

February 16, 1993

MEMORANDUM FOR: James M. Taylor  
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary /s/

SUBJECT: SECY-92-391 - DENIAL OF PRM-60-4 - PETITION  
FOR RULEMAKING FROM THE STATES OF WASHINGTON  
AND OREGON REGARDING CLASSIFICATION OF  
RADIOACTIVE WASTE AT HANFORD

The Commission (with all Commissioners agreeing) has approved the staff's recommendation that the subject petition be denied.

A majority of the Commission (the Chairman and Commissioners Rogers, Remick and de Planque) has approved publication in the Federal Register of the proposed notice of denial of the petition for rulemaking with the changes indicated in the attachment. A majority of the Commission (the Chairman and Commissioners Rogers, Remick and de Planque) has also approved the proposed letter to DOE with the changes indicated in the attachment. Commissioner Curtiss disagreed with the proposed notice and letter to DOE, as modified by the Commission majority, for reasons stated below.

The Commission (with the Chairman and Commissioner Rogers, Remick and de Planque agreeing) believes that it is DOE's responsibility to communicate to NRC any new indication that some wastes are subject to NRC licensing and therefore do not believe that DOE needs to keep the NRC informed of its ongoing assessments. This is not different from other situations involving an activity that may or may not be subject to NRC jurisdiction. In such cases, the party wishing to engage in the activity must make an initial determination about whether its proposed activity would be subject to NRC licensing. Presumably, the party would involve NRC only if it finds that its proposed activity would be subject to NRC jurisdiction or if it finds that such jurisdiction is unclear. The changes indicated in the attachment reflect this position, which is based on DOE assurances.

---

SECY NOTE: THIS SRM, SECY-92-391, AND THE VOTE SHEETS OF ALL COMMISSIONERS WILL BE MADE PUBLICLY AVAILABLE 10 WORKING DAYS FROM THE DATE OF THIS SRM

Commissioner Curtiss believes that DOE should explicitly document the results of its analysis supporting any DOE conclusion that the criteria proposed by the NRC staff in the subject paper have been met. Commissioner Curtiss also believes that a commitment by NRC to carefully review such documentation is essential to provide a credible basis for the Commission's denial of the subject petition and for continued confidence that the wastes in question are not subject to NRC jurisdiction.

Attachment:  
As stated

cc: The Chairman  
Commissioner Rogers  
Commissioner Curtiss  
Commissioner Remick  
Commissioner de Planque  
OGC  
OIG  
Office Directors, Regions, ACRS, ACNW (via E-Mail)  
OP, SDBU/CR, ASLBP (via FAX)