March 29, 2002

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - SECY-00-0201 - PROPOSED RULE - 10 CFR PART 40 AMENDMENTS TO REQUIRE NRC APPROVAL FOR TRANSFER FROM LICENSEES TO EXEMPT PERSONS

The Commission has approved publication of the proposed rule to amend 10 CFR § 40.51 to require NRC approval for licensee transfers of "unimportant quantities" of source material to exempt persons for the purpose of disposal subject to the comments and changes provided below. The Commission also approved the amendment of 10 CFR § 40.13(a) to clarify that non-NRC licensees are allowed to dispose of source material under 0.05 percent by weight

(EDO) (SECY Suspense: 5/31/02)

1. The Statement of Consideration (SOC) should be modified to provide that requests for transfers would normally be approved if the estimated dose to a member of the public is unlikely to exceed a dose limit of 0.25 mSv/yr (25 mrem/yr). The Commission should be kept informed of requests where the estimated dose is likely to exceed 0.25 mSv/yr (25 mrem/yr). The SOC should clearly indicate that these exposure limits apply to members of the general public. Other factors that might be considered in determining whether to allow such transfers would include whether the dose arises from an occupational exposure (albeit to a worker at an unlicensed facility), whether the exposed individual is informed of and consents to the exposure, the likely duration of exposure, the estimated numbers of exposed individuals, and other appropriate considerations. Such approvals should be premised on disposal sites having in-place the appropriate EPA or State permit.

2. The Commission should be kept informed of transfer and disposal requests that the NRC receives for evaluation of material within the 25 mrem to 100 mrem range, as well as its resolution status.

3. Although this staff memorandum addresses potential Commission approval for specific sites with estimated doses up to 100 mrem/year, this discussion is not meant to preclude the staff from submitting applications for Commission approval with calculated exposures above 100 mrem/year if the staff believes such approvals are justified due to the unique circumstances of the specific case under review.

4. The context for the Commission's consideration of this matter is in connection with releases of material for disposal in appropriate facilities (e.g., a RCRA Subtitle C facility authorized for such material). The discussion of the tolerable dose limits in the

Statement of Consideration should be modified to reflect this constraint. If releases of exempt material for other purposes are sought (e.g., recycle), the staff should evaluate the acceptability of the potential dose on a case-by-case basis until the Commission's approach to the release of solid material is resolved. The dose limits described in the proposed rule may not be appropriate in contexts other than disposal.

5. The Regulatory Analysis should be revised (at page 4, 1st bulleted paragraph) to remove any implication that all Subtitle C RCRA facilities are not equipped to protect against radiation hazards.

6. The staff should develop cost information for disposing of material at uranium mill tailings impoundments. Since this option is now available, providing associated cost estimates will complement and complete the existing data. If the staff is unsure of the cost estimates, it is acceptable to specifically request comments on costs in the proposed rule *Federal Register* notice.

7. While continuing to work toward consistency on a national basis in the regulatory control of materials with equivalent levels of risk, the Commission supports alternatives to a low-level waste disposal facility for low concentrations of source material, provided the public health and safety and environment are adequately protected.

8. The draft rulemaking should request comment on how the rule language could be modified to indicate that diluting source material with non-source material solely to reduce disposal costs is still not acceptable. At a minimum, the SOC should be modified to more clearly state the intent of the Commission and this revision may require specific changes in the proposed rule language as well.

9. The staff should revise 40.51(b) to make the wording gender neutral.

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
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CFO
OCA
OIG
OPA
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