

December 31, 2001

MEMORANDUM TO: William D. Travers
Executive Director for Operations

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

SUBJECT: NOVEMBER AND DECEMBER 2001 REPORT ON THE STATUS OF
PUBLIC PETITIONS UNDER 10 CFR 2.206

The attached combined report for November and December, 2001, gives the status of 10 CFR 2.206 petitions as of December 31, 2001. Currently, there are three open petitions, which have been accepted for review under the 2.206 process, all in the Office of Nuclear Reactor Regulation (NRR).

Attachment 1 provides the detailed status of the open petitions. Attachment 2 shows the age statistics for the open 2.206 petitions as of December 31, 2001. Attachment 3 shows the statistics for all 2.206 petitions processed in the past 12 months.

This report and recently-issued Director's Decisions are placed in the Agencywide Documents Access and Management System (ADAMS) making them readily accessible to the public.

Attachments: As stated

CONTACT: Ram Subbaratnam, NRR
415-1478

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* see previous concurrence

OFFICE	PM:PDII	LA:PDII	SC:PDII D:PDII	NMSS/IMNS/I MOB	DD/D:DLPM Eadensam For JZwolinski	ADPT:NRR
NAME	RSubbaratnam*	Dunnington*	RCorreia* HBerkow*	PGoldberg*	L. Marsh J. Zwolinski SBlack*	BSheron
DATE	12/14 /01	12/ 14 /01	12/ 17 /01 12/ 17 /01	12/ 14 /01	12/26/01 12/ 26/01 12/20 /01	12/ 27/01

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PUBLIC w/att 1, 2, & 3

Report on Status of Public Petitions Under 10 CFR 2.206
December 31, 2001
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Attachment 1

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Attachment 1

Report on Status of Public Petitions Under 10 CFR 2.206

Facility:	Indian Point, Unit 2
Petitioner:	Deborah Katz, et al. (CAN)
Date of Petition:	12/4/2000
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	12/11/2000
EDO Number:	G20000568
Scheduled Completion Date:	11/21/2001
Last Contact with Petitioners:	11/23/2001
Petition Manager:	C. Gratton
Case Attorney:	J. Goldberg

Issues/Action Requested:

(1) That the licensee, ConEd, have its license suspended for the Indian Point Unit 2 (IP2) facility due to persistent and pervasive negligent management, which has endangered the public health and safety and the environment due to significant safety problems existent at the site for decades. (2) Specifically, that NRC investigate the apparent misrepresentation of material fact by the utility to determine whether the significantly insufficient engineering calculations relied on to ensure adequacy of design of key systems, including the steam generator (SG) analysis and the electric bus analysis at the IP2 reactor, were due to a lack of rigor and thoroughness or a result of deliberately misleading information. (3) Should the investigation determine that ConEd deliberately provided insufficient and false information, the petitioners specifically request that ConEd's operating license be revoked for its IP2 reactor. (4) Should NRC not revoke the license, and the IP2 reactor returns to operation, the petitioners specifically request that it remain on the list of agency focus reactors to oversee the operation of the reactor until such time as its management demonstrates that it can fulfill its regulatory requirements and commitments. (5) No license transfer requests should be approved for IP2 until such time that its management can demonstrate that the Updated Final Safety Analysis Report (UFSAR) backlog and the maintenance requirements are up-to-date and workers have been retrained to the complete and revised UFSAR. (6) NRC should keep IP2 off-line until the fundamental breakdown in management is analyzed and corrected.

Background:

With the SG replacement having been completed at IP2 and the licensee in the process of restart, the Petition Review Board (PRB) convened a meeting on December 20, 2000, to consider the Immediate Action request related to plant restart (item 6). The petitioners were informed of this decision by telephone on December 20, 2000. The PRB concluded that there was insufficient information provided and that the petitioners did not substantiate any safety concerns to justify delaying unit restart. The petitioners were, in accordance with Management Directive (MD) 8.11, offered an opportunity to address the PRB in an open meeting. This meeting was conducted on January 24, 2001, at NRC Headquarters. A PRB meeting to consider the petitioners' issues (items 1 thru 5) was held on February 7, 2001. The PRB recommended accepting the petition.

