



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

September 19, 2006

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-06-0143

TITLE: STAKEHOLDER COMMENTS AND PATH FORWARD ON
DECOMMISSIONING GUIDANCE TO ADDRESS LICENSE
TERMINATION RULE ANALYSIS ISSUES

The Commission (with Chairman Klein and Commissioners McGaffigan, Merrifield and Lyons agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of September 19, 2006. Commissioner Jaczko approved in part and disapproved in part.

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 Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

VOTING SUMMARY - SECY-06-0143

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X				X	7/20/06
COMR. McGAFFIGAN	X				X	8/18/06
COMR. MERRIFIELD	X				X	7/27/06
COMR. JACZKO	X	X			X	8/11/06
COMR. LYONS	X				X	7/18/06

COMMENT RESOLUTION

In their vote sheets, Chairman Klein and Commissioners McGaffigan, Merrifield and Lyons approved and Commissioner Jaczko approved in part and disapproved in part 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 September 19, 2006.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN KLEIN
SUBJECT: **SECY-06-0143 - STAKEHOLDER COMMENTS
AND PATH FORWARD ON DECOMMISSIONING
GUIDANCE TO ADDRESS LICENSE
TERMINATION RULE ANALYSIS ISSUES**

Approved x Disapproved Abstain

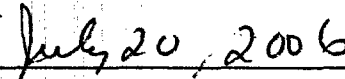
Not Participating

COMMENTS: Below Attached None

I approve the staff recommendations to finalize guidance on onsite disposal of radioactive material and on restricted use and institutional controls. I commend the staff for using a risk-informed approach to maintain health and safety while reducing unnecessary regulatory burden on decommissioning licensees.



SIGNATURE



DATE

Entered on "STARS" Yes ✓ No

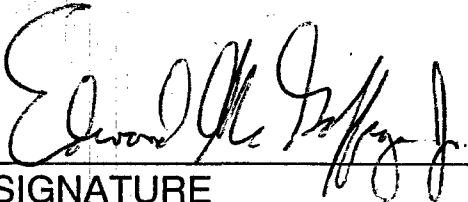
NOTATION VOTE
RESPONSE SHEET

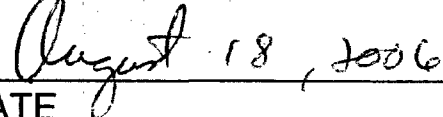
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-06-0143 - STAKEHOLDER COMMENTS
AND PATH FORWARD ON DECOMMISSIONING
GUIDANCE TO ADDRESS LICENSE
TERMINATION RULE ANALYSIS ISSUES**

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE


DATE

Entered on "STARS" Yes No

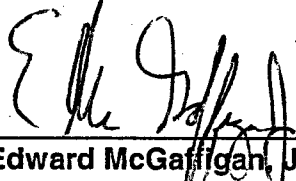
Commissioner McGaffigan's Comments on SECY-06-0143

I approve the staff's recommendations for finalizing the decommissioning guidance on the License Termination Rule (LTR) Analysis issues in NUREG-1757. I believe the staff's efforts to develop this guidance are a benchmark for future guidance development. The staff's timely and responsive interactions with the ACNW, its high-quality analysis, public and stakeholder communication, and diligence have resulted in clear guidance on what otherwise could have remained essentially unimplementable provisions of the LTR.

In 2003, I supported the development of multiple dose and financial assurance criteria as guidance for use of the 10 CFR 20.2002 alternative disposal regulation. At that time, one of the sets of draft criteria was a dose criterion of 1 mSv/yr (100 mrem/yr), so long as such requests were approved contingent on providing additional financial assurance to cover the cost of decommissioning the burial site for license termination. However, I agree that several factors (such as those relating to the Timeliness Rule, and the creation of future legacy sites) now weigh in favor of "a more cautious use" of such options. Therefore, I agree that we should adopt a dose criteria of "a few millirem" as the approach which is generally acceptable, and approve requests based on other dose criteria on a case-by-case basis.

With regard to long-term control (LTC) licenses, I approve the staff's recommendation to amend existing licenses when it needs to create a new possession-only LTC license. This process is more efficient than the alternative, which would be to terminate the existing license, only to immediately create a new possession-only LTC license. I also agree that the guidance should clarify that the finality concept embodied in 10 CFR 20.1401(c) should apply to sites with a LTC license.

While it's not a policy issue raised by the staff, I also wish to comment on one of the staff's proposed changes to the guidance on intentional mixing. I am pleased that, in response to stakeholder comments, staff proposes to remove a restriction, which is currently in the guidance, which states that soil from outside the site boundary or from an offsite location should not be used for an intentional mixing proposal. When I approved the intentional mixing guidance in my vote on SECY-04-0035, I was not aware that staff would impose this ancillary restriction. As proposed in SECY-04-0035, the guidance was to have focused on the matter of whether the use of soil from presumably anywhere outside the footprint of contaminated areas was acceptable, so long as such use is the only reasonable or viable alternative to meet the release criteria of the LTR. Given that this guidance already embodies a stringent test (i.e., the use of soil for mixing should be a matter of last resort), I see no compelling reason to further restrict where licensees may obtain the soil.


Edward McGaffigan, Jr.

8/18/06
(Date)

NOTATION VOTE
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-06-0143 - STAKEHOLDER COMMENTS
AND PATH FORWARD ON DECOMMISSIONING
GUIDANCE TO ADDRESS LICENSE
TERMINATION RULE ANALYSIS ISSUES**

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE

DATE 7/27/06

Entered on "STARS" Yes No

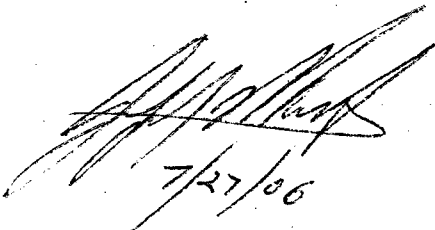
Comments from Commissioner Merrifield