

**POLICY ISSUE**  
(Information)

October 1, 2002

SECY-02-0177

FOR: The Commissioners

FROM: William D. Travers  
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SUBJECT: INITIAL ANALYSIS AND PLAN FOR ADDRESSING LICENSE  
TERMINATION RULE ISSUES

PURPOSE:

To provide the Commission with the initial results of the staff's analysis of how to make the restricted release/alternate criteria provisions of the License Termination Rule (LTR) more available for licensee use. In addition, this paper identifies other issues that the staff plans to evaluate in order to improve the decommissioning of sites under the LTR. The initial results for each issue addressed in this LTR analysis include scoping of specific issues, the staff's planned evaluations, and a schedule. This Commission paper responds to the June 18, 2002, Staff Requirements Memorandum (SRM)-SECY-01-0194 and updates SECY-02-0008 on the status of the U.S. Department of Energy's (DOE's) efforts regarding potential site transfers under Section 151(b) of the Nuclear Waste Policy Act (NWPA).

BACKGROUND:

The staff experience using the LTR since it was finalized in 1997 has revealed some important implementation issues. While only a few privately owned sites have considered restricted release, for various reasons, they have been unable to achieve restricted release under 10 CFR 20.1403. The staff has been working to resolve this problem by seeking DOE agreement to exercise its authority under Section 151(b) of NWPA to assume Federal Government ownership and long-term stewardship. However, this effort has thus far been unsuccessful (see SECY-02-0008).

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As part of a site-specific case, the Commission directed the staff and AAR Manufacturing Group, Inc. (AAR) to consider creative options that would make restricted release more available. This direction was part of a Commission decision, in SRM-SECY-01-0194, approving the staff's proposal to deny using the unimportant quantities of source material in 10 CFR 40.13(a) as decommissioning criteria.

Thus, the AAR case, combined with the unsuccessful efforts with DOE, and other licensee difficulties discussed in Attachment 1, led the Commission to expand its direction to the staff in SRM-SECY-01-0194 to conduct a comprehensive analysis of the restricted release provisions of the LTR, in an effort to make this option more available to appropriate licensees.

## DISCUSSION:

### 1. Initial Results

#### a. Identification of LTR Issues

The staff has identified the following four LTR issues, based on both the Commission-directed evaluations in SRM-SECY-01-0194 and other issues that have hindered the staff's and licensee's efforts to decommission sites under the LTR.

- Restricted release/alternate criteria and institutional control (IC) requirements (**SRM directed**);
- Relationship between the LTR release limits and other release limits:
  - Unimportant quantities limit under 10 CFR 40.13(a) [including insights from the Jurisdictional Working Group (JWG) efforts] (**SRM directed**);
  - On-site disposal under 10 CFR 20.2002 (**SRM directed**);
  - Appropriateness of developing an alternative unrestricted release standard for uranium and thorium (**SRM directed**); and
  - Control of solid materials (staff initiated);
- Realistic exposure scenarios (staff initiated); and
- Measures to prevent future legacy sites (staff initiated).

Many of these issues are interrelated and therefore need to be evaluated together so that the impacts of options for one issue can be considered when evaluating related issues. For example, the restricted release options could be affected by options associated with exposure scenarios or alternative unrestricted release standards for uranium and thorium.

#### b. Scoping specific issues and planned evaluations

The staff has evaluated each of the four issues to determine the nature and extent of the issue and to identify specific subissues. Similarly, for each of the four issues, the staff has identified evaluations that will be conducted to provide, as appropriate, the basis for identifying options, pros and cons for each option, and recommendations. Included in the staff's planned evaluations for the restricted release issue are the interactions with AAR that the Commission requested in SRM-SECY-01-0194. Restricted release subissues and planned evaluations are summarized in Attachment 1. Issues and planned evaluations for the other LTR issues are summarized in Attachment 2.

For restricted release, the staff's initial analysis resulted in identifying the specific issues (see Attachment 1) that appear, based on staff experience, to be the primary causes of difficulties implementing the restricted release provisions for the small set of licensed sites considering restricted release. In summary, these subissues reflect difficulties establishing a clear, graded approach, based on radiological risk and duration of risk, for ICs that ensure long-term effectiveness, such as Federal/State ownership, independent third-party oversight, and legally enforceable ICs that will also apply to future owners (i.e., "run with the land").

The staff's initial analysis also identified planned evaluations (see Attachment 1). The staff plans on evaluating the approaches and experiences of other groups that are actively involved with restricted release/institutional control issues, such as the U.S. Environmental Protection Agency and DOE, as well as considering the experience from the staff's uranium recovery program under the Uranium Mill Tailings Radiation Control Act of 1978. The staff also has started discussions with its licensees that might consider restricted release such as AAR, and future publicly noticed meetings are being scheduled in calendar year 2002, to exchange views on the issues and potential options for these sites. Other licensees will be invited to participate in these meetings. Finally, the staff has recently become involved with a new cooperative effort sponsored by the Environmental Council of States Subcommittee on Long-Term Stewardship. The purpose of this subcommittee is to provide a forum, for major Federal agencies and interested representatives from States and Tribes, to periodically meet and exchange information on long-term stewardship issues and solutions. Based on the staff's initial attendance at an August 2002 workshop, a continued monitoring and information-gathering role appears to be an efficient and effective way to establish Agency contacts, access new information and experience, and benefit from collaborative solutions to key issues.

