AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER DICUS

SUBJECT: **SECY-01-0127 - DRAFT FINAL RULE - 10 CFR PART 63, "DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A PROPOSED GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA**

Approved __X__ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached comments.

Greta Joy Dicus
SIGNATURE

August 28, 2001
DATE

Entered on "STARS" Yes __X__ No ____

11 JUL 01 3:55

COMMENTS OF COMMISSIONER DICUS REGARDING SECY 01-0127

With respect to the number, range, and complexity of comments submitted to the NRC throughout the 10 CFR Part 63 rulemaking process, and for the extensive effort put forth in trying to resolve individual protection and ground water protection issues with the EPA, I commend staff for doing an outstanding job in finalizing the NRC's high-level waste regulatory requirements. I also would like to recognize the considerable progress that staff has made in maintaining and improving public outreach throughout the entire Yucca Mountain process.

As required by the Energy Policy Act of 1992, the NRC is in a position whereby it is legally bound to conform its final Yucca Mountain implementing regulations consistent with those of the EPA. Accordingly, I agree with the Chairman that staff has appropriately modified the NRC proposed rule to implement the EPA standards fully and thoughtfully. I also join the Chairman in recognition that the EPA's individual protection standard of 15 mrem/year and the separate 4 mrem/year ground-water resource protection standard (using EPA's maximum contaminant levels (MCLs)), departs significantly from the NRC proposed rule.

It is my personal view that EPA's introduction of new health-physics terminology, specifically, "annual Committed Effective Dose Equivalent," combined with its continued utilization of MCLs derived from outdated dosimetry and being non-uniform in their radionuclide risk application, are not based on sound science, are not internationally recognized, and do not provide greater protection levels than the NRC 25 mrem/year all-pathway protection standard. Although the NRC's proposed all-pathway dose limit of 25 mrem/year is not being applied to the Yucca Mountain site, I firmly believe that it remains scientifically sound and is fully protective of the public and the environment. I also remain supportive of its continued application in NRC regulated activities and facilities, such as, West Valley, where the EPA has formally recognized the 25 mrem/year all-pathway standard as being fully protective of the public and the environment. Nonetheless, since the NRC is legally required to conform its Yucca Mountain implementing regulations consistent with those of the EPA, I therefore approve, with comment, publication of the final rule in the Federal Register. I largely support the comments as provided in the Chairman's vote and offer the following specific viewpoints:

1. The final rule and Statement of Considerations (SOC) should be modified to reflect that the NRC will be utilizing the Total Effective Dose Equivalent (TEDE) dose methodology instead of the annual Committed Effective Dose Equivalent (CEDE) as proposed by the EPA. As a starting point, I recommend that staff utilize and optimally adopt the language provided in Footnote 1 of the Chairman's vote. To the extent appropriate, staff should also consider incorporating any successful harmonization efforts that the NRC and the EPA have concluded. I also recommend that the term "dose limit" be continually referenced throughout the rule language and SOC, as appropriate, in-lieu of referencing a specific dose methodology (i.e. TEDE). Much of the original language already addresses this issue, however, I prefer that it consistently and continually be referenced;

2. In Part 63 and consistent with the EPA's proposed and final 40 CFR Part 197, the NRC describes severability in terms of the individual protection standard and the ground-water

protection standard. Even though not addressed in either its proposed or final rule, the EPA asserts that severability also includes the human intrusion component as well. Premised upon the aforementioned, as well from additional discussions with the Office of General Counsel, I do not support including the human intrusion component as part of the NRC's implementing regulation or SOC. Since the EPA did not address or include human intrusion as being a severable component in its proposed or final regulations, I do not believe that staff should be placed in a position of having to introduce an issue that solely belongs to the EPA. I believe that if staff did address the issue at this time, we would have to consider whether a re-noticing of Part 63 would be warranted;

3. Since the EPA included the term "Very Unlikely" in both its proposed and final regulations with an assigned quantitative probability of 10^{-8}, I recommend that staff pursue the complimentary step of assigning a quantitative probability range to the term "Unlikely." This clarification will provide the next logical sequence of event probability cutoff ranges that I believe any potential licensee would need in order to make a compliance determination of an unlikely event. I agree with the Chairman that this effort should be undertaken as a separate rulemaking activity; and

4. I join the Chairman and Commissioner Merrifield in not seeking additional stakeholder input on the NRC's preliminary sufficiency comments regarding DOE's Yucca Mountain site characterization efforts.