

IN RESPONSE, PLEASE  
REFER TO: M891221A

January 31, 1990

MEMORANDUM FOR: James M. Taylor  
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary /S/

SUBJECT: STAFF REQUIREMENTS - BRIEFING ON NRC ACTIONS  
FOR CLEANUP OF CONTAMINATED SITES UNDER NRC  
JURISDICTION, 2:00 PM, THURSDAY, DECEMBER 21,  
1989, COMMISSIONERS' CONFERENCE ROOM, ONE WHITE  
FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO  
PUBLIC ATTENDANCE)

The Commission was briefed by the staff on its proposed strategy for cleanup of contaminated materials sites under NRC jurisdiction.

The Commission requested the staff to:

1. Submit a preliminary analysis of any implications of the BEIR-V report with respect to the Commission Policy Statement on Exemption from Regulatory Control. The analysis should also include recommendations on the need for further analysis of the BEIR-V report with respect to other Commission actions (e.g., Part 20, Clean Air Act).

(Subsequent to the meeting, the staff submitted an analysis on January 10, 1990.)

2. Submit a list of contaminated sites in order of priority including the name and location of the site, name of responsible party, schedule and description of the next step in site cleanup, and other pertinent information. The list should be accompanied by a discussion of criteria used to rank each site.

(EDO) (SECY Suspense: 2/28/90)

3. Submit to the Commission any proposal to terminate a license at a site with significant contamination within this coming year or where a site with such contamination has been cleaned for unrestricted release.
4. Submit an estimate of the minimum time required to promulgate requirements on residual radioactivity criteria. Staff should expedite this rulemaking because the requirements, once final, will provide licensees with an incentive to complete site decommissioning rather than

the current situation which may encourage licensees to defer decommissioning pending issuance of NRC requirements. As part of the Federal Registry notice for this rulemaking, NRC staff should provide general notice to licensees that additional cleanup may be necessary to comply with standards promulgated at a future date by EPA. In the interim before NRC requirements are in place, staff should provide notice to licensees that terminated licenses may be recalled and additional cleanup required if forthcoming NRC requirements indicate a need for further decontamination. Once NRC requirements are in place, NRC should not needlessly raise uncertainties at the time of each license termination about the potential need for licensees to conduct additional contamination to meet further standards. Unless additional decontamination is shown in the future to be necessary to protect human health and the environment, NRC decisions to terminate licenses are considered final agency actions as long as licensees comply with all applicable standards in effect at the time of termination.

Consistent with this approach, the Commission directs the staff not to develop procedures to provide notice to licensees that licenses terminated in accordance with NRC requirements may be recalled if forthcoming EPA regulations indicate a need for further decontamination. In the event that the EPA should develop residual radioactivity standards, staff should emphasize to EPA the need either to grandfather those sites whose licenses have already been terminated in accordance with NRC requirements prior to issuance of such standards or to demonstrate that EPA's standards result in significant and justifiable improvement in protecting human health and the environment.

(EDO) (SECY Suspense: 2/28/90)

With respect to the possibility of forthcoming EPA standards, Commissioner Curtiss expressed the following view:

In lieu of the approach recommended by the staff (i.e. to develop procedures to notify the licensees that terminated licenses may be recalled if the forthcoming EPA residual radioactivity standards indicate a need for further decontamination) Commission Curtiss would direct the staff to provide that if a licensee complies with all applicable standards in effect at the time, the license should be terminated with a statement to that effect. This approach will serve to expedite site decommissioning by giving licensees an incentive to move forward with

decommissioning, rather, than encouraging the licensee to defer action pending the issuance of final EPA standards. In the event that EPA should develop residual radioactivity standards, the staff should emphasize to EPA that for the sake of the administrative finality, provision should be made to grandfather sites for which licenses have already been terminated.

5. Establish a timeless criterion (e.g., 3 years) for the completion of decontamination and cleanup activities after cessation of operations. As a first step staff should submit a plan promulgating a timeless criterion. The criterion should be accompanied by a provision for a licensee to seek a variance for timing of cleanup based on a demonstration that compliance with the timeless criterion (1) is not necessary to ensure protection of public health and safety or the environment; (2) is not technically achievable; or (3) would likely cause greater environmental or public harm than deferred cleanup.  
(EDO) (SECY Suspense: 2/28/90)

6. The Commission rejected the staff's recommendation to pursue discussions with the Environmental Protection Agency (EPA) on the development of a protocol governing the application of Superfund to contaminated sites. Instead, the staff should first consult with the Commission in the event that the need arises to consider the application of Superfund for any particular site. At such a time, the staff should submit a detailed discussion of the circumstances at the given site, the reason(s) that existing NRC regulatory authority is inadequate, and the objectives that would be served by the application of Superfund to the given site. The discussion should also include an analysis of (1) the cleanup standard that would apply under Superfund and the difference between that standard and the Atomic Energy Act standard; (2) the rights and authorities that the state could have if Superfund were extended to the site; and (3) the rights and authorities that private citizens would have to sue the Federal government or the licensee(s) using the citizens' suit provision of Superfund.  
(EDO) (SECY Suspense: 2/28/90)

cc: Chairman Carr  
Commissioner Roberts  
Commissioner Rogers  
Commissioner Curtiss  
Commissioner Remick  
OGC  
GPA  
ACRS

PDR - Advance  
DCS - P1-24