

November 20, 1998

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: John C. Hoyle, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - SECY-98-209 - PROPOSED
AGREEMENT WITH THE STATE OF OHIO AND
COMPATIBILITY REQUIREMENTS OF 10 CFR PART 20,
SUBPART E

The Commission has approved the staff's position that Ohio's approach to decommissioning is compatible with NRC's radiological criteria for license termination (the cleanup rule) described in Subpart E of Part 20.

The Commission offers the following comments on two issues that were not specifically addressed in the paper – NRC-licensed sites remediated under the Site Decommissioning Management Plan (SDMP) or other sites with NRC-approved decommissioning plans, and formerly-licensed sites located in Ohio. The staff should inform the Commission of its resolution of these issues when submitting the final agreement to the Commission for approval.

(EDO) (SECY Suspense: at time final agreement is submitted)

- Regarding sites with NRC-approved decommissioning plans including SDMP sites, while the Commission continues to support compatibility category "C" for NRC's cleanup rule to provide Agreement States flexibility to impose more restrictive cleanup standards, the Commission also believes that licensed sites with NRC-approved decommissioning plans including SDMP sites should not be subject to a second set of cleanup criteria. To effect this, NRC promulgated specific provisions in the cleanup rule to "grandfather" such sites thereby providing finality for the sites. While the Commission may not have specifically contemplated applying Agreement State criteria to such sites when promulgating the rule, the Commission did intend to ensure finality for grandfathered sites by not subjecting them to a second set of cleanup criteria regardless of the source. Based on the information received, it is the Commission's understanding that Ohio will honor any decommissioning plan approved by NRC prior to the effective date of the Agreement. This approach will ensure that the intent of NRC's rule is met. States entering into agreements with NRC in the future should be encouraged to follow the same approach. The staff and OGC should explore with Ohio whether it is necessary from a legal basis--as implied in Ohio's memorandum--to amend the licenses of sites with NRC-approved decommissioning plans to recognize those plans prior to transferring the license to Ohio. Resolution of this issue is particularly important in the case of the Shelwell site since the staff considers the probabilistic approach described in

SECY-98-117 to be the "NRC-approved decommissioning plan" thereby eliminating the need for submittal of a formal license termination plan by the licensee.

- Regarding "formerly-licensed" sites, the staff should ensure that information relevant to the formerly-licensed sites located in Ohio--that were identified as a result of the license file review conducted by the Oak Ridge National Laboratory (ORNL)--is shared with Ohio well in advance of the effective date of the agreement. This includes, but is not necessarily limited to, ORNL file review results, NRC followup actions and NRC's basis for its determination to "close the file" in each case. NRC should ensure that there is full disclosure of information associated with these sites.

While the Commission recognizes that the SDMP Shieldalloy site in Cambridge, Ohio may be subject to Ohio's cleanup rule since the licensee has not yet submitted a decommissioning plan for NRC approval, the Commission looks forward to receiving the staff paper on the technical issues associated with possible transfer of licensed material from both Shieldalloy sites (Ohio and New Jersey) to non-licensees. It is conceivable that the Commission's decision on these issues could influence Shieldalloy's decision on whether to submit a decommissioning plan to NRC or to Ohio once the agreement is in effect. The Commission needs a prompt proposal (or options paper) to resolve this matter on a fast track.

(EDO)

(SECY Suspense:

12/18/98)

The staff should forward to the Commission for information purposes a copy of the final NUREG developed by ORNL that summarizes the file review and its findings.

(EDO)

(SECY Suspense:

at time final NUREG is complete)

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