On March 9, 2001, the staff issued an acknowledgment letter to the petitioners and a summary of the public meeting held on January 24, 2001.

On June 5, 2001, the petitioners requested that information contained in an April 26, 2001, submittal to the IP2 license transfer proceedings be considered as further information to support their request for enforcement actions against the licensee for systemic mismanagement of the IP2 reactor facility. The PRB re-convened on June 28, 2001, to discuss the supplement and its impact on issuance of the proposed Director's Decision (DD). During the PRB meeting, it was determined that the supplement did not meet the requirements to be reviewed under 10 CFR 2.206 because the request is already the subject of another agency proceeding (license transfer proceeding). The petitioners were notified on July 2, 2001, that this information would not be considered in the proposed DD. A closure letter for the supplement to the petition was sent to the petitioners on July 31, 2001, explaining the reasons for the rejection.

The proposed DD on the original petition was issued on July 25, 2001.

Current Status:

The petitioners responded to the proposed DD on September 14, 2001. The final DD-01-04 on the petition was issued on November 21, 2001. In that decision, the staff concluded that the information contained in the petition and the supplement did not warrant NRC staff action to suspend or revoke the operating license for IP2. Likewise, the staff did not find any basis for initiating an investigation into wrongdoing on the part of ConEd. For these issues, the petitioners' requested actions were not granted. However, the NRC granted in part the petitioners' request that IP2 remain on the list of agency focus plants (i.e., plants with multiple/repetitive degraded cornerstones). The NRC staff did not grant the petitioners' request to define under what conditions IP2 will be removed from the list of plants with multiple/repetitive degraded cornerstones in the Reactor Oversight Process. In addition, the staff found that the petitioners' request to delay or deny a request to transfer the operating license for IP2 until the licensee's management can demonstrate that the UFSAR, Condition Report backlog, and maintenance requirements are up to date, and that plant workers have been retrained to the modified UFSAR, did not meet the requirements for review under 10 CFR 2.206. After the 25-day Commission review, the DD became a final Agency action on December 17, 2001.

Facility:	<u>All Licensees Using Security Services Provided by Wackenhut Corporation</u>
Petitioner:	D. Lochbaum (UCS)
Date of Petition:	04/24/2001
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	4/25/2001
EDO Number:	G20010159
Scheduled Completion Date:	11/26/2001
Last Contact with Petitioners:	11/26/2001
Petition Manager:	C. Patel
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requests that the NRC issue a Demand for Information (DFI) to each of the licensees listed in the petitioner's letter dated April 24, 2001, requiring each licensee to provide a docketed response as to how it complies with 10 CFR 26.10 and 10 CFR 26.20, specifically the requirements that: (1) "Fitness-for-duty (FFD) programs must: Provide reasonable measures for the early detection of persons who are not fit to perform activities within the scope of this part" [10 CFR 26.10]; and (2) "Licensee policy should also address other factors that could affect fitness for duty such as mental stress, fatigue and illness." [10 CFR 26.20]

Background:

As a basis for the above requests, the petitioner stated that:

"An individual employed by Wackenhut Corporation and assigned duties as security officer at Indian Point Nuclear Unit 2 was fired on June 26, 2000. The individual had worked five straight 12-hour shifts and declined to report for a sixth straight 12-hour shift because he reported to his management—in writing—that it would be 'physically and mentally exhausting.' The individual reported to his management—in writing—that he was fully aware of his condition and 'would not want to be negligent in performing [his] duties as a security officer."

"The security officer had unescorted access to Indian Point 2 and thus was covered by 10 CFR Part 26 as specified in Section 26.2."

Wackenhut has a requirement in its employment conditions that employees are required to report to work when directed, which is also ratified in its Collective Bargaining Agreement and the Security Officer's Handbook.

The petitioner claims, "Thus a worker employed by Wackenhut Corporation at an NRC-licensed facility reported to his management that he felt unfit for duty, declined to report for mandated overtime, and was terminated."

