The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by MK and SGT of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than MK or SGT, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, D.C. 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351, and to MK and SGT. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceeding. If an extension of time requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 24th day of September, 1999.

For the U.S. Nuclear Regulatory Commission.

Frank Miraglia,

Deputy Executive Director for Reactor Programs.

[FR Doc. 99–25719 Filed 10–1–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–336 and 50–423]

Northeast Nuclear Energy Company, et al.; Millstone Nuclear Power Station, Unit Nos. 2 and 3; Issuance of Final Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC), has issued a Final Director's Decision with regard to two related Petitions, both dated April 14, 1999, submitted by Mr. Scott Cullen, on behalf of Standing for Truth About Radiation, the Nuclear Information Resource Service, New York State Senator Ken LaValle, and New York State Assembly members Fred Thiele and Patricia Acampora (the Petitioners), requesting action under Title 10 of the Code of Federal Regulations, Section 2.206 (10 CFR 2.206). The Petitions pertain to the Millstone Nuclear Power Station, Unit Nos. 2 and 3, operated by Northeast Nuclear Energy Company (NNECO, or the licensee).

In the first Petition, the Petitioners requested that (1) the NRC immediately suspend NNECO's licenses to operate the Millstone Nuclear Power Station until there are reasonable assurances that adequate protective measures for Fishers Island, New York, can and will be taken in the event of a radiological emergency at Millstone, (2) the operating licenses should be suspended until such time as ''a range of protective actions have been developed for the plume exposure pathway EPZ [emergency planning zone] for emergency workers and the public'', and (3) these matters be the subject of a public hearing, with full opportunity for public comment. The basis for the Petitioners' requests is that the Millstone Nuclear Power Station is not in full compliance with the law. Specifically, the Petitioners contend that the site is in violation of 10 CFR 50.54(q) and 10 CFR 50.47 with regard to emergency planning requirements because Fishers Island, New York, which is located within the 10-mile EPZ for Millstone, has no functional emergency plan.

In the second Petition, the Petitioners requested that the NRC institute a proceeding, pursuant to 10 CFR 2.202, to suspend the operating licenses for the Millstone Nuclear Power Station until the facility is in full compliance with the law. Specifically, the Petitioners maintain that all of the regulatory listed factors, that is, ''demography, topography, land characteristics, access routes, and jurisdictional boundaries,'' were ignored in establishing the 10-mile plume exposure pathway EPZ (10-mile EPZ) for emergency planning at the Millstone Nuclear Power Station and, as such, constitute a violation of 10 CFR 50.54(q) and 10 CFR 50.47.

By letter dated May 14, 1999, the NRC informed the Petitioners that their request for the immediate suspension of the operating licenses for the Millstone Nuclear Power Station, Unit Nos. 2 and 3 (first Petition, Request 1), was denied. In that letter, the NRC also informed the Petitioners that their request for an informal public hearing (first Petition, Request 3) was denied. The NRC also told the Petitioners in the May 14, 1999, letter that their request, in the second Petition, to initiate a proceeding pursuant to 10 CFR 2.202 to suspend the operating licenses for Millstone did not satisfy the criteria for consideration as a 10 CFR 2.206 Petition. The reasons for these decisions were explained in the May 14, 1999, letter and in the ''Final Director's Decision Pursuant to 10 CFR 2.206'' (DD–99–12).

As noted in the May 14, 1999, letter, the NRC stated that the areas identified in the Petitions related to the adequacy of evacuation and protective measures planning for Fishers Island, New York, would be evaluated within a reasonable time. The staff has completed its review of this area with the assistance of the Federal Emergency Management Agency. For the reasons given in the Final Director's Decision, DD–99–12, dated September 28, 1999, Request 2 of the first Petition is denied.

Additional information is contained in the ''Final Director's Decision Pursuant to 10 CFR 2.206'' (DD–99–12), the complete text of which follows this notice and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, 49 Rope Ferry Road, Waterford, Connecticut.

