

May 21, 1997

IN RESPONSE: PLEASE  
REFER TO: M970521

MEMORANDUM TO: L. Joseph Callan  
Executive Director for Operations

FROM: John C. Hoyle /s/

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION,  
9:30 A.M. WEDNESDAY, MAY 21, 1997, COMMISSIONERS  
CONFERENCE ROOM, ONE WHITE FLINT NORTH,  
ROCKVILLE, MARYLAND (OPEN TO PUBLIC  
ATTENDANCE)

I. SECY 97-046A - FINAL RULE ON RADIOLOGICAL CRITERIA FOR  
LICENSE TERMINATION

The Commission\* approved a final rule which would revise 10 CFR Part 20 to provide specific radiological criteria for the decommissioning of lands and structures at NRC-regulated facilities and to establish a clear and consistent regulatory basis for determining the extent to which lands and structures must be remediated before decommissioning of a site can be considered complete and the license terminated. In reaching its decision to approve the final rule, the Commission addressed the following specific issues:

- Dose Criteria for Release of a Site to Unrestricted Use

The Commission adopted a 25 mrem/year all-pathways dose limit coupled with a requirement to reduce radiological doses resulting from residual radioactivity to levels that are as low as reasonably achievable. The Commission believes that these criteria are consistent with the recommendations of national and international bodies tasked with the development of guidance for radiation protection; are appropriately based on risk, cost-benefit, and socio-economic standards; provide the needed flexibility to accommodate site-specific conditions; and are sufficiently conservative to ensure

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\* Section 201 of the Energy Reorganization Act, 42 U.S.C. Section 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Diaz was not present when this item was affirmed. Accordingly, the formal vote of the Commission was 4-0 in favor of the decision. Commissioner Diaz, however, had previously indicated that he would approve this paper, and had he been present, he would have affirmed his prior vote.

adequate protection of public health and safety and the environment.

- Separate Groundwater Protection Standard

The Commission did not adopt a separate groundwater protection standard as proposed by the Environmental Protection Agency (EPA) because the Commission believes that a separate single pathway standard for groundwater would not provide any significant enhancement of public health and safety and is unnecessary since the NRC final rule's all-pathways standard of 25 mrem/year plus ALARA should ensure adequate protection of public health and safety. Imposition of separate groundwater standards could also have the adverse effect of delaying cleanup and increasing public risk. Moreover, the Commission was not convinced that EPA's separate groundwater maximum contaminant levels were appropriately derived or soundly based from a technical standpoint.

- Alternate Criteria

The Commission adopted the NRC staff's recommendation to use alternate criteria for license termination for certain difficult sites since codifying such an approach in the text of the rule is expected to greatly reduce the likelihood that licensees will seek exemptions from the requirements of the regulation. Nevertheless, the Commission also approved a revision to section 20.1404 in the text of the final rule to require the NRC staff to obtain Commission approval for each application of the alternative criteria, to solicit comment from EPA during the public comment period required under section 20.1405 of the final rule, and to ensure a more substantive level of public participation. The Commission expects the use of such criteria to be relatively rare. (Specific, Commission-approved changes to section 20.1404 are contained in the attachment to this SRM).

- Public Participation

The Commission, in the absence of a provision that requires a Site Specific Advisory Board, which had been included in the proposed rule but not in the final rule, agreed to modify the final rule to require licensees proposing to decommission by restricting use of a site, or through the use of alternate criteria, to provide for participation by a broad cross section of community interests, an opportunity for a comprehensive discussion on the issues by participants, and to make public a summary of the results of such discussions. (Specific,

Commission-approved changes to section 20.1403(d) of the final rule are contained in the attachment to this SRM).

- Agreement State Compatibility Level

The Commission adopted Compatibility Level 2, as proposed by the NRC staff. This will afford the Agreement States flexibility to account for local needs and conditions.

The staff is directed to incorporate the attached specific changes to the final rule and forward the Federal Register notice to the Office of the Secretary for signature and publication.

(EDO)

(SECY Suspense: 6/03/97)

Attachment: As stated

cc: Chairman Jackson  
Commissioner Rogers  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
OGC  
OCA  
OPA  
OIG  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR - Advance  
DCS-P1-17

SPECIFIC COMMENTS ON FINAL RULE ON RADIOLOGICAL CRITERIA  
FOR LICENSE TERMINATION (SECY 97-046A)

1. The rule is being completed on an expedited basis, and as a result, guidance documents are not available for Commission review. Since the guidance documents can have a significant impact on how this rule is implemented, the staff should provide all guidance documents to the Commission for review and approval prior to publication no later than February 21, 1998.
2. The Statement of Considerations (p. 41) and the text of the rule (p. 122) are inconsistent in describing and defining the term "Critical Group". The staff should resolve the inconsistency and make appropriate changes to the final rule package prior to publication.
3. The following changes to section 20.1403(d) (underlined) should be incorporated in the final rule:

(d) The licensee has ... advice.