The petitioner states that, "10 CFR 26.20 requires all licensees to have formal policy and written procedures for factors that could render plant workers unfit for duty. Fatigue is specifically mentioned in 10 CFR 26.20." The petitioner claims that the contractual right conflicts with the regulations stated in 10 CFR 26.10(a) and (b), and that in the subject case, the individual

essentially provided "reasonable measures for early detection" of a condition rendering him unfit to perform activities within the scope of Part 26. "Rather than respect the individual's judgment or seek another opinion by a Medical Review Officer or other health care professional, Wackenhut fired him."

In its meeting on May 7, 2001, the Petition Review Board (PRB) recommended accepting the petition. An acknowledgment letter and *Federal Register* notice on the petition were issued on May 29, 2001.

The PRB reconvened on June 25, 2001, to review progress on the petition. The PRB considered ConEd's response to a 'chilling effect' letter on this subject.

The proposed Director's Decision (DD) on the original petition was issued on September 28, 2001.

Current Status:

Comments on the proposed DD were received from the petitioner on October 2, 2001. The final DD-05-01 on the petition was issued on November 26, 2001. In that decision, the staff noted that the petition raised generic policy questions concerning how the NRC requirements apply to circumstances involving individuals who declare themselves not fit for duty because of fatigue and to the actions taken by licensees in response to such declarations. Specifically, the manner in which a licensee or its contractor implements certain conditions of employment or policies for preventing the abuse of leave can potentially discourage employees from reporting that they are not fit for duty or contribute to inadequacies in the assessment of employee FFD. Either outcome would undermine the effectiveness of a licensee's FFD program. The staff noted that these concerns may not be limited to licensees that use Wackenhut security personnel. As a result, the staff did not believe that a regulatory action limited to licensees that use Wackenhut security personnel is an appropriate means to address this concern. The staff also believed that in matters concerning self-declaration of "not fit for duty," the potential for conflicts with NRC requirements was largely in the implementation of licensee policies, procedures, and conditions of employment, rather than the written terms of these documents. Accordingly, a DFI requesting such documents was not expected to provide significant new information to the staff and therefore did not appear warranted. However, the staff granted the petitioner's request to the extent that the NRC will address the petitioner's concerns through the generic communication process. Specifically, the staff will develop a communication to all nuclear power plant licensees subject to the requirements of Part 26. That communication will highlight the concerns identified in the petition and articulate the NRC's requirements as they apply to matters involving a worker's self-declaration of not fit for duty. Further, as the staff proceeds with proposals to revise Part 26 and address worker fatigue through rulemaking, it will consider the need to clarify the NRC's expectations concerning worker declarations of not fit for duty and work scheduling. After the 25-day Commission review, the DD became a final Agency action on December 21, 2001.

Facilities:	<u>Salem Nuclear Generating Station, Unit Nos. 1 and 2</u> <u>Hope Creek Generating Station</u> <u>Oyster Creek Generating Station</u>
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Petitioner:	Norm Cohen, Unplug Salem Campaign
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Date of Petition:	9/17/2001
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	9/19/2001
EDO Numbers:	G20010389
Scheduled Completion Date:	4/30/2002
Last Contact with Petitioners:	12/7/2001
Petition Manager:	R. Fretz
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requested that the U.S. Nuclear Regulatory Commission (NRC) order either the closure of, or an immediate security upgrade at, the Salem Nuclear Generating Station, Unit Nos. 1 and 2, Hope Creek Generating Station, and Oyster Creek Nuclear Generating Station. In addition, the petitioner requested that: (1) the plants' defenses be upgraded to withstand a jet crash similar to that which occurred at the World Trade Center (WTC) on September 11, 2001; (2) all the spent fuel pools be brought into the containment buildings until a new jet bomber-proofed containment is built for them; (3) the NRC triple the number of Operational Safeguards Response Evaluation (OSRE) security inspections; and (4) the NRC cancel proposals to allow nuclear plants to conduct their own security inspections.

Background:

The events of September 11, 2001, were cited as the basis for the request, with the petitioner stating that the four New Jersey nuclear power plants are vulnerable to terrorist threats, including a suicide airplane attack similar to that experienced at the WTC.

Current Status:

Two closed PRB meetings were conducted on November 19, 2001, and November 29, 2001, to consider the merits of the requested actions. The PRB concluded that the petition met the threshold for processing under 10 CFR 2.206, and that the details provided in the petitioner's request were found sufficient to warrant further inquiry (Part III of Management Directive (MD) 8.11). An acknowledgment letter and a single *Federal Register* notice common to this and two other similar petitions (see pages 7 and 8) were issued on December 20, 2001.