As provided in 10 CFR 2.206(c), a copy of this Final Director's Decision will be filed with the Secretary of the

Commission for the Commission's review. This Final Director's Decision will constitute the final action of the Commission 25 days after its issuance, unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 28th day of September 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Final Director's Decision Pursuant to 10 CFR 2.206

I. Introduction

By letter dated April 14, 1999, Mr. Scott Cullen, on behalf of Standing for Truth About Radiation (STAR), the Nuclear Information Resource Service (NIRS), New York State Senator Ken LaValle, and New York State Assembly members Fred Thiele and Patricia Acampora (the Petitioners) submitted two separate but related Petitions pursuant to Title 10 of the Code of Federal Regulations, § 2.206 (10 CFR 2.206). In the first Petition, the Petitioners requested that (1) the U.S. Nuclear Regulatory Commission (NRC) immediately suspend Northeast Nuclear Energy Company's (NNECO's) licenses to operate the Millstone Nuclear Power Station until there are reasonable assurances that adequate protective measures for Fishers Island, New York, can and will be taken in the event of a radiological emergency at Millstone; (2) the operating licenses should be suspended until such time as ''a range of protective actions have been developed for the plume exposure pathway EPZ [emergency planning zone] for emergency workers and the public''; and (3) these matters be the subject of a public hearing, with full opportunity for public comment. The basis for the Petitioners' requests is that the Millstone Nuclear Power Station is not in full compliance with the law. Specifically, the Petitioners contend that the site is in violation of 10 CFR 50.54(q) and 10 CFR 50.47 with regard to emergency planning requirements because Fishers Island, New York, which is located within the 10-mile EPZ for Millstone, has no functional emergency plan.

In the second Petition, the Petitioners requested that the NRC institute a proceeding, pursuant to 10 CFR 2.202, to suspend the operating licenses for the Millstone Nuclear Power Station until the facility is in full compliance with the law. Specifically, the Petitioners maintain that there are no mechanisms by which the conditional factors of demography, topography, land characteristics, access routes, and jurisdictional boundaries can be evaluated, resulting in a complete lack of reasonable assurances that adequate protective measures can and will be taken on Long Island in the event of an accident at Millstone. The Petitioners' contend that this constitutes a violation of 10 CFR 50.54(q) and 10 CFR 50.47.

The NRC informed the Petitioners in a letter to Mr. Cullen dated May 14, 1999, that their request for immediate suspension of the operating licenses for the Millstone Nuclear Power Station, Unit Nos. 2 and 3 (first Petition, Request 1), was denied. The denial was based on the NRC's finding about the current state of emergency preparedness at Millstone. The Federal agency with lead responsibility for assessing the emergency preparedness of State and local governments within the EPZs surrounding nuclear power plants is the Federal Emergency Management Agency (FEMA). FEMA's responsibilities are defined in NRC's and FEMA's regulations (10 CFR Part 50 and 44 CFR Part 350, respectively) and in a memorandum of understanding between the two agencies (58 FR 47996, September 14, 1993). The NRC evaluates onsite emergency planning and reviews FEMA's evaluation of offsite emergency preparedness for the purpose of making findings on the overall state of emergency preparedness. As stated in 10 CFR 50.54(s)(3):

> The NRC will base its finding on a review of the FEMA findings and determinations as to whether State and local emergency plans are adequate and capable of being implemented, and on the NRC assessment as to whether the licensee's emergency plans are adequate and capable of being implemented.

FEMA has reviewed the State of Connecticut's emergency plan. FEMA has also reviewed the plans for the nine local communities within the Millstone plume exposure pathway EPZ, including Fishers Island, New York. Further, FEMA has evaluated several exercises of these plans. FEMA originally provided its findings and determinations to the NRC in October 1984 on the adequacy of offsite planning for Millstone, in accordance with 44 CFR Part 350 of its regulations. Following the latest exercise, FEMA confirmed that the offsite radiological emergency response plans and procedures for the State of Connecticut and the affected local jurisdictions, including Fishers Island, New York, specific to the Millstone Nuclear Power Station, can be implemented and are adequate to provide reasonable assurance that appropriate measures can be taken to protect the health and safety of the public in the event of a radiological emergency at Millstone. This was documented in a December 29, 1997, letter from FEMA to the NRC. The letter forwarded FEMA's report for the August 21, 1997, full-participation plume pathway and the October 8–10, 1997, ingestion pathway exercises of the offsite radiological emergency plans for Millstone. Regarding Fishers Island, no deficiencies or areas requiring corrective action were identified in the exercises.

