



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

June 30, 2005

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-05-0104

TITLE: OPTIONS AND RECOMMENDATIONS FOR THE  
POTENTIAL ROLE OF THE NRC DURING THE  
DEVELOPMENT OF THE DOE EIS ON DISPOSAL OF  
GREATER-THAN-CLASS-C RADIOACTIVE WASTE

The Commission (with all Commissioners agreeing) disapproved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of June 30, 2005.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook".

Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
Commissioner Jaczko  
Commissioner Lyons  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-05-0104

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ		X			X	6/27/05
COMR. McGAFFIGAN		X			X	6/22/05
COMR. MERRIFIELD		X			X	6/21/05
COMR. JACZKO		X			X	6/20/05
COMR. LYONS		X			X	6/28/05

COMMENT RESOLUTION

In their vote sheets, all Commissioners disapproved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on June 30, 2005.

NOTATION VOTE  
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN DIAZ

SUBJECT: **SECY-05-0104 - OPTIONS AND RECOMMENDATIONS FOR THE POTENTIAL ROLE OF THE NUCLEAR REGULATORY COMMISSION DURING THE DEVELOPMENT OF THE DEPARTMENT OF ENERGY ENVIRONMENTAL IMPACT STATEMENT ON DISPOSAL OF GREATER-THAN-CLASS-C RADIOACTIVE WASTE (SRM-M050215)**

Approved \_\_\_\_\_ Disapproved <sup>w/comment</sup> xx but Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS:

See attached comments.

*Libby*  
SIGNATURE

June 27, 05  
DATE

Entered on "STARS" Yes  No

Chairman Diaz's Comments on SECY-05-0104

For the reasons stated by my fellow Commissioner's, I disapprove the staff's recommendation to become a cooperating agency during the development of the EIS to address disposal of Greater-than-Class-C (GTCC) waste. I believe the NRC should be a commenting agency only.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

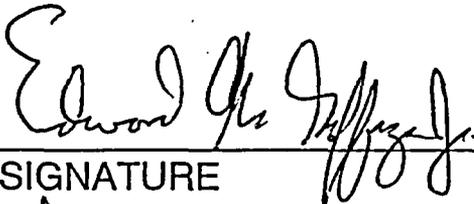
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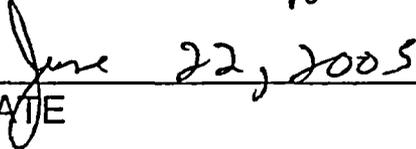
Approved \_\_\_\_\_ Disapproved  <sup>w/comments</sup> Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS:

See attached comments.

  
\_\_\_\_\_  
SIGNATURE

  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

Commissioner McGaffigan's Comments on SECY-05-0104

I join Commissioner Merrifield and Commissioner Jaczko in disapproving the staff's recommendation to become a cooperating agency during the development of the U.S. Department of Energy's (DOE's) Environmental Impact Statement (EIS) to address disposal of Greater-Than-Class-C (GTCC) radioactive waste. Rather, I believe NRC should be a commenting agency only.

As Commissioner Merrifield points out, NRC was a commenting agency, not a cooperating agency, on DOE's Yucca Mountain EIS. Arguably, because of the statutory mandate for NRC to adopt the DOE Yucca Mountain EIS to the maximum extent practicable, there would have been a stronger case for NRC to be a cooperating agency for that EIS. But the Commission correctly chose to be a commenting agency to prevent any misperceptions about our regulatory independence of DOE.

The same arguments hold here. As both Commissioner Merrifield and Commissioner Jaczko point out, NRC will be the ultimate regulator of any DOE GTCC waste disposal option. Therefore, NRC's views as a commenting agency should be given great weight by DOE. If they are not, NRC will likely have to supplement DOE's GTCC EIS when an application for a license is ultimately submitted, perhaps a decade from now.

EMG

NOTATION VOTE  
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MERRIFIELD

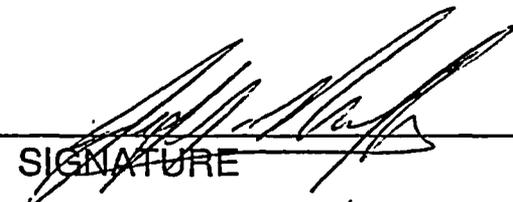
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Approved \_\_\_\_\_ Disapproved  Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS:

*See attached comments.*

  
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SIGNATURE

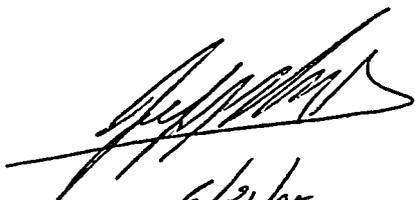
*6/21/05*  
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DATE

Entered on "STARS" Yes  No \_\_\_\_\_

Comments from Commissioner Merrifield on SECY-05-0104:

I disapprove the staff's recommendation and approve the NRC acting as a commenting agency in DOE's efforts to produce an environmental impact statement related to disposal to Greater-than-Class-C waste. My principal reason for this action is that the NRC was a commenting agency in DOE's efforts to produce an environmental impact statement for Yucca Mountain. One option for disposal of Greater-than-Class-C waste is to place it in whatever facility is finally approved for disposal of high level waste, which could, potentially, include Yucca Mountain! Therefore the NRC should use a consistent approach in dealing with material that may eventually go to a high level waste repository. In addition, NRC comments provided in this review should be neutral concerning an agency decision on a potential high level waste disposal facility.

