



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 25, 2000

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-00-0021

TITLE: PROPOSED RULE: INTERIM STORAGE FOR
GREATER THAN CLASS C WASTE

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of April 25, 2000.

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

Annette Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

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

VOTING SUMMARY - SECY-00-0021

RECORDED VOTES

| | APRVD | DISAPRVD | ABSTAIN | NOT PARTICIP | COMMENTS | DATE |
|------------------|-------|----------|---------|-----------------|----------|---------|
| CHRM. MESERVE | X | | | | X | 3/14/00 |
| COMR. DICUS | X | | | | X | 3/9/00 |
| COMR. DIAZ | X | | | | X | 2/11/00 |
| COMR. McGAFFIGAN | X | | | | X | 3/10/00 |
| COMR. MERRIFIELD | X | | | | X | 3/2/00 |

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on April 25, 2000.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook
Secretary of the Commission

FROM: CHAIRMAN MESERVE

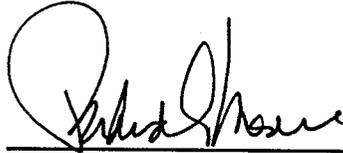
SUBJECT: SECY-00-0021 - PROPOSED RULE: INTERIM STORAGE
FOR GREATER THAN CLASS C WASTE

Approved XX w comments _____ Disapproved _____ Abstain _____

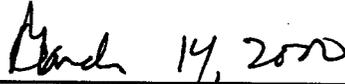
Not Participating _____ Request Discussion _____

COMMENTS:

See attached comments.



SIGNATURE



DATE

Entered on "AS" Yes _____ No _____

COMMENTS OF CHAIRMAN MESERVE ON SECY-00-0021

I approve publication of a proposed rule to amend Parts 72, 150, and 171 to allow licensing for interim storage of reactor-related greater than class C (GTCC) waste in a manner that is consistent with licensing the interim storage of spent fuel. However, the staff should make the following changes to the FRN prior to publication of the proposed rule:

- ✓ 1. I agree with Commissioner Diaz that the staff should expand the statements of consideration to include discussion of Agreement State comments and concerns on the draft rulemaking plan, in particular with respect to the relinquishment of authority for GTCC waste. The text of pp 13-14 of the Federal Register notice might be expanded to respond to the comments.
- ✓ 2. The Federal Register notice seeks comment (at pp 11-12) for a variety of issues (commingled waste, liquid waste) that are not encompassed by the proposed rule (p 15). The text should be modified to indicate that, guided by the comments, these matters may be addressed in the final rule.
- ✓ 3. Page 16 of the Federal Register notice should be revised to clarify when the reviewer guidance will be available.
4. Suggested editorial changes to the FRN are attached.

fuel, currently being stored in the spent fuel pool, to an onsite Independent Spent Fuel Storage Installation (ISFSI) licensed under 10 CFR Part 72. The petitioner requested that 10 CFR Part 72 be revised to permit GTCC waste to be stored at the ISFSI pending transfer to a permanent disposal facility. The petitioner suggested that, because the need to provide interim storage for GTCC waste is not specific to Trojan but is generic, the regulations in 10 CFR Part 72 should be amended to explicitly provide for storage of GTCC waste in a licensed ISFSI².

The petitioner believes that storage of GTCC waste under 10 CFR Part 72 will ensure safe interim storage. This storage would provide for public health and safety and environmental protection as required for spent fuel located at an ISFSI or spent fuel and high-level waste stored at a Monitored Retrievable Storage Installation (MRS).

The specific changes proposed in the petition would explicitly include interim storage of GTCC waste within the Purpose, Scope, and Definitions sections of 10 CFR Part 72 in order to treat GTCC waste in a manner similar to that for spent nuclear fuel. The revised definitions would only apply to the interim storage of GTCC waste under the authority of 10 CFR Part 72.

If this rule is adopted in final form, the petition would be granted in part and denied in part. This proposed rule would grant the petitioner's request to authorize GTCC waste storage under a 10 CFR Part 72 license, but as discussed later, uses a different approach.