Further, the NRC has found that the licensee's emergency plans are an adequate basis for an acceptable state of onsite emergency preparedness in accordance with the requirements of 10 CFR 50.47(b) and Appendix E to 10 CFR Part 50 as documented in the NRC's letter to the licensee dated June 4, 1998.

In the first Petition, the Petitioners raised a concern about the evacuation of Fishers Island residents to New London, Connecticut, a direction closer to the site and to an area that may have already been affected by a radiological emergency at Millstone. Fishers Island is located about 7½ miles east/southeast of Millstone. The New London port is located about 5 miles northeast of Millstone. As stated in the NRC's May 14, 1999, letter to the Petitioners, the NRC found no prima facie evidence in the information submitted by the Petitioners that the protective action of evacuation to New London will not provide an adequate level of protection to the public. Further, the Petitioners did not submit any other information that would raise an immediate concern with the NRC's finding regarding the adequacy of emergency planning for Millstone. On the basis of a review of FEMA's findings and determinations on the adequacy of offsite emergency preparedness and on the NRC's assessment of the adequacy of onsite emergency preparedness, the NRC determined that (1) there was reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency and (2) there was insufficient evidence to grant the Petitioners' request to immediately suspend the operating licenses for Millstone Nuclear Power Station, Unit Nos. 2 and 3.

The Petitioners were also told in the May 14, 1999, acknowledgment letter that their request for an informal public hearing (first Petition, Request 3) was denied. The denial was based on the NRC's finding about the current state of emergency preparedness at Millstone. Specifically, the denial was based on the NRC staff's determination that the information provided in the Petitions did not identify deficiencies in offsite

emergency preparedness that would preclude the implementation of adequate protective measures for the public in the event of a radiological emergency at Millstone. Further, the NRC staff determined that the issues did not rise to the level of significance that justified conducting an informal hearing on the Petitions.

The Petitioners were told, however, that their Petition did raise the potential that enhancements could be made to emergency planning for Millstone that could improve the protection of public health and safety. Further, the May 14, 1999, acknowledgment letter indicated that the areas identified in the Petitions related to the adequacy of evacuation and protective measures planning for Fishers Island would be evaluated within a reasonable time. Since FEMA has the primary responsibility for evaluating the emergency preparedness of State and local governments, the NRC requested the assistance of FEMA, in a letter dated June 4, 1999, in evaluating the potential enhancements identified in the Petitions.

The NRC also told the Petitioners in the May 14, 1999, letter that the request in their second Petition to initiate a proceeding, pursuant to 10 CFR 2.202, to suspend the operating licenses for Millstone did not satisfy the criteria for consideration as a 10 CFR 2.206 Petition. Specifically, the NRC concluded that the referenced factors regarding the determination of the 10-mile plume exposure pathway EPZ were properly taken into account. The NRC determined that the second Petition request did not contain sufficient information to warrant further action by the NRC to require that the 10-mile EPZ be expanded to include the eastern end of Long Island, New York.

II. Discussion

The Commission's regulations in 10 CFR 50.54(q) and (s) governing emergency planning for operating nuclear power plants require the submittal and implementation of licensee (onsite) and State and local government (offsite) emergency plans that conform to the emergency planning standards in 10 CFR 50.47(b) and the requirements in Appendix E to 10 CFR Part 50. FEMA is the Federal agency with the lead responsibility for evaluating offsite radiological emergency response plans and preparedness.

