denied
G19990268	NRR	Nine Mile Point 1	5/24/99	11/28/99	5	Denied
GT96919	NRR	Millstone 1, 2 & 3	11/25/96, as amended 12/23/96	2/16/2000	37	Partly Granted
G19990465	NRR	Indian Point Unit 2	9/15/99	4/13/2000	6	Denied
G20000062	NRR	Indian Point Unit 3	2/10/2000	7/26/2000	4	Partly Granted

1) Age calculated from the date of the acknowledgment letter.
2) Goals: Acknowledgment letter issued within 5 weeks from date of receipt; DD issued within 4 months of acknowledgment letter.