

June 28, 1993

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary /s/

SUBJECT: SECY-93-124 - FINANCIAL ASSURANCE FOR CLEANUP
OF ACCIDENTS FOR ALL MATERIALS LICENSEES WITH
POTENTIAL FOR SIGNIFICANT ACCIDENTAL
CONTAMINATION

This is to advise you that the Commission (with all Commissioners approving) has agreed that additional justification is necessary before a decision can be made not to proceed with the subject rulemaking.

A recent GAO report on NRC's materials licensing program identified the lack of an NRC requirement for financial assurance for clean-up from accidents as a long-standing problem and suggested that Congress consider appropriate legislation. Given the GAO report, SECY-93-124 does not present a sufficiently compelling argument to terminate the rulemaking. Before approving such a recommendation, the staff should provide the following:

1. A discussion that addresses the concerns raised by GAO in its current report and its earlier (1988) report on NRC's materials licensing program;
2. A discussion that systematically relates the size of potential accidents (in terms of clean-up cost) to (1) the number of potentially affected licensees, (2) their likelihood of occurrence, and (3) possible mechanisms for providing financial assurance and the potential impact of such mechanisms on licensees;
3. An explicit discussion of how financial assurance requirements for decommissioning combined with private insurance that licensees obtain for business purposes provide a two-layer system of financial assurance.

SECY NOTE: This SRM and the subject SECY paper will be made publicly available in 10 working days from the date of this SRM.

4. The SECY paper presents some good arguments why rulemaking is not necessary. Was this information provided to GAO before they issued their report (93-90) in April 1993? If not, was the SECY paper specifically designed to be responsive to the issues raised in the 1985 GAO report?;
5. According to the staff, in 1985, most of the local, state and federal comments supported the rulemaking. In 1992, the views of selected states that were contacted by the staff were described as not opposing the rule, and in 1993, another group of states said that they would support termination of the rulemaking. The main reason States are no longer concerned about the 1985 rulemaking for financial assurance for accidents may be the protection afforded by the 1988 decommissioning rule financial requirements. Further, by memorandum to the Commissioners dated May 28, 1993, the EDO informed the Commission about actions in progress and plans for future actions to evaluate and improve the decommissioning funding requirements for materials licensees. If the 1985 effort has been overtaken by events or subsumed into the broader decommissioning funding efforts, this should be made clear and discussed in more detail;
6. A more complete and documented evaluation of the insurance and financial assurance market; and
7. Information on EPA experiences with funding requirements under RCRA and other agency experiences referenced in the 1985 notice, if such information is available.

In addition, the staff has separately indicated in SECY-93-127 that it intends to consider a rulemaking requiring financial assurance for Independent Spent Fuel Storage Installations licensed under Part 72. The similarities and differences between the licensees considered in that paper and this paper should be further discussed.

Finally, the argument that insurance should not be required because most licensees who should have such insurance already do is not a persuasive reason to not proceed with rulemaking.

Accordingly, based on the information presented in the paper, the staff's conclusion that no rulemaking is appropriate is premature and perhaps wrong. The Commission believes that this issue needs to be more fully considered, and that rulemaking may very well be in order for some categories and sizes of materials licensees.

The staff should perform a fuller evaluation of this issue, and provide the Commission with a better and more focused analysis and recommended course of action.

(EDO)

(SECY Suspense: 12/31/93)

cc: The Chairman
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
Commissioner de Planque
OGC
OIG
CAA