

November 14, 2005

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations
/RA/
FROM: Gary M. Holahan, Associate Director
for Risk Assessment and New Projects
Office of Nuclear Reactor Regulation
SUBJECT: OCTOBER 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 October 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 the Office of Nuclear Material Safety and Safeguards (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 October 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/DPR
415-1322

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DISTRIBUTION: See next page

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DATE	11/09/05	11/8/05	11/9/05	11/09/05	11/14/05

OFFICIAL AGENCY RECORD

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

Date: November 14, 2005

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Status of Open Petitions

<u>Facility</u>	<u>Petitioner/EDO No.</u>	<u>Page</u>
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Facility:	<u>All Boiling-Water Reactors (BWRs) with Mark I and II Containments</u>
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:	November 7, 2005
Last Contact with Petitioner:	November 7, 2005
Petition Manager:	Peter Tam
Case Attorney:	Giovonna 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.

Three members of the Coalition submitted a significant number of comments on July 29, 2005. The petition manager informed the petitioners that we received the comments on August 22, 2005. Based on the level of effort to respond, the anticipated issuance date of the final Decision was extended to October 31, 2005.

Current Status:

The final Director's Decision was issued on November 7, 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:	November 7, 2005
Last Contact with Petitioner:	November 7, 2005
Petition Manager:	George Wunder
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 staff 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 NRC staff is evaluating the petitioner's comments and issues identified by the Federal Emergency Management Agency (FEMA) during the emergency planning drill held at VY in May 2005. These will be addressed in the final Director's Decision.

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. The NRC 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.

Current Status:

The final Director's Decision was issued on November 07, 2005.

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:	November 8, 2005
Last Contact with Petitioner:	November 8, 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 the request would 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.

The staff issued the proposed Director's Decision to the licensee and the petitioner on August 3, 2005, for comment.

Current Status:

Comments on the proposed Director's Decision were submitted by the petitioner on August 14, 2005. Comments were submitted by Exelon on August 12, 2005. The staff issued the final Decision on November 8, 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 15, 2005
Final DD Issuance:	November 30, 2005
Last Contact with Petitioner:	September 15, 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.

The staff issued a proposed Director's Decision on September 15, 2005. The letter to the petitioner and licensee requested that any comments be submitted by October 15, 2005.

Current Status:

No comments were received on the proposed Director's Decision. The staff expects to issue the final Decision by November 30, 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:	September 23, 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 PRB 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.

The staff received responses to the June 10, 2005, letter from three licensees which address issues in the petition.

A proposed Director's Decision was sent to the petitioner and the involved licensees on September 23, 2005.

Current Status:

In its proposed Decision, the NRC staff requested that comments be submitted by October 21, 2005. Comments have been received from the petitioner and two licensees. The staff is reviewing and addressing the comments and plans to issue a final Decision by December 5, 2005.

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 11, 2005
Final DD Issuance:	December 26, 2005
Last Contact with Petitioner:	October 11, 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 PRB 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.

On August 17, 2005, the licensee submitted a letter describing their plans with regard to removal of Hemyc material at VY.

Current Status:

The NRC staff issued a proposed Decision on October 11, 2005, and requested that comments be submitted by November 10, 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 20, 2005**

Final DD Issuance: **January 9, 2006**

Last Contact with Petitioner: **October 20, 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 PRB 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:

A proposed Director's Decision was issued on October 20, 2005. Comments are due by November 29, 2005.

Facilities:	<u>Vermont Yankee</u>
Petitioners:	Jonathan Block
Date of Petition:	October 11, 2005
Director's Decision to be Issued by:	NRR
EDO Number:	G20050706
Proposed DD Issuance:	November 18, 2005
Final DD Issuance:	TBD
Last Contact with Petitioner:	October 18, 2005
Petition Manager:	Jim Shea
Case Attorney:	Giovonna Longo

Issues/Actions requested:

That the NRC issue an emergency order for a temporary closure or de-rating of the Vermont Yankee Nuclear Power Station (VY) as a result of storm damage to the city of Keene, town of Hinsdale in New Hampshire, and other portions of New Hampshire that are part of existing evacuation routes for VY within the effluent pathway in an emergency event.

Background:

During a telephone conversation with the petition manager on October 18, 2005, the petitioner informed the staff that he had received information from FEMA regarding the State of New Hampshire's awareness of evacuation issues at the time of the flooding and that alternate routes had been evaluated. Therefore the emergency request for temporary plant closure or de-rating was not necessary and was denied by the NRC's Petition Review Board (PRB). The petitioner further emphasized his broader concern regarding demonstration that FEMA and the State of New Hampshire actually have plans for an evacuation if an event occurred at VY simultaneously with a natural disaster such as the recent flooding. During the call, the petition manager informed the petitioner that his request met the criteria for review under 10 CFR 2.206. The petitioner declined an invitation to address the PRB with additional information to support the petition.

Current Status:

The staff is evaluating the petition, along with the information provided by the petitioner in the telephone call, and is preparing a proposed Director's Decision.

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, and August 2, 2005
EDO Number:	G20050462
PRB meeting:	July 28, 2005, and September 1, 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 PRB 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.

Following the teleconference, the petitioner submitted a supplement to the petition on August 2, 2005. This supplement consisted of the references used in the development of the petition. The NRC staff has reviewed the information in the original submittal, the transcript of the July 28 teleconference, and the supplement and has determined that the petition does not meet the criteria for it to be reviewed under 10 CFR 2.206. Specifically, the Petition either raises issues which have already been the subject of NRC staff review or evaluation and which have been resolved, or constitute a challenge to NRC regulations, or raise concerns not within the jurisdiction of NRC, or requests actions not within the NRC's authority. In addition, the facts that constitute the basis for many issues raised by the Petition are not sufficient to warrant further inquiry.

The petition manager contacted the petitioner on August 24 and informed her of the NRC staff's decision. The petitioner requested another teleconference with the Board to provide additional supporting information. This teleconference was held on September 1, 2005, and was transcribed.

The staff issued a letter to the petitioner on September 27, 2005. The staff concluded that the petition failed to provide new information sufficient to warrant revisiting the investigations and corrective actions that are documented on the NRC docket. Therefore, the petition does not meet the criteria to be accepted as a 2.206 petition.

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	11/ /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/ New England Coalition	12/07/04	01/06/05	01/26/05 50	05/24/05 118	11/ /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	11/10/05	
NRR	Beaver Valley/ Union of Concerned Scientists	4/12/05	N/A	5/20/05 38	9/15/05 116	11/30/05	
NMSS	All Depleted Uranium Munition Licensees/ James Salsman	4/03/05	5/04/05	5/26/05 52	9/23/2005 120	TBD	
NRR	Vermont Yankee/ Ray Shadis	5/03/05	5/17/05	6/15/05 43	10/11/05 118	12/26/05	
NRR	All plants that use Hemyc fire barrier/ NIRS	5/12/05	6/01/05	6/27/05	10/20/05 115	01/09/06	
NRR	Vermont Yankee/ Jonathan Block	10/11/05	N/A	11/18/05	TBD	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.

Attachment 3