Fishers Island, New York, is located within the 10-mile plume exposure pathway EPZ for the Millstone Nuclear Power Station and is included in the State of Connecticut's Radiological Emergency Response Plan for Millstone. This plan has been approved by FEMA in accordance with 44 CFR Part 350 of its regulations. The Connecticut emergency plan (Revision 1, dated July 1997) contains the following information regarding Fishers Island:

> Fishers Island, located about 7½ miles east/southeast of Millstone, is primarily residential with a small year-round population of about 300 persons and a summer population estimated to be approximately 3000 persons. On the Independence Day (July 4) weekend, this transient population may peak at approximately 5000 persons. Fishers Island is a Hamlet, [a] political subdivision of the Town of Southold, New York, which is in Suffolk County on Long Island.
>
> Because of the logistics associated with the island's location, there has been a long-standing operational agreement between officials of Fishers Island, the Town of Southold, Suffolk County, the State of New York, and the State of Connecticut. Under this agreement, the lead responsibility for assessing the initial radiological impact of an incident on Fishers Island, and providing assistance with the implementation of any protective actions, belongs to the State of Connecticut. Officials of Fishers Island and the Town of Southold, however, have the authority to implement public protective actions.
>
> The State of New York coordinates the assessment process and resulting protective action recommendations made by the State of Connecticut for Fishers Island, maintains communications with Suffolk County, and provides support to Suffolk County and Fishers Island, as necessary. The Town of Southold, as well as Suffolk County, provides back-up communication capabilities and support, and would lend additional emergency services to the island, if requested.
>
> The State of Connecticut offers resource support to Fishers Island in the area of protective actions. Emergency Alerting System (EAS) announcements for Fishers Island will be made over the Connecticut Emergency Alerting System. The island relies on the nearby Town of Groton, Connecticut, for back-up activation of the public alerting system. Fishers Island residents are designated to go to the host community of Windham[, Connecticut].

On September 2, 1999, FEMA responded to the NRC's request for assistance, including a report prepared by the Regional Assistance Committee (RAC) Chair of FEMA Region I, the FEMA region in which Millstone is located. The RAC Chair is the leading staff technical person with radiological emergency preparedness responsibilities in each FEMA region. FEMA stated that they performed a thorough review and assessment of the emergency evacuation planning for Fishers Island, New York. FEMA noted that Fishers Island is included in the State of Connecticut's approved radiological emergency response plan and that the Fishers Island plan has been tested several times since it was approved, most recently during the August 1997 exercise of the State of Connecticut's plans for Millstone.

FEMA's report stated that in the unlikely event of a nuclear incident at Millstone, the residents of Fishers Island would be directed to shelter in place or to evacuate. If directed to evacuate, the Fishers Island evacuees would be moved by ferry to New London, then transported by bus to the host community in Windham, Connecticut. New London was chosen as the ferry's destination because the Fishers Island Ferry District, which would provide service in the event of an evacuation, is based on Fishers Island and normal everyday traffic travels between New London and Fishers Island. Should an incident at Millstone require the evacuation of Fishers Island, residents would evacuate the island using the regular ferry service, and would be transported to the host community in Windham, Connecticut, by way of the Port of New London. Should New London not be available to the Fisher Island evacuees (*i.e.*, if radiological conditions have resulted in its evacuation), then the Connecticut Emergency Management Director and the State of New York Emergency Management Office would jointly choose to direct the ferry to another port, such as Stonington, Connecticut, located northeast of Fishers Island and east of New London. FEMA's report noted that the protective actions of sheltering and evacuation are the same two protective actions that appear in all other Connecticut emergency response plans.

With regard to the Petitioners' specific concern about the August 8, 1997, Millstone exercise, FEMA's report stated that the postulated condition of the Millstone plant during the exercise was such that the Governor of Connecticut ordered residents in all EPZ communities to evacuate. With the postulated conditions, the protective action for Fishers Island was to evacuate through New London. The Petitioners were concerned that this was a direction that brought the evacuees closer to the plant. FEMA indicated that the Fishers Island evacuees would not have been at risk during the conduct of this protective action because the plume, had it been real, was traveling in a westerly direction, away from New London, according to the exercise scenario. As such, during this scenario, the evacuees could pass through New London without the threat of exposure to radiation. As discussed previously, should New London not be available

(for example, the plume has passed over New London and adverse radiological conditions exist), the ferry would be directed to another port.