² Although the proposal to grant this petition is no longer needed for Trojan since the GTCC waste was shipped to the Hanford LLW site within the reactor vessel, the NRC believes that this rulemaking, if promulgated, will be useful for other reactor operators that need to store their GTCC waste.

example, some forms of GTCC waste may be susceptible to radiolytic or thermal decomposition. Consequently, the design of a container for the storage of GTCC waste would need to consider the generation of gas or other products. Furthermore, chemical, galvanic, or thermal interactions may occur between GTCC waste, spent fuel, and the cask internals for GTCC waste and spent fuel stored in the same cask (i.e., commingled).

Accordingly, the Commission is requesting comments from interested stakeholders on the following safety, technical or licensing issues. The Commission may use this information to assist in the development of ^{a final rule} ~~future regulations~~ on the storage of GTCC waste under 10 CFR Part 72. Comments are not limited to the safety and technical issues listed below. Comments on proposed performance criteria for storage of GTCC waste are particularly requested. The performance criteria should ensure that systems, structures, and components (SSCs) which are important to safety will retain their ability to perform design functions during GTCC waste normal storage operations, anticipated occurrences, and accidents.

1. Should the storage of certain forms of GTCC waste and spent fuel in the same cask be prohibited? Or, should storage be permitted if performance criteria can be established? If so, what criteria should be used?

Note: As previously discussed, the NRC has already approved the storage of certain types of GTCC waste and spent fuel in the same cask on a case-by-case basis. The approved GTCC waste has typically been reactor core components, (e.g., thimble plugs, burnable poison rod assemblies, and control rod assemblies). In addition, the Commission is separately requesting information from DOE regarding DOE's position on the final disposal of commingled spent fuel and GTCC waste.

Proposed Regulatory Action

The NRC is proposing to modify 10 CFR Parts 72, 150, and 171. The proposed changes to these parts are necessary to allow the interim storage of NRC-licensed reactor-related GTCC waste within an ISFSI or an MRS and to require that the licensing responsibility for this waste remain under Federal jurisdiction. This proposed action deals only with GTCC waste used or generated by a commercial power reactor licensed under 10 CFR Part 50 (i.e., not a research reactor) and does not include any other sources of GTCC waste. Because reactor-related GTCC waste is initially under Federal jurisdiction while the reactor facility is operated and the ultimate disposal of GTCC waste is also under Federal jurisdiction, the NRC believes that the interim period between termination of a reactor license and ultimate disposal should also remain under Federal jurisdiction. GTCC waste could become eligible for disposal in a geologic repository in the future. Spent fuel can be stored in an ISFSI or a MRS pending ultimate disposal. Therefore, for efficiency and consistency of licensing, the NRC believes that 10 CFR Part 72 should be modified to also allow the storage of GTCC waste within these facilities under NRC's jurisdiction. The existing regulatory scheme, which would allow for Federal-State-Federal jurisdiction over the generation, interim storage, and disposal of GTCC, waste is an inefficient approach. It is inefficient for NRC and an Agreement State to both spend scarce resources to license and inspect an ISFSI that stores both spent fuel and GTCC waste. 10 CFR Parts 150 and 171 would also require conforming changes.

nor does it include other forms of LLW generated under a Part 50 license.

This proposed rule would allow storage of reactor-related GTCC waste under a 10 CFR Part 72 specific license. The proposed changes would modify 10 CFR Part 72 to allow storage of GTCC waste under this part using the performance criteria of 10 CFR Part 72 (General Design Criteria in Subpart F). This would provide a more efficient means of implementing what is essentially already permitted by the regulations (storage of GTCC waste co-located at an

rule to
QS

reactor-related GTCC waste in different casks and containers within an ISFSI or MRS. However, the proposed rule is not structured to permit the commingling of spent fuel and GTCC waste in the same storage cask. Additionally, this proposed rule is not structured to permit the storage of liquid reactor-related GTCC waste. However, a licensee or applicant may submit an exemption request pursuant to § 72.7 for approval for commingling of spent fuel and solid reactor-related GTCC waste in the same storage cask, or storing liquid reactor-related GTCC waste. The NRC will review and approve these types of requests on a case-by-case basis. As stated above, the NRC is still evaluating these technical issues and as noted earlier is asking for additional input during the public comment period for use in the development of the final rule.

