

February 4, 2000

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-278

TITLE: NRC/AGREEMENT STATE JURISDICTION FOR FORMERLY LICENSED SITES

The Commission (with Chairman Meserve and Commissioners Dicus, McGaffigan, and Merrifield agreeing and Commissioner Diaz disagreeing) approved Option 3 of the subject paper as recorded in the Staff Requirements Memorandum (SRM) of February 4, 2000.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission, and the SRM of February 4, 2000.

Annette Vietti-Cook
Secretary of the Commission

Attachments: 1. Voting Summary
2. Commissioner Vote Sheets
3. Final SRM

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO

VOTING SUMMARY - SECY-99-278

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	1/3/00
COMR. DICUS	X				X	1/3/00
COMR. DIAZ		X			X	12/16/99
COMR. McGAFFIGAN	X				X	1/21/00
COMR. MERRIFIELD	X				X	12/21/99

COMMENT RESOLUTION

In their vote sheets, Chairman Meserve and Commissioners Dicus, McGaffigan, and Merrifield approved Option 3, the staff's recommendation, and provided some additional comments. Commissioner Diaz approved a modified Option 1 (Legislation). Commissioner Diaz stated that there are sufficiently good reasons for legislative action to ensure a clear, final resolution of this issue. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on February 4, 2000.

Commissioner Comments on SECY-99-278

Chairman Meserve

I approve the staff's proposal to implement Option 3 which would facilitate the remediation of contamination at formerly licensed sites by providing technical assistance to Agreement States. When informing an Agreement State of the decision, the staff should clarify that the State retains jurisdiction

over the site but that, pursuant to the SRMs for [SECY-98-273](#), [SECY-99-193](#), and COMRAM-99-001, the NRC anticipates the opportunity to provide funds for file review and for remediation of sites for which there is no financially responsible party.

Commissioner Diaz

I disapprove the staff's recommendation to implement Option 3 and instead approve a modified Option 1.

There are sufficiently good reasons for legislative action to ensure a clear, final resolution of this issue. However, given the lack of threats to public health and safety and current resource constraints, NRC should not develop and propose an amendment to the Atomic Energy Act. Instead, the staff should inform the Agreement States that the Commission would not object to an Agreement State proposal to Congress to amend Section 274 of the Atomic Energy Act to return jurisdiction over formerly licensed sites to NRC. I believe the Agreement States have the best knowledge of the local impacts of this issue, including the legal, technical, and financial implications, and, therefore, are in the best position to take the lead in a legislative proposal. If the Agreement States forward such a proposal to Congress, the Commission should indicate its support of the proposal in an accompanying letter to Congress. The staff should also make it clear to our stakeholders that, should NRC get jurisdiction under this proposal, it would not necessarily mean that there would be further remediation of the sites. The NRC would make clean-up decisions based on the technical merits of each case.

Commissioner McGaffigan

I approve the staff recommendation to implement Option 3--Continue to Provide Technical Assistance to the Agreement States--to effect timely closeout of sites formerly licensed by NRC located in Agreement States. I also offer the following comments for consideration by the staff.

Clearly, there are diverse opinions on whether the NRC or Agreement States have jurisdiction over sites formerly licensed by NRC located in Agreement States. However, I agree with the staff that it is not absolutely necessary to fully resolve the jurisdictional issue. In fact, resolution of the jurisdictional issue as proposed in Options 1 and 2 may be years away, if ever, and as a result, site closeout would be further delayed unnecessarily. With regard to providing funding and technical assistance to the Agreement States, I continue to believe that allocation of funds to an individual Agreement State should be limited to the estimated cost for each site to comply with the radiation standards set forth in 10 CFR part 20, Subpart E, e.g., 25 millirem per year to an individual when releasing a site for unrestricted use. This approach is consistent with Commission direction to the staff in staff requirements memoranda dated March 15, 1999 on [SECY-98-273](#) and August 25, 1999 on [SECY-99-193](#). Any additional cleanup costs for compliance with more conservative criteria, as determined by the Agreement State, would be funded by the State. This approach should also be applied as we lend technical assistance to an Agreement State to facilitate site closeout. Differences between NRC and an Agreement State on the appropriate radiation standard may make it undesirable or, at minimum, not practical to have NRC and the State sign a joint letter to the licensee, as proposed in the paper. Also, as the staff points out, a joint letter could create confusion regarding the jurisdictional issue at a particular site. Therefore, I suggest that the staff continue working with the affected Agreement States either collectively or individually to determine whether separate letters or a joint letter to the Agreement State licensee is indicated.

With regard to resources, I propose that the staff redirect the FTE needed to support this initiative in FY 2001. For FY 2002, the FTE should be included as part of the budget proposal to the Commission, and, together with the grant money, should be included among the various fairness and equity issues.