

10 CFR §2.206 Process

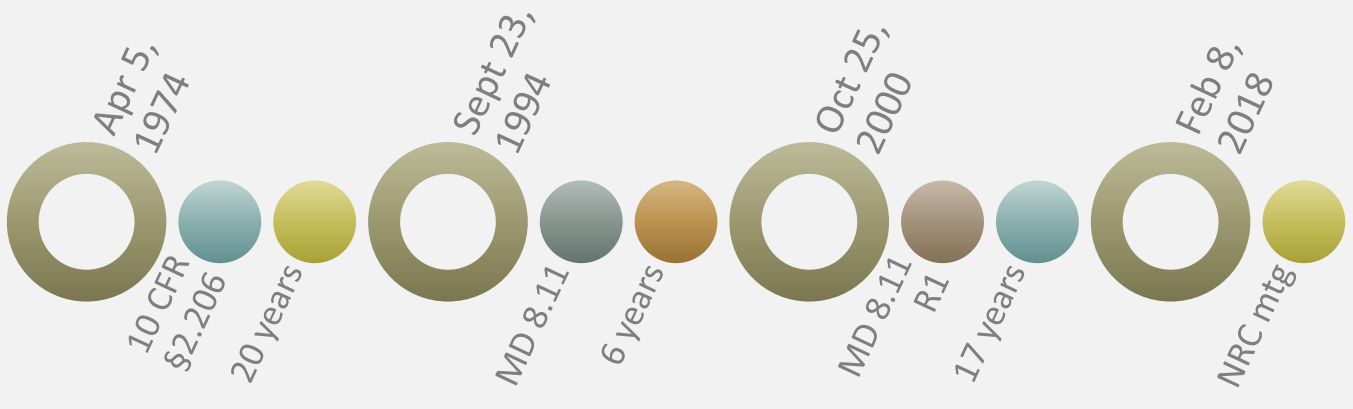
Samuel Miranda, PE

February 8, 2018

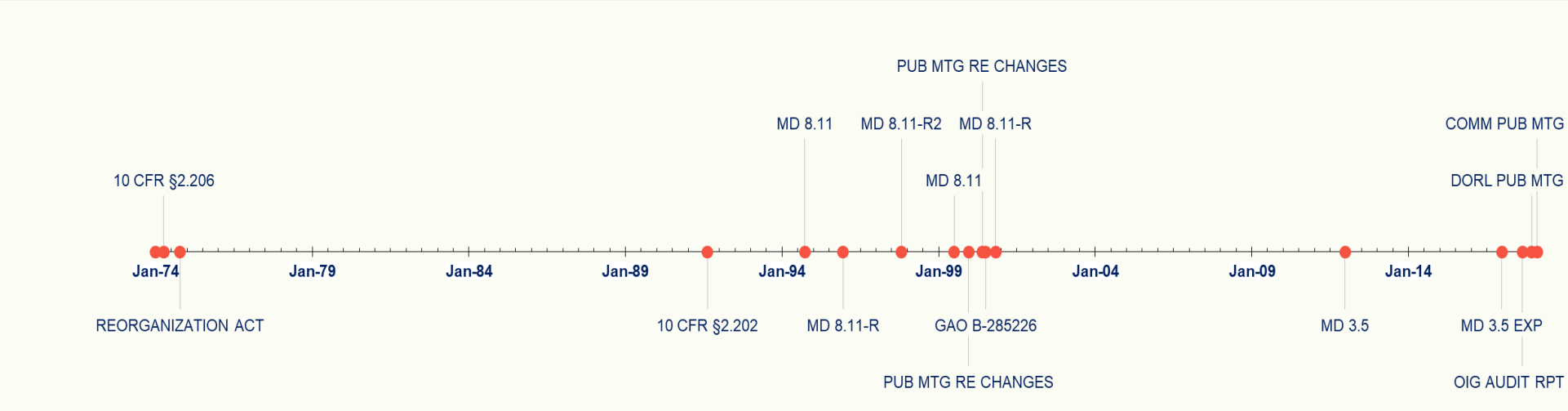
MD 8.11, "Review Process for 10 CFR 2.206 Petitions" Objectives:

- To ensure the public health and safety, through the prompt and thorough evaluation of any potential problem addressed by a petition filed under 10 CFR 2.206.
- To provide for appropriate participation by a petitioner in, and observation by the public of, NRC's decision-making activities related to a 10 CFR 2.206 petition.
- To ensure effective communication with the petitioner and other stakeholders on the status of the petition

MD 8.11 Versions



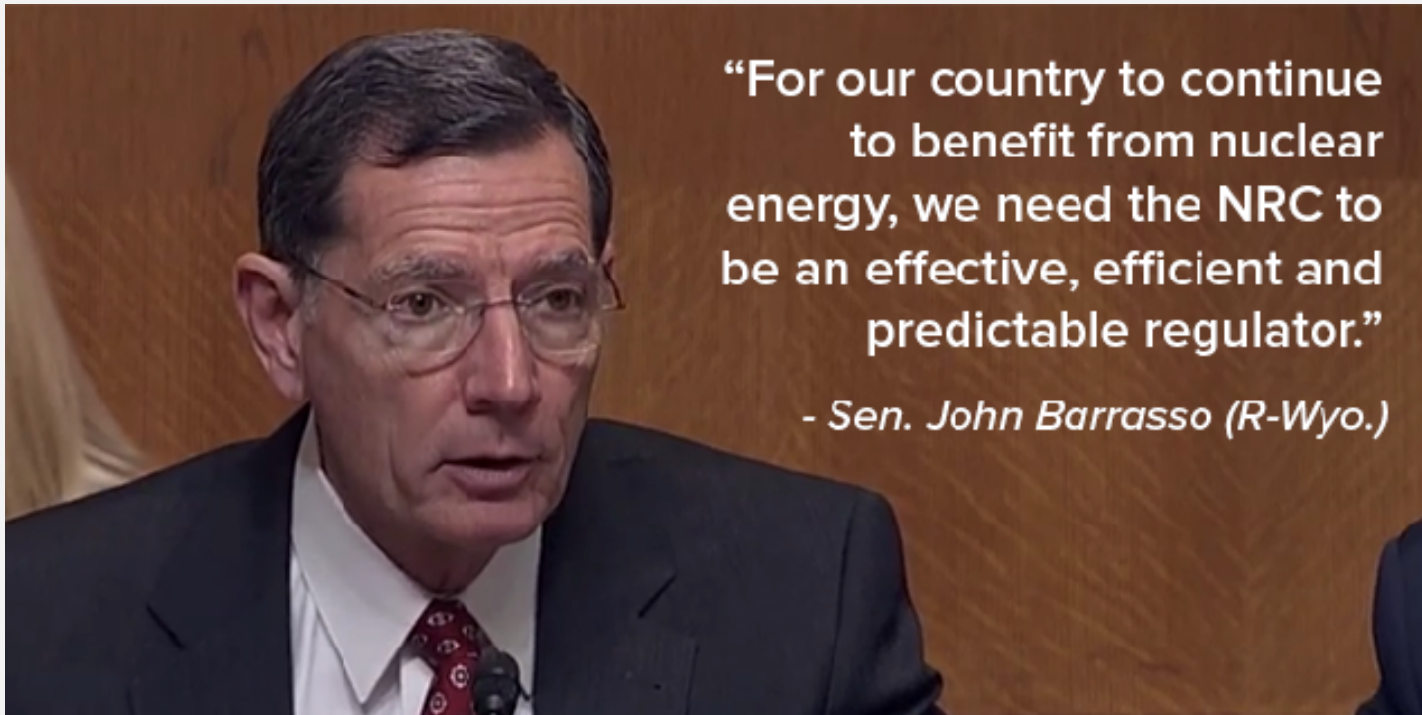
MD 8.11 Timeline



Topics

Scope and uses of the 2.206 enforcement petition process

- Assessment of effectiveness and efficiency of 2.206 enforcement process
- Views on the staff's proposed changes to the 2.206 enforcement process
- Recommendations for other potential changes to the 2.206 enforcement petition process



“For our country to continue to benefit from nuclear energy, we need the NRC to be an effective, efficient and predictable regulator.”

