

June 28, 1991

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

William C. Parler, General Counsel

Harold R. Denton, Director
Governmental and Public Affairs

FROM: Samuel J. Chilk, Secretary

SUBJECT: SECY-91-132 - EVALUATION OF THE FEASIBILITY
OF INITIATING A CONSENSUS PROCESS TO ADDRESS
ISSUES RELATED TO THE BELOW REGULATORY
CONCERN POLICY

The Commission (with all Commissioners agreeing) is declaring a moratorium on the implementation of the Below Regulatory Concern (BRC) policy. This includes deferring consideration of any BRC petitions for rulemaking that seek BRC exemptions for generic waste streams on a national scale, such as those that would be requested pursuant to 10 CFR Part 2, Appendix B.

The Commission (with all Commissioners agreeing) has also approved the initiation of a phased consensus-building process similar to that outlined in SECY-91-132, provided that, prior to proceeding beyond the core group phase, (1) representatives of all parties who have demonstrated a major interest in the BRC policy are willing to participate and (2) all such parties agree to defer action on other avenues of relief (e.g., legislative and judicial relief) during the pendency of the consensus process (i.e., the consensus process will be the exclusive forum during its tenure for all parties to address BRC issues). The Commission is establishing a target date of December 1992 as the closure date for the consensus body to provide its final advice to the Commission on BRC issues.

SECY NOTE: THIS SRM AND THE VOTE SHEETS OF COMMISSIONERS
ROGERS, CURTISS AND REMICK WILL BE MADE PUBLICLY
AVAILABLE.

The Commission believes that in order for the consensus-building process to be effective as a forum to evaluate the entire range of issues related to the BRC policy, it is essential that representatives of all affected parties, especially those groups who have demonstrated a major interest in the policy, participate in the process. Furthermore, it is apparent to the Commission that some groups vital to the success of this effort may be unwilling to commit resources to this process so long as other groups continue to pursue litigative or legislative alternatives.

Parties to the consensus process should also recognize that NRC will need to continue with those activities that are necessary to provide adequate protection of public health and safety and the environment, particularly those activities concerned with the clean-up of contaminated sites in a timely manner. Therefore, while the Commission is deferring implementation of the BRC policy, the NRC intends to carry out its responsibilities to address issues related to waste disposal, consumer products, recycling of materials, and decontamination and decommissioning, as necessary and on a case-by-case basis, in the manner in which these issues were considered prior to the publication of the BRC policy statement. Accordingly, the staff should continue to make licensing decisions involving exemptions or site decommissioning using existing rules, criteria, and practices and should inform the Commission of all significant or controversial actions of this type. The staff should also continue its accelerated efforts in the completion of the technical basis for the rulemaking on residual contamination criteria, as well as the bases for other rulemakings which are necessary for accomplishing NRC's mission of protection public health and safety and the environment. This information will provide useful, practical examples for the consensus process. It will also provide the technical bases for rulemakings, such as the rulemaking on residual contamination criteria, which the Commission expects to resume in January 1993 or sooner as part of the consensus process.

To implement the process, Mr. Cameron should remain detailed to the Commission and report administratively to the Chairman. Resources should be provided to retain the services of an experienced contractor and other necessary expertise in public participation and consensus building. Mr. Cameron should draft a Federal Register notice announcing the Commission's decision to initiate the BRC consensus process subject to the above considerations.

(OCM)

(SECY Suspense: 7/12/91)

Mr. Cameron should proceed with the establishment of a core group to assess whether all affected parties, especially those groups who have demonstrated a major interest in the policy, would be willing to participate in the process subject to the above considerations and inform the Commission accordingly. The core group should include representatives of affected parties, including, as a minimum, high-level representatives of a State, utility interests, medical interests, the Commission, and an environmental/public interest group that has demonstrated a major interest in the BRC policy.

(OCM)

(SECY Suspense: 9/30/91)

In order for staff to be fully prepared to participate effectively in the consensus process, the staff should identify the mechanism that the staff will use to coordinate NRC positions on BRC issues and identify and prioritize the issues that the staff believes should be addressed by the plenary consensus body.

(EDO)

(SECY Suspense: 10/30/91)

In the event that one or more affected parties are unwilling to participate, the concept of consensus-building should not be abandoned. If, within 90 days, representatives of all affected parties have not agreed to participate consistent with the above considerations, the NRC staff should select a single issue, such as the establishment of residual contamination criteria, and attempt to build consensus on that matter using a process that would go beyond the normal process of notice and comment rulemaking. The staff should consider a process that includes the conduct of early scoping meetings with all interested parties who are willing to participate, including public interest groups, Agreement and non-Agreement States, industry groups, professional associations and societies, NRC licensees, and other Federal agencies, in order to ascertain the depth and breadth of the issues to be considered. Consideration should also be given to conducting workshops and holding public meetings to solicit views of the interest parties on these issues. The objective of these interactions with the interested parties would be to fully ventilate the issues and seek consensus on their resolution as the basis for a proposed rule on the matter. The staff should submit a plan for implementing this alternative consensus-building process. The plan should include a description of the process, schedules, and resource estimates including dollar costs and FTEs.

(EDO/OGC/GPA)

(SECY Suspense: 10/30/91)

cc: Chairman Carr
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
ACNW
ACRS
PDR - Advance
DCS - P1-24