The petitioner was contacted on December 7, 2001, and informed of the staff's progress to date. The petitioner was informed that the NRC had advised all NRC licensees, after the September 11, 2001, terrorist attack on the WTC, to go to the highest level of alert, which they promptly did. Since there were no credible threats, there was no need to order the plants to shut down. Thus, the petitioners' immediate action requests were, in effect, partially granted by prior NRC actions. The petitioner was informed that the NRC will follow the 10 CFR 2.206 petition process as explained in MD 8.11 to the extent possible without compromising sensitive information.

Facility:	<u>All Operating Nuclear Power Plants (103) in the U. S.</u>
Petitioner(s):	Michael D. Kohn, National Whistleblower Center
Date of Petition:	10/24/2001
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	10/26/2001
EDO Numbers:	G20010485
Scheduled Completion Date:	4/30/2002
Last Contact with Petitioners:	12/7/2001
Petition Manager:	G. Shukla
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioner requested that the NRC take immediate short-term and long-term corrective actions to protect the public against the possibility of terrorists seizing control of a large commercial jetliner and crashing into a nuclear power plant in the United States. The petitioner also requested that the NRC staff take certain specified compensatory measures to protect the public and the environment from the catastrophic impact of a terrorist attack on a nuclear power plant or a spent fuel pool.

Background:

As a basis for the above requests, the petitioner states that no commercial nuclear power plant located within the United States was designed to withstand the impact of a large commercial airliner. The petitioner cites the plants' inability to be protected against terrorist attacks, including a suicide airplane attack similar to the attack on the World Trade Center (WTC). The petitioner discusses NRC's failure to adequately assess risk of malevolent airborne attack, failure to adequately assess risk of terrorist attacks at spent fuel storage facilities, and failure to adequately protect nuclear plants from terrorist attacks.

Current Status:

There are two other petitions with similar requests concerning the security of nuclear power plants in the U.S. subsequent to the terrorist attack on the WTC on September 11, 2001. (See pages 6 and 8 for the current status of these petitions).

The petitioner was contacted on December 7, 2001, and informed of the staff's progress to date. The petitioner was informed that the NRC had advised all NRC licensees, after the September 11, 2001, terrorist attack on the WTC, to go to the highest level of alert, which they promptly did. Since there were no credible threats, there was no need to order the plants to shut down. Thus, the petitioners' immediate action requests were, in effect, partially granted by prior NRC actions. The petitioner was informed that the NRC will follow the 10 CFR 2.206 petition process as explained in Management Directive 8.11 to the extent possible without compromising sensitive information. An acknowledgment letter and a single *Federal Register* notice common to this and two other similar petitions (see pages 6 and 8) were issued on December 20, 2001.

Facility:	<u>Indian Point Units 2 and 3</u>
Petitioner(s):	Alex Matthiessen/Karl Coplan/Pace Environmental Litigation Clinic, Inc., Riverkeeper, Inc. and Villages of Hastings and Croton-on-Hudson, New York
Date of Petition:	11/8/2001, 11/21/2001and 11/26/2001
Director's Decision To Be Issued by:	NRR
Date Referred to Review Organization:	11/9/2001, 12/17/2001 and 12/07/2001
EDO Numbers:	G20010508, G20010556, G20010567
Scheduled Completion Date:	4/30/2002
Last Contact with Petitioners:	12/27/2001
Petition Manager:	P. Milano
Case Attorney:	J. Goldberg

Issues/Action Requested:

The petitioners request that: (1) the NRC issue an order to the Indian Point 2 and 3 licensee for a temporary shutdown to conduct a full review of vulnerabilities, security measures, and evacuation plans; (2) the NRC require the licensee to provide sufficient information about security for NRC to determine their ability to meet realistically expected threats and contemplate making the measures permanent; (3) the NRC mandate specifically listed measures to set up and protect a permanent no-fly zone and a defensive system to protect the "entire facility"; and (4) a revision be made to the emergency planning to include terrorists risks and multiple attacks on the infrastructure used in an evacuation. Finally, the petitioner requested that the NRC shut down the Indian Point facility permanently if security cannot be sufficiently ensured, and order the immediate conversion from spent fuel storage pools to a dry cask system.