(A) Licensees proposing to decommission by restricting use of the site shall seek advice from such affected parties regarding the following matters concerning the proposed decommissioning--

- (1) ....
  - (i) ...;
  - (ii) ...;
  - (iii) ...;
- (2) ...;

(B) In seeking advice on the issues identified in Section 20.1403(d)(A), the licensee shall provide for:

(1) participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(2) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(3) a publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(e) ....

4. The following changes to section 20.1404 (underlined) should be incorporated in the final rule:

20.1404 Alternate criteria for license termination

- (a) The Commission may ...  
    (1) Provides assurance that ...  
    (2) Has employed ...  
    (3) Reduced doses to ....

(b) Licensees proposing to decommission by use of alternate criteria to terminate a license pursuant to paragraph (a) of this section shall seek advice from affected parties regarding this approach. In seeking such advice, the licensee shall provide for:

(1) participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(2) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(3) a publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(c) The use of alternate criteria to terminate a license requires the approval of the Commission after

consideration of the NRC staff's recommendations that will address any comments provided by the Environmental Protection Agency and any public comments submitted pursuant to section 20.1405.

5. The following change (underlined) to section 20.1405(a) should be incorporated in the final rule:
  - (a) Notify and solicit comments from the Environmental Protection Agency, local and state ....
6. Conforming changes to reflect the revisions in 3 and 4 above are needed in other regulations that reference these sections. The staff should also modify the Statement of Considerations accompanying the final rule to indicate that the staff will receive and review public comments gathered by the licensee prior to final NRC action on the licensee's request for license termination. The Statement of Considerations should also describe the other opportunities for NRC interaction with the public on individual site decommissioning applications.
7. The public announcement should be modified to include a general discussion of the Commission's position, as described in this SRM, on the 25 mrem/yr limit, groundwater protection, alternate criteria, public participation, and compatibility. In addition, the announcement should include additional illustrations of an individual's average exposure to typical sources of radiation (e.g., medical diagnosis at 53 mrem/yr) to provide perspective for the public on the conservatism in the 25 mrem/yr limit.
8. A note should be made in the analysis of comments that EPA's MCLs are based upon outmoded modeling that does not reflect current understandings of the uptake and doses resulting from ingestion of radionuclides through drinking water.
9. The Regulatory Analysis, on pages 3 and 4, states that the criteria would not apply to sites which have submitted a sufficient license termination plan or decommissioning plan within [6 months after the effective date of the final rule] and such a plan is approved by NRC within [18 months after the effective date of the final rule]. These times are 12 and 24 months respectively in the Federal Register. Staff should clarify these times.
10. In the GEIS, p.3-3, citation of regulations, categorization of facilities, item 1, it is stated that sealed source users are licensed under Parts 30, 33, and 35, but did not include Parts 34, 36, or 39. In item 2, it cites Parts 30, 33, and 35 in discussion of short-lived byproduct radionuclides, but does not include Part 39 for I-131 use. The GEIS should list

all the parts of the regulations, or state "licensed pursuant to Part 30" (such as in sections 30.31 and 30.34).

11. The Commission is aware that there are peculiarities in the models used for site release in that there is area dependence in the dose calculations. The NRC staff should develop comprehensive guidance on how previously released portions of licensed sites may need to be revisited to address this issue. The Federal Register notice should be revised to make clear such consideration may be necessary.
12. The guidance the staff develops to implement the public participation provisions in sections 20.1403(d) and 20.1404 (b) of the final rule should include criteria for establishing and using Site Specific Advisory Boards (SSABs). The criteria should be such that the expected starting point in providing an opportunity for public participation would be the establishment of an SSAB; however, the criteria should delineate those situations in which an SSAB would not be appropriate.
13. Prior to submitting the text of the final rule to the Federal Register, section F.6.3 of the Statement of Considerations should be revised to augment the basis for the Commission's decision with respect to radon.
14. The scope of the final rule should be revised to exclude facilities that are currently subject to Appendix A to 10 CFR Part 40. The Commission has considered the difficulties associated with the decommissioning of these unique facilities, some of which are also subject to EPA standards under UMTRCA, and is concerned that the complexities of this issue may have been overshadowed by other provisions of the rule. Therefore, the Commission believes that this aspect of the rule warrants additional consideration by the NRC and the affected parties. Without prejudice to the approach described in SECY 97-046A and on an expedited basis, the staff should develop a rule which addresses license termination for these facilities. In the interim, the staff should continue its current practice for decommissioning uranium and thorium mills and in-situ leach facilities.