These information-collecting activities and others listed in Attachment 1 are necessary to provide a sound basis for identifying, evaluating, and recommending to the Commission new options to resolve the specific issues and broaden the choice of options already available under the LTR. Attachment 1 identifies some new options, under a graded approach, that the staff will consider, including those directed by the Commission in SRM-SECY-01-0194. Other options may emerge as the staff continues its analysis.

#### c. Status of Interactions with DOE

The staff provided the Commission with a status report, on January 14, 2002, on its efforts to develop a memorandum of understanding (MOU) with DOE, for a decision process regarding potential site transfers under Section 151(b) of the NWPA (SECY-02-0008). This MOU had the potential for addressing the restricted release issue by providing licensees with a process for seeking the Federal ownership option already authorized by Congress (assuming DOE approval). The following status report is included so that this option can be considered within the broader context of the restricted release issues and new options that may be needed to make the restricted release provisions of the LTR more available for licensee use.

As noted in SECY-02-0008, the Chairman sent a letter, on November 2, 2001, to the Secretary of Energy, that encouraged DOE to complete the MOU. DOE responded on January 24, 2002, to the Chairman's letter and recommended working together with the appropriate Federal land management agencies, such as the U.S. Department of the Interior (DOI), as well as the Office of Management and Budget (OMB), to seek a viable solution to this and other important land management issues. Although the MOU was not explicitly mentioned in the letter, the staff understands, from the DOE perspective, that the MOU effort has been superseded by DOE's proposed policy change and initiatives to seek either DOI or other Federal options.

Subsequent to DOE's January letter, periodic coordination meetings have been held between senior Nuclear Regulatory Commission (NRC) and DOE management, and the staff has routinely been updated regarding DOE's meetings with DOI and preparations for a meeting with OMB. Although DOE has not yet met with OMB, background information has been provided. The staff has recently learned, from DOE, that DOI has expressed reservations about DOE's approach, although DOE has not yet submitted a formal proposal to DOI. As a result, DOE is considering multiple options for the management of long-term stewardship. These options range from maintaining an Office within DOE to conduct long-term stewardship activities for the Department, to continuing to pursue a coordinated Federal Government approach to managing land with long-term stewardship requirements. Although the staff plans on continuing to monitor these efforts, the timing or feasibility of these potential solutions is highly uncertain at this time. Thus, as a follow-up to the Commission's request in SRM-SECY-00-0180, the staff is informing the Commission that the efforts to seek an MOU have not been successful and a feasible alternative is unclear at this time. These results reinforce the Commission's direction, in SRM-SECY-01-0194, for the staff to evaluate other options to make restricted release more available to licensees.

## 2. Future Products and Schedule

The results of the planned evaluations will be provided to the Commission in March 2003. The planned Commission paper will give the results of the analysis of the four LTR issues, including options, associated pros and cons, and recommendations, where appropriate. Depending on the results of those analyses, the planned evaluations may lead to additional reports to the Commission following the March 2003 paper.

This action is being coordinated with the work of the 10 CFR Part 40 JWG, whose evaluations and recommendations are also due to be provided to the Commission in March 2003. That paper will include evaluations and recommendations relevant to the subissue regarding unimportant quantities under 10 CFR 40.13(a).

The March 2003 schedule is needed to conduct the planned evaluations listed in the attachments. It is noted that the staff has a number of ongoing activities in the decommissioning area, some of which may involve policy issues that will be addressed in the March paper. While the staff does not believe that this schedule will delay licensing decisions, separate Commission papers will be prepared, if needed, to address site-specific issues.

### RESOURCES:

The staff estimates that about 0.5 full time equivalent (FTE) will be needed in fiscal year (FY) 2003, to conduct the planned evaluations of all four issues identified above and to prepare the

LTR issues Commission paper. The current FY 2003 budget request for the Decommissioning Program does not include resources for conducting the LTR analysis. Therefore, the additional FTE will be reallocated from lower-priority activities using the Planning, Budgeting, and Performance Management process.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objections. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

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William D. Travers  
Executive Director  
for Operations

Attachments:

1. "Initial Results of the Restricted Release and Institutional Control Analysis: Issues and Planned Evaluations"
2. "Other License Termination Rule Issues and Planned Evaluations"

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TICKET: 200200164/ WITS 200200080

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Path & File Name: S:\DWM\DCB\RLJ2\ltr-analysis-draft-paper-911.wpd \* See Previous Concurrence

<b>OFC</b>	DCB		DCB		DCB		TECH ED		DWM	
<b>NAME</b>	RJohnson*		SMoore*		LCamper*		EKraus*		JGreeves*	
<b>DATE</b>	09/12/2002		09/12/2002		09/12/2002		09/12/2002		09/18/2002	

  

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<b>DATE</b>	09/14/2002		09/19/2002		09/ 18/2002		09/26 /2002		09/26/2002	

  

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