Without this change, after termination of the 10 CFR Part 50 license, a licensee would need multiple licenses -- 10 CFR Part 72 for spent fuel and 10 CFR Part 30 or 70 (or both) for GTCC waste. Having one license for the ISFSI (or MRS) under 10 CFR Part 72 will be simpler for both licensees and the NRC, relative to approval and management.

The NRC believes that the concept proposed in the petition of storing GTCC waste under the provisions of 10 CFR Part 72 is valid. However, the NRC also believes that the method proposed by the petitioner, that is modifying the definition of spent fuel to include GTCC waste, could lead to confusion. Modifying the definition of spent fuel would only apply to spent fuel as defined under 10 CFR Part 72 and would not be technically accurate.

Therefore, the NRC is proposing to add a definition of GTCC waste within § 72.3 that would be consistent with 10 CFR 61.55. The NRC has evaluated 10 CFR Part 72 to determine which sections need to be modified to accommodate storage of solid GTCC waste co-located with spent fuel within an ISFSI or an MRS. The majority of the changes to 10 CFR Part 72 would simply add the term "GTCC waste" to the appropriate sections and paragraphs (typically

when immediately after the terms "spent fuel" or "high-level waste"). Section 72.120 would be revised to require that GTCC waste be in a solid form. Reviewer guidance will be developed. *It is anticipated that the guidance will be published*
10 CFR Parts 150 and 171 would be modified to be consistent with the changes

proposed for 10 CFR Part 72. The proposed change to 10 CFR Part 150 (Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274) would specify that any GTCC waste stored in an ISFSI or an MRS is under NRC jurisdiction. This part would also be modified to indicate that licensing the storage of any GTCC waste that originates in, or is used by, a facility licensed under 10 CFR Part 50 (a production utilization facility) is the responsibility of the NRC.

The proposed change to 10 CFR Part 171 (Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC) would include an annual fee for receipt and storage for GTCC waste, within the fee schedule for spent fuel at an ISFSI, under the license fee schedule. There would be no additional charge to the spent fuel annual fee to include GTCC waste.

NRC to Maintain Authority for Reactor-Related GTCC Waste

Section 274(c)1 of the Atomic Energy Act of 1954, as amended, provides that no agreement entered into by the NRC with a State "shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of -- (1) the construction and operation of any production or utilization facility or any uranium enrichment facility." The NRC has incorporated this statutory prohibition into its regulations in 10 CFR 150.15(a) and (a)(1) which states that:

Compatibility of Agreement State Regulations

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the Federal Register on September 3, 1997 (62 FR 46517), 10 CFR Part 72 and §§ 150.15, and 171.16 continue to be classified as compatibility Category "NRC." The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or provisions of Title 10 of the Code of Federal Regulations.

The Commission is particularly interested in the position of the Agreement States on issues raised in this proposed rule. Specifically, the Commission would like Agreement State comment on the following questions:

1. What is the position of the Agreement States on NRC assuming jurisdiction of storage of GTCC waste generated during the operation of a 10 CFR Part 50 license after termination of the 10 CFR Part 50 license?
2. What controls and regulatory framework would the Agreement States envision assuming they have jurisdiction over GTCC waste generated during the operation under a 10 CFR Part 50 license after termination of the 10 CFR Part 50 license? How would the Agreement States plan to ensure consistency with a national regulatory scheme?

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in the proposed revision to improve the organization and

This should be appended to discuss AFS concerns on implementing plan

type facility, the high-level waste and reactor GTCC waste must be ^{an} a durable solid ^{form} with demonstrable leach resistance.

(d) The ISFSI or MRS must be designed, made of materials, and constructed to ensure that there will be no significant chemical, galvanic, or other reactions between or among the storage system components, spent fuel, reactor-related GTCC waste, and/or high level waste including possible reaction with water during wet loading and unloading operations or during storage in a water-pool type ISFSI or MRS. The behavior of materials under irradiation and thermal conditions must be taken into account.

27. Section 72.122 is amended by revising paragraphs (b)(2), (h)(2), (h)(4), (h)(5), (i) and (l) to read as follows:

§ 72.122 Overall requirements.