Background:

As a basis for the above requests, the petitioners state that no commercial nuclear power plant located within the United States was designed to withstand the impact of a large commercial airliner. The petitioners cite the plant's inability to be protected against terrorist attacks, including a suicide airplane attack similar to the attack on the World Trade Center (WTC).

On November 21, 2001, the Village of Hastings-on-Hudson, New York, submitted its Board of Trustees' resolution calling for action very similar to those of the above petitioner and citing the same bases. Since the resolution did not make reference to 10 CFR 2.206, the Village Clerk was contacted on December 27, 2001, to explain the petition process and discuss the existing petition. The Village Clerk asked to have this resolution treated as a supplement to the existing petition.

On November 26, 2001, the Village of Croton-on-Hudson, New York, in accordance with their Board of Trustees Resolution, requested that they join the Riverkeeper coalition as a co-petitioner. The PRB acceded to the request and recommended that they be included into the coalition and be acknowledged along with rest of the petitioners.

Current Status:

There are two other petitions with similar requests concerning the security of nuclear power plants in the U.S. subsequent to the terrorist attack on the WTC on September 11, 2001. (See pages 6 and 7 for the current status of these petitions).

The petitioners were contacted on December 20 and 27, 2001, and informed of the staff's progress to date. An acknowledgment letter and a single *Federal Register* notice common to this and the two other similar petitions (see pages 6 and 7) were issued on December 20, 2001. The acknowledgment letter to the Village-of-Hastings will be issued in early January 2002, since its supplement was received after December 20, 2001. The petitioners were informed that the NRC had advised all NRC licensees, after the September 11, 2001, terrorist attack on the WTC, to go to the highest level of alert, which they promptly did. Since there were no credible threats, there was no need to order the plants to shut down. Thus, the petitioners' immediate action requests were, in effect, partially granted by prior NRC actions. The petitioners were informed that the NRC will follow the 10 CFR 2.206 petition process as explained in Management Directive 8.11 to the extent possible without compromising sensitive information.

Attachment 2
AGE STATISTICS FOR AGENCY 2.206 OPEN PETITIONS
As of December 31, 2001

ASSIGNED ACTION OFFICE	PETITION NUMBER	FACILITY	Acknowledgment Date	AGE (days)*	Scheduled Completion Date	Comments if not meeting the Agency's 120-day Completion Goal
NRR	G20010389	Salem 1, 2, Hope Creek, Oyster Creek	12/20/2001	11	4/30/2002	-
NRR	G20010485	All 103 Nuclear Power Plants in the U.S.	12/20/2001	11	4/30/2002	-
NRR	G20010508, G20010556, G20010567	Indian Point 2, 3	12/20/2001	11	4/30/2002	-

*Age calculated from the date of the acknowledgment letter.

Note: The two columns representing resources expended by the action office and OGC have been deleted from the table because the information is difficult to obtain on a monthly basis and is of marginal utility for purposes of this report.

Attachment 3
Table on Status of Public Petitions
Under 10 CFR 2.206 for DDs Issued During the Last 12 Months

Petition Number	Assigned Action Office	Facility	Petition Date	DD Date	Age at Closure ^{1,2} (Months)	Comments
G20000138,136	NMSS	Envirosafe, Idaho	3/13/2000	12/13/2000	8	Denied
G20000345	NMSS	US Department of Defense	6/1/2000	1/9/2001	3	Denied
G20000462	NRR	Haddam Neck	9/26/2000	12/19/2000	2	Partly Granted
G19990011	NMSS	Moab Site of Atlas Corp.	1/11/1999	5/7/2001*	N/A	Petition Moot and Closed
G20000568	NRR	Indian Point Unit 2	12/4/2000	7/25/2001	4	Partly Granted
G20010159	NRR	All Licensees using Wackenhut Security	4/24/2001	9/28/2001	4	Partly Granted

1) Age calculated from the date of the acknowledgment letter to the proposed Director's Decision issuance.

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

* No DD issued on this petition.