I recognize that there are advantages to DOE if the NRC were to participate as a cooperating agency in this environmental impact statement. Staff also states that DOE is more likely to accept the NRC comments if we are a cooperating agency. I disagree with this second thought. The NRC is the final regulatory authority and DOE will be placing a potential future site application at risk if they ignore the NRC comments. The bottom line is that the higher the quality of the DOE environmental impact statement, the lower the probability that NRC will need to supplement or conduct an independent environmental impact statement at the time of licensing. This bottom line is true irrespective of whether the if NRC is a cooperating or a commenting agency.



6/21/05

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER JACZKO

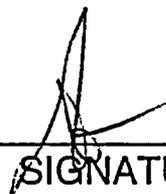
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Approved \_\_\_\_\_ Disapproved xx Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS:

See attached comments.

  
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6/27/05  
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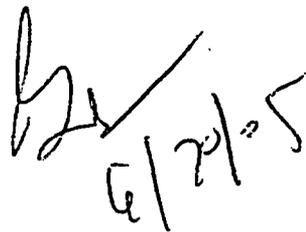
Entered on "STARS" Yes X No \_\_\_\_\_

**Commissioner Jaczko's Comments on SECY-05-0104**  
**Options and Recommendation for the Potential Role of the Nuclear Regulatory**  
**Commission During the Development of the Department of Energy Environmental Impact**  
**Statement on Disposal of Greater-Than-Class-C Radioactive Waste**

I appreciate the staff's thoughtful paper on the issue of NRC's potential role during the development of the Department of Energy's (DOE) Environmental Impact Statement (EIS) on the disposal of Greater-Than-Class-C (GTCC) radioactive waste. I, however, can not support the staff's recommended option of becoming a cooperating agency in DOE's EIS, but instead, approve of the staff's participation as a commenting agency.

The staff's primary argument in support of cooperating agency status is not unreasonable - that the NRC could realize an overall resource savings by potentially reducing or eliminating the need for NRC to develop its own EIS or to expend significant efforts toward adoption of DOE's EIS. These and the other advantages of cooperating agency status highlighted by the staff are certainly important considerations. They are, however, simply overwhelmed by the primary advantage of participating, instead, as a commenting agency - that of reducing the likelihood that individuals and groups develop the perception that NRC is not acting in an independent regulatory manner.

I strongly believe that one of the most critical issues facing our agency is that of strengthening the public's trust in the NRC. We must work toward a goal of encouraging that trust so that when we make our decisions - on environmental, safety or security issues - our stakeholders will have confidence in our conclusions. Given the NRC's role as the regulatory agency with the responsibility to ultimately render judgement on the environmental and safety issues raised by any GTCC facility, I do not believe we strengthen public trust by cooperating on an EIS with DOE - the very entity we will regulate - with the ultimate goal being to later adopt DOE's EIS - the regulated entities' product. Thus, while I appreciate the staff's recommendation, I believe that maintaining our independence is simply too critical of a goal for it to be overwhelmed by potential resource savings in this case.

  
6/21/05

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER LYONS

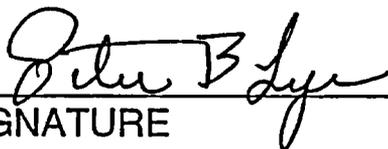
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Approved \_\_\_\_\_ Disapproved   x   Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS:

See attached comments.

  
\_\_\_\_\_  
SIGNATURE

  6/28/05    
\_\_\_\_\_  
DATE

Entered on "STARS" Yes   ✓   No \_\_\_\_\_

Commissioner Lyons' Comments on SECY-05-0104

I appreciate the staff's thorough analysis on the issue of NRC's potential role during the development of the Department of Energy (DOE) Environmental Impact Statement (EIS) on the disposal of Greater-Than-Class-C (GTCC) radioactive waste. However, I disapprove the Staff's recommendation to pursue a written cooperating agency agreement (memorandum of understanding [MOU]) with DOE in its effort to produce an EIS. I believe that NRC should be a commenting agency rather than a cooperating agency. This will avoid a potential public and stakeholder perception that the NRC is no longer exercising its *independent* regulatory responsibilities.

Lyons  
6/28/05