★ ★ ★ ★ ★
(b) ★ ★ ★

(2)(i) Structures, systems, and components important to safety must be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, lightning, hurricanes, floods, tsunami, and seiches, without impairing their capability to perform their intended design functions. The design bases for these structures, systems, and components must reflect:

(A) Appropriate consideration of the most severe of the natural phenomena reported for the site and surrounding area, with appropriate margins to take into account the limitations of the data and the period of time in which the data have accumulated, and

(B) Appropriate combinations of the effects of normal and accident conditions and the effects of natural phenomena.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

Mr. Ivan Itkin, Director
Office of Civilian Radioactive Waste Management
U.S. Department of Energy
1000 Independence Avenue, NW
Washington, DC 20585

SUBJECT: REQUEST FOR COMMENT ON A PROPOSED RULE TO STORE REACTOR-RELATED GTCC WASTE UNDER A 10 CFR PART 72 LICENSE

Dear Mr. Itkin:

The U.S. Nuclear Regulatory Commission (NRC) has published a proposed rule in the Federal Register (see enclosure) that would allow the storage of reactor-related greater than class C (GTCC) waste under the provisions of 10 CFR Part 72 "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste." Part 72 allows for the interim storage of spent fuel within an Independent Spent Fuel Storage Installation (ISFSI) or spent fuel and high-level waste within a Monitored Retrievable Storage installation (MRS). This rulemaking, if implemented, would also allow the interim storage of reactor-related GTCC waste within an ISFSI or an MRS.

In the development of the proposed rule, the NRC has identified a potential policy issue associated with the U.S. Department of Energy's (DOE's) responsibility for the disposal of GTCC waste. Because the DOE has not yet identified criteria or technical regulations for a disposal package for spent fuel or GTCC waste, the NRC is concerned that the commingling of spent fuel and GTCC waste (i.e., stored within the same cask) may be unacceptable for permanent disposal in the geologic repository. Therefore, the proposed rule would not allow commingling of GTCC waste with spent fuel in a single container.

The NRC desires to formulate regulations that reduce both radiological exposure and costs associated with repackaging the spent fuel and GTCC waste into two separate containers. Therefore, DOE information on disposal policies will be helpful in developing storage criteria for 10 CFR Part 72 (i.e., precluding a storage option that will be unacceptable for permanent disposal).

Specifically, the NRC is ^{solv's} ~~looking for~~ ^{views} DOE's ~~position~~ ^{views} on commingling of spent fuel and GTCC waste in the same container for disposal at the geologic repository. In addition, the NRC would also appreciate DOE's response on the subject to commingling spent fuel and GTCC waste during interim storage in an ISFSI or spent fuel, high-level waste, and GTCC waste in an MRS.

NOTATION VOTE

RESPONSE SHEET

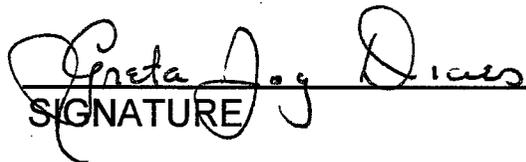
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER DICUS
SUBJECT: **SECY-00-0021 - PROPOSED RULE: INTERIM STORAGE
FOR GREATER THAN CLASS C WASTE**

Approved ^{w/comments} Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached comments.


SIGNATURE

March 9, 2000
DATE

Entered on "STARS" Yes No _____

COMMENTS OF COMMISSIONER DICUS - SECY-00-0021

I approve publication of the Proposed Rule, Interim Storage for GTCC Waste, that would amend 10 CFR Parts 72, 150, and 171 to allow interim storage of 10 CFR Part 50 power reactor-related GTCC waste at an ISFSI or MRS under 10 CFR Part 72, and would retain NRC jurisdiction over power reactor-related GTCC waste. However, staff should address the following prior to publication of the Proposed Rule:

1. SECY Paper, page 3, second paragraph, modify third sentence to read, "The licensing process will be simpler with less regulatory burden if all GTCC radioactive waste to be stored at an ISFSI or MRS is stored under the authority of on Part 72 license."
- ✓ 2. FRN, Page 10, first paragraph, modify second sentence to read, "Therefore, information from DOE on disposal policies will be helpful in developing commingling storage criteria for 10 CFR Part 72 (and enable the NRC to preclude a storage option that would be unacceptable for permanent disposal)."
- ✓ 3. FRN, Page 20, under Compatibility of Agreement State Regulations, staff should include the Agreement State jurisdiction retention comments that were provided in response to the draft rulemaking plan from the States of Illinois, Texas, New York, and Utah.
- ✓ 4. FRN, Page 20, under Compatibility of Agreement State Regulations, staff should address the existing status of Agreement State licensees that possess GTCC waste under an existing Agreement State license (if any), and what path-forward would be necessary for NRC taking over jurisdiction.
- ✓ 5. As identified in the FRN, GTCC liquid wastes are precluded from being co-located with spent-fuel, however, this option can be evaluated and approved on a case-by-case basis. This same scenario exists with respect to commingling GTCC reactor-related solid waste with spent-fuel. For the spent-fuel commingling scenario, examples are provided of when commingling would be acceptable. For the GTCC liquid waste co-location scenario, no examples or guidance is provided. Staff should provide examples or scenarios for the GTCC liquid wastes similar to those provided for the spent-fuel commingling scenario so that the licensee has some idea of what and what not may be acceptable.
6. Revise the DOE letter to be signed-out by the NMSS Office Director and make the necessary adjustments in the letter to accommodate the signature change.

gfd
3-9-00

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER DIAZ
SUBJECT: **SECY-00-0021 - PROPOSED RULE: INTERIM STORAGE
FOR GREATER THAN CLASS C WASTE**

Approved xx *[Signature]* Disapproved _____ Abstain _____
Not Participating _____

COMMENTS:

See attached comments.

[Signature]

SIGNATURE

02/11/00

DATE

Entered on "STARS" Yes No _____

-- REC'D BY HJD --

31 JAN 00 3:04

COMMISSIONER DIAZ'S COMMENTS ON SECY-00-0021 -- PROPOSED RULE: INTERIM STORAGE FOR GREATER THAN CLASS C (GTCC) WASTE

I approve publication of a proposed rule that would amend Parts 72, 150, and 171 to allow storage of reactor-related GTCC waste under Part 72 and would retain NRC jurisdiction over reactor-related GTCC waste. However, the staff should make the following changes to the FRN prior to publication of the proposed rule:

- ✓ In response to a request for comments on a draft rulemaking plan for this proposed rule, four Agreement States provided comments, of which three of these States indicated that they were opposed to voluntarily relinquishing their authority and preferred to maintain their licensing authority for GTCC waste. The staff should expand the "Compatibility of Agreement State Regulations" section of the FRN to specifically address the comments and concerns raised by the Agreement States that would prefer to maintain their licensing authority for GTCC waste and provide additional justification for why NRC should retain jurisdiction over reactor-related GTCC waste.
- ✓ The staff should expand the "Compatibility of Agreement State Regulations" section of the FRN to state that NRC is not aware of current Agreement State licensees that possess reactor-related GTCC waste. This section should specifically request whether the Agreement States are aware of such licensees in their States and, if so, how NRC should handle the licensing of these facilities.
- ✓ The staff should modify the FRN to include a discussion of alternatives for 10 CFR Part 50 licensees that want to terminate their license but possess reactor-related non-solid GTCC waste that is not appropriate for storage under the proposed modifications to 10 CFR Part 72.

lwy

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-00-0021 - PROPOSED RULE: INTERIM STORAGE
FOR GREATER THAN CLASS C WASTE**

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

*The staff did a good job on this package
in response to Commission guidance.*

Edward McKeefry Jr.

SIGNATURE

March 10, 2000

DATE

Entered on "STARS" Yes No _____

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-00-0021 - PROPOSED RULE: INTERIM STORAGE
FOR GREATER THAN CLASS C WASTE**

Approved Disapproved Abstain

Not Participating

COMMENTS: *See attached comments.*


SIGNATURE

3/5/00
DATE

Entered on "STARS" Yes No

Comments from Commissioner Merrifield on SECY-00-0021:

I approve the staff's request, with modifications as described below, to publish a proposed rule allowing licensing for interim storage of reactor-related greater than class C (GTCC) waste under 10 CFR Part 72. In addition, this rulemaking would maintain Federal jurisdiction over the interim storage of reactor-related GTCC waste either on or off the reactor site. This rulemaking does raise a fundamental question of what should take priority between State's rights and regulatory efficiency. Both issues are important to me. However, in this particular instance, the NRC has (1) sole regulatory authority to regulate this material while the licensee has a license issued under 10 CFR Part 50, (2) sole regulatory authority under 10 CFR Part 72 to license the spent fuel storage facility (where this GTCC material is most likely to be stored), and (3) sole regulatory authority to regulate the final disposal facility for this GTCC waste. The possibility of regulation by an Agreement State of this GTCC waste only exists during the time of interim storage after the operating license is terminated. Therefore, it is appropriate for NRC to retain regulatory authority during the interim storage period between the end of the final operating phase and final disposal. While I am strongly supportive of State's rights and their responsibility to control issues within the State borders, I believe the need for consistent regulatory control over this specific GTCC waste outweighs the State's rights in this case.

However, there are several changes that need to be made to the package before it is published.

1. On page 16 of attachment 1, the two sentence paragraph describing the changes to the fee structure in 10 CFR Part 171 appears to be contradictory and should be clarified. The first sentence states that an annual fee for receipt and storage of GTCC waste would be included on the fee schedule and the second sentence says that there would be no additional charge for receipt and storage of GTCC waste. The staff should more clearly explain the intent of this paragraph.
2. Both the Environmental Assessment (attachment 3) and the Regulatory Analysis (attachment 4) contain a discussion of three alternatives. For alternative 2, there are two sentences located together which may create an incorrect impression (refer to attachment 3, page 8, second paragraph and attachment 4, page 8, second paragraph). The first sentence states that alternative 2 meets the request of the petitioner and the second sentence says that alternative 2 would allow dual regulation of a facility licensed under Part 72. The request of the petitioner was to include the definition of GTCC waste under Part 72 and did not discuss the possibility of dual regulation. A potential fix would modify the two sentences to read as follows: "Allowing interim storage of GTCC waste under a 10 CFR Part 72 specific license would meet the request of the petitioner. However, without additional changes in the regulations (not requested by the petitioner), one result of this alternative is the potential dual regulation of the licensed facility by both the NRC and an Agreement State."
3. Several times in the attachments (including the letter to DOE), the staff makes a definitive statement that "the proposed rule is not structured to permit commingling of spent fuel and GTCC waste in the same storage cask" (attachment 1, page 15, first full sentence and the same thought is communicated in attachments 2 through 4). But in other paragraphs, physically separated from this discussion, the staff states that it intends to continue allowing components of spent fuel rods to be commingled in the same storage cask with the spent fuel (refer to attachment 1, page 10, first paragraph and the same thought is in attachments 3 and 4). Although not stated in the paragraph, these components of the fuel rod may be GTCC.

While I have no problems with allowing this practice to continue, the statement that commingling will not be permitted needs to be modified to indicate except for GTCC components integral to the fuel rod itself or other appropriate wording proposed by the staff.



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

April 25, 2000

SECRETARY

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary *Annette Vietti-Cook*

SUBJECT: STAFF REQUIREMENTS - SECY-00-0021 - PROPOSED RULE:
INTERIM STORAGE FOR GREATER THAN CLASS C WASTE

The Commission has approved publication of the proposed rule to amend 10 CFR Parts 72 and 150 to allow licensing for interim storage of reactor-related greater than class C (GTCC) waste in a manner that is consistent with licensing the interim storage of spent fuel and would maintain Federal jurisdiction over the interim storage of reactor-related GTCC waste. The Federal Register notice, other attachments to the SECY paper, and the letter to DOE should be modified as noted in the comments provided below.

