

June 5, 1992

MEMORANDUM FOR: James M. Taylor  
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: SECY-92-057 - TIMELINESS IN DECOMMISSIONING  
OF MATERIALS FACILITIES

The Commission (with all Commissioners agreeing) has approved publication in the Federal register of the proposed rule to amend 10 CFR Parts 30, 40, 70, and 72 for public comment. The proposed rule should be modified as indicated in the attachment and as described below and returned for Commission review in a negative consent format prior to publication.

(EDO) (SECY Suspense: 8/14/92)

1. The first two stipulations under §30.36(b)(1), items (i) and (ii), are not amenable to accurate determination and are probably unenforceable. These items should be separated out into another subparagraph and reworded to clearly describe what is required in a legally enforceable manner. This should be coordinated with OGC.
2. The description of the time period for request submittal under §30.36(b)(2) should be made clearer.
3. Paragraph 30.36(a)(2) refers to "revoke the license" while §§30.36(b)(1) and (e) refer to "termination of the license." The use of these terms is confusing. The staff appears to be trying to clarify the regulations to address the legal status of the activities when termination, expiration, revocation, and denials of renewals are involved. The preamble to

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SECY NOTE: THIS SRM, SECY-92-057, AND THE VOTE SHEETS OF THE CHAIRMAN, AND COMMISSIONERS ROGERS, CURTISS AND de PLANQUE WILL BE MADE PUBLICLY AVAILABLE 10 WORKING DAYS FROM THE DATE OF THIS SRM

the Federal Register notice (FRN) and other documents should be revised to address this issue so as to clarify and accurately characterize the status and provide the basis for the associated proposed rule changes.

4. The modifications in items 1, 2, and 3 above should also be applied to similar sections in Parts 40 and 70.
5. Sections 40.42(f) and (g) do not apply to licensees who are permanently disposing of 11e.(2) material because they are subject to other requirements in Appendix A to Part 40. A brief discussion of the separate reclamation requirements for these licensees should be included in the FRN. Also, the applicability to all types of uranium recovery facilities should be discussed in the FRN.
6. The proposed rule should provide for additional flexibility to consider extending the 18-month period to complete actual decommissioning actions. A new item (5) should be added to 10 CFR 30.36(h), 40.42(h) and 70.38(h) and a new item (v) added to 72.54(d)(2) as follows:

Other site-specific factors which the Commission may consider appropriate on a case-by-case basis such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.
7. The rulemaking package should be updated to include and be consistent with recent positions and language approved by the Commission -- in particular, the April 3, 1992 Action Plan for SDMP sites and the EDO's April 9, 1992 testimony before the Senate Committee on Government Affairs. The discussion of residual criteria also needs to reflect the participatory rulemaking process as approved by the SRM dated April 15, 1992. See, for example, the comments on pages 2 and 8 of the draft FRN in the attachment.
8. The FRN preamble should address the basis for the differences between the proposed changes to 10 CFR Part 72 and the other parts. For example, it is not obvious from the proposed changes to Part 72 that

decommissioning of separate areas or buildings is included.

9. The staff should review the provisions of the existing rules included in the FRN and the proposed changes to ensure that additional changes are not needed or desirable to reflect the addition of decommissioning of separate areas and buildings. For example, the license will not be terminated if licensed activity will continue. The attachment points out some changes which serve to illustrate this problem, but additional changes and accompanying explanation may need to be added to the FRN. The Request for Comment section will need to be examined to ensure it reflects existing proposed changes and new changes that are added in response to this SRM.

Attachment:  
As stated

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