FEMA's report indicates that certain enhancements to the Fishers Island plan are being considered and its September 2, 1999, report summarized some of the ongoing emergency planning activities. In July 1998, Northeast Utilities (the licensee), the Connecticut Office of Emergency Management, and FEMA Regions I and II, participated in a demonstration of a ferry run from Fishers Island to Stonington, Connecticut. The objective of this demonstration was to determine the feasibility of having the ferry pick up people from Fishers Island and take them to Stonington, which is located about 7 miles northeast of Fishers Island. The plan and preparations for adding the Port of Stonington, Connecticut, as a receiving port for Fishers Island evacuees is projected to be completed by the end of 1999. Windham, Connecticut, will continue to be used as the host community for Fishers Island residents. FEMA will review changes to the offsite emergency plans to ensure that the plans are adequate and capable of being implemented.

FEMA's report stated that an agreement exists between the Connecticut Office of Emergency Management and the Fishers Island Ferry District for the exclusive use of their ferries in the event of an incident at Millstone. Further, FEMA indicated that negotiations are in progress for an agreement between the Connecticut Office of Emergency Management and the Cross Sound Ferry Company for the use of five of their ferries in the event of an emergency at Millstone.

FEMA's report also noted that in September 1998, a meeting between Connecticut and New York State emergency management agencies was held in Hartford, Connecticut, to discuss offsite emergency preparedness for Millstone and the degree of coordination and communications. At the meeting were representatives of the Connecticut Office of Emergency Management, the New York State Emergency Management Office, Northeast Utilities, FEMA, and the NRC. Further, in October 1998, the Connecticut Office of Emergency Management and the New York State Emergency Management Office met to discuss other ways of improving communications in making appropriate protective action decisions for Fishers Island.

On June 22, 1999, the Connecticut Office of Emergency Management held its quarterly emergency management director's meeting on Fishers Island to discuss emergency response issues concerning Millstone. The emergency management directors from the Millstone EPZ communities attended this meeting, including those from Fishers Island, the Town of Southold, New London, Stonington, and the host community of Windham, Connecticut. This meeting gave these key emergency management directors an opportunity to communicate directly.

In its September 2, 1999, letter to the NRC, FEMA stated that on the basis of its assessment of emergency planning for the Millstone Nuclear Power Station, there is continued reasonable assurance that adequate protective measures can be taken to protect the public health and safety in the event of a radiological emergency at Millstone.

III. Conclusion

After reviewing FEMA's findings and determinations on the adequacy of offsite emergency preparedness and the NRC's assessment of onsite emergency preparedness, the NRC has determined that there is continued reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Millstone. In addition, based on FEMA's findings on the adequacy of emergency preparedness for Fishers Island, the NRC concludes that the Fishers Island emergency plan is adequate and there is reasonable assurance that it can be implemented. Further, the NRC recognizes that potential enhancements are being implemented to improve the protection of the health and safety of the population on Fishers Island. As a result of these findings by FEMA and the NRC, the NRC has determined that the Petitioner's request to suspend the operating licenses for Millstone Unit Nos. 2 and 3 until a range of protective actions are developed for the 10-mile EPZ (first Petition, Request 2) is denied.

A Copy of this Final Director's Decision will be placed in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, 49 Rope Ferry Road, Waterford, Connecticut.

As provided in 10 CFR 2.206(c), a copy of this Final Director's Decision will be filed with the Secretary of the Commission for the Commission's review. This Final Director's Decision will constitute the final action of the Commission 25 days after its issuance, unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 28th day of September 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–25716 Filed 10–1–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 030–14016; License No. 21–18668–01; EAs 99–097 & 99–169]

Testing Engineers & Consultants, Inc.; Troy, Michigan; Order Imposing Civil Monetary Penalty

I

Testing Engineers & Consultants, Inc. (Licensee) is the holder of Byproduct Materials License No. 21–18668–01 which was last renewed in its entirety by the Nuclear Regulatory Commission (NRC or Commission) on September 17, 1996. The license authorizes the Licensee to use certain byproduct material in accordance with the conditions specified therein.

II

Between July 28, 1998 and March 23, 1999, an inspection and an investigation of the Licensee's activities were conducted. The results of the inspection and the investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated July 8, 1999. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations.

The Licensee responded to the Notice in letters dated August 4 and 13, 1999. In its responses, the Licensee agreed with the information presented in the Notice, admitted the violations, but requested mitigation or remission of the civil penalties.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that