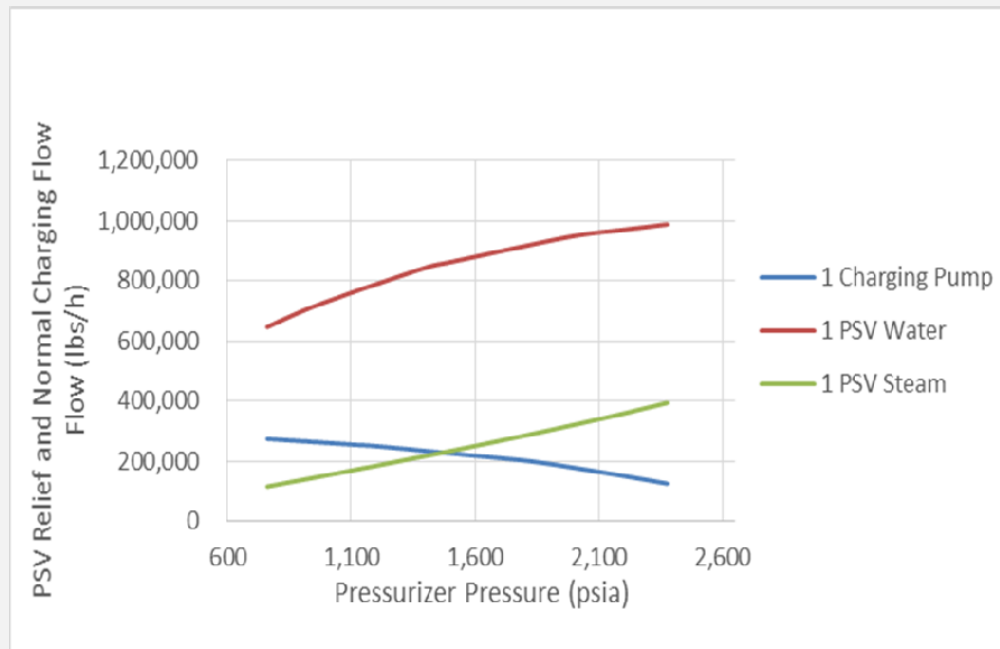
- *Sen. John Barrasso (R-Wyo.)*

Assessment of effectiveness of 2.206 enforcement process

- Effectiveness
- The degree to which something is successful in **producing a desired result**; success.

- MD 8.11
- Ensure public health and safety through the prompt and **thorough evaluation** of any potential problem addressed by a petition filed under 10 CFR 2.206

A “Thorough” Petition Evaluation (example) accepts a one million lb/hr water “leak” --



Assessment of effectiveness of 2.206 enforcement process

MD 8.11, Dec 12, 1995

- “The NRC has granted petitions in whole or in part on only about 10 percent of petitions submitted to the agency.”
- “This practice has led to a longstanding public perception that the NRC was unresponsive to 2.206 petitions.”

OIG-17-A-23, August 22, 2017

- “NRC has not issued orders in response to any of the 38 10 CFR 2.206 petitions filed from FY 2013 through FY 2016.”
- “The lack of such actions could adversely affect the public’s perspective on the effectiveness of the agency’s 10 CFR 2.206 petition process.”

Assessment of effectiveness of 2.206 enforcement process

US GAO, B-285226, June 30, 2000:

- One of the NRC's new performance goals is to increase public confidence.
- NRC has developed strategies to increase public confidence.
- However, NRC did not identify measures for this performance goal.
- Ensuring public health and safety from the operations and activities of its licensees is the NRC's primary statutory responsibility.

Wall Street Journal, September 8, 2011

- "It's called license renewal, not relicensing," says Brian Holian, director of license renewal at the NRC.
- The public "often is not satisfied" by that explanation, he admits. "Sometimes, they want the opportunity to re-evaluate whether the plant should even be there."