(EDO)

(SECY Suspense: 6/12/00)

1. On pages 3 and 4, move the footnote numbers for footnotes 1 and 2 after the period.
2. On page 10, first paragraph, modify the second sentence to read, "Therefore, information from DOE on disposal policies will be helpful in developing commingling storage criteria for 10 CFR Part 72 (and enable the NRC to preclude a storage option that would be unacceptable for permanent disposal)."
3. On page 11, 1st full paragraph, revise line 3 to read ' ... assist in development of a final rule on the storage'
4. The Federal Register notice seeks comment (at pp 11-12) for a variety of issues (commingled waste, liquid waste) that are not encompassed by the proposed rule (p 15). The text should be modified to indicate that, guided by the comments, these matters may be addressed in the final rule.
5. On page 13, paragraph 1, revise line 6 to read ' ... any other sources of GTCC waste nor does it include other forms of LLW generated under a Part 50 license.'
6. The staff should expand the statements of consideration to include discussion of Agreement State comments and concerns on the draft rulemaking plan, in particular with respect to the relinquishment of authority for GTCC waste. Since three of the four Agreement States that provided comments indicated that they were opposed to voluntarily relinquishing their authority and preferred to maintain their licensing authority for GTCC waste, the FRN should be revised to specifically address the comments and concerns raised by the Agreement States that would prefer to maintain their licensing authority for GTCC waste.

7. The staff should expand the "Compatibility of Agreement State Regulations" section of the FRN to state that NRC is not aware of current Agreement State licensees that possess reactor-related GTCC waste. This section should specifically request whether the Agreement States are aware of such licensees in their States.
8. On page 16, the paragraph at the top of the page should be revised to clarify when the reviewer guidance will be available. A sentence could be added at the end of line 2 which states that 'It is anticipated that the guidance will be published ____.'
9. The discussion of fees in the proposed Part 72 Federal Register Notice should be modified as suggested below. As it is now written, it is unclear whether there will be additional Part 171 fees as a result of this rulemaking.
 - a. Eliminate all references to revising Part 171 to include annual fees for GTCC waste.
 - b. On page 16 of Attachment 1 to SECY-00-0021, revise the second paragraph to read:

The NRC will continue to recover costs for generic activities related to the storage of GTCC waste under Part 72 through Part 171 annual fees assessed to the spent fuel storage/reactor decommissioning class of licensees. Subsequent to issuing the final revision to Part 72, Part 170 will be amended to clarify that full costs fees will be assessed for amendments and inspections related to the storage of GTCC waste under Part 72.
10. Several times in the attachments (including the letter to DOE), the staff makes a definitive statement that "the proposed rule is not structured to permit commingling of spent fuel and GTCC waste in the same storage cask" (attachment 1, page 15, first full sentence and the same thought is communicated in attachments 2 through 4). But in other paragraphs, physically separated from this discussion, the staff states that it intends to continue allowing components of spent fuel rods to be commingled in the same storage cask with the spent fuel (refer to attachment 1, page 10, first paragraph and the same thought is in attachments 3 and 4). Although not stated in the paragraph, these components of the fuel rod may be GTCC. The statement that commingling will not be permitted needs to be modified to indicate an exception for GTCC components integral to the fuel rod itself or other appropriate wording proposed by the staff.
11. The staff should modify the FRN to include a discussion of alternatives for 10 CFR Part 50 licensees that want to terminate their license but possess reactor-related non-solid GTCC waste. The alternatives include requesting a Part 30/70 license or requesting an exemption from the requirements of Part 72.
12. On page 44, revise line 1 to read '... reactor GTCC waste must be in a durable solid form with ...'
13. Both the Environmental Assessment (attachment 3) and the Regulatory Analysis (attachment 4) contain a discussion of three alternatives. For alternative 2, there are two sentences located together which may create an incorrect impression (refer to attachment 3, page 8, second paragraph and attachment 4, page 8, second paragraph). The first sentence states that alternative 2 meets the request of the petitioner and the

second sentence says that alternative 2 would allow dual regulation of a facility licensed under Part 72. The request of the petitioner was to include the definition of GTCC waste under Part 72 and did not discuss the possibility of dual regulation. A potential fix would modify the two sentences to read as follows: "Allowing interim storage of GTCC waste under a 10 CFR Part 72 specific license would meet the request of the petitioner. However, without additional changes in the regulations (not requested by the petitioner), one result of this alternative is the potential dual regulation of the licensed facility by both the NRC and an Agreement State."

14. In the letter to DOE, page 1, last paragraph, revise line 1 to read ' ... the NRC seeks DOE's views on commingling of spent'
15. Revise the DOE letter to be signed-out by the NMSS Office Director and make the necessary adjustments in the letter to accommodate the signature change.

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
CIO
CFO
OCA
OIG
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR
DCS