Assessment of effectiveness of 2.206 enforcement process

- If the (inferred) objective is to issue some specified number of orders, then MD 8.11 is not effective, since no orders have ever been issued.
- If the (stated) objective is to perform thorough evaluations of petitions, then MD 8.11's effectiveness is poor, since thorough evaluations are very rare.
- If the (observed) objective is to reject petitions, then MD 8.11 is effective.
- Appeals from licensees; but not from petitioners, are heard
- MD 3.5 (re meetings) can be used to bypass MD 8.11

Assessment of efficiency of 2.206 enforcement process

- Efficiency
- Ability to accomplish something with the least waste of time and effort
- Ensure public health and safety through the **prompt** and thorough evaluation of any potential problem addressed by a petition filed under 10 CFR 2.206

- MD 8.11
- Proposed revisions are aimed at improving efficiency by adding:
 - a **streamlined** director's decision
 - a means to **accelerate the PRB initial assessment**,
 - a **timeliness goal** for issuing the **closure** letter, and
 - criteria for **holding a petition in abeyance**,

Views on the staff's proposed changes to the 2.206 enforcement process

• Changes Proposed

- Adds the New Reactors Office (NRO), and the Office International Programs (OIP).
- The offices of Enforcement, and the General Counsel take advisory roles.
- Deletes, “most of the actions described in this directive and the associated handbook apply only to those offices.”
- Deputy office directors of the listed Offices are empowered to, “to hold a petition in abeyance.”

• Changes Not Proposed

- Revisions do not reflect the findings of the OIG audit.
- No guidance re conflict of interest when selecting a PRB chairperson
- Impaired limit re eligible Offices
- No basis for selecting PRB chairpersons from the Senior Executive Service (SES)
- No guidance re PRB evaluation methods
- No guidance re imposing a 10 CFR 2.202 order

Recommendations for other potential changes (MD 3.5 Attendance at NRC Staff-sponsored Meetings)

- MD 8.11 cites MD 3.5 re meetings with petitioners
- Update and revise MD 3.5 (re: “drop in” meetings)
- MD 3.5 states, “Senior executives of a licensee, request the opportunity to conduct a “drop-in” visit with the EDO, (and/or) with other senior managers. ... Because these visits ... are usually limited to a general exchange of information not directly related to any regulatory action or decision, they would not typically be public meetings.”
- All “drop in” meetings, regardless of subject (except proprietary or classified info), should be public.

Recommendations for other potential changes to the 2.206 enforcement petition process

- Implement the recommendations of OIG-17-A-23
- Follow all MD 8.11 procedures
- Add appeal procedures for petitioners and other stakeholders
- Add selection criteria for PRB chairpersons
- Set standards for “thorough” PRB evaluation methods
- Define “new significant” information
- Include petitioners in discussions, between NRC staff and licensees, to resolve issues of the petitions

Conclusions

- MD 8.11 pertains to a “process”, not to a result.
- Improving efficiency without first ensuring effectiveness is irrelevant.
- Fundamental changes are needed, like equalizing appeal rights.
- Appeal decisions should be reviewed by an independent body (e.g., ACRS)
- MD 8.11 refers to MD 3.5, which requires an update.
- “Abeyance” can be a dead end.
- Built-in ambiguity, like “new significant” information must be corrected.
- PRB evaluations should lead to technical decisions, not policy. Limit SES chairpersons.
- MD 8.11 serves the NRC staff, not the public. MD 8.11 is an S.L.I.C.C.

Recommendations

- Reduce MD 8.11 to a one-page checklist
- Process petitions like LARs from stakeholders (i.e., LIC-101)
- Assign petition evaluations to cognizant engineer(s), w/o PRB
- Allow acceptance reviews, RAIs, and denials
- Hold public meetings with petitioners and licensees
- Apply a problem-solving approach, short of license action
- Allow one appeal from the licensee(s), and one from the petitioner(s)
- Finalize appeal decision after one review from an independent body (e.g. ACRS)

Advantages

- LAR process is familiar, and routinely used (see LIC-101)
- LAPs are reviewed by cognizant engineers, as priority LARs, not by SES managers
- Appeals from petitioners and licensees are treated alike
- No “drop in” meetings
- 10 CFR 2.202 orders (and the barrage of appeals) may be avoided
- Public confidence, and predictability can be enhanced
- Transparency and accountability can also be improved
- MDs 8.11, 3.5, and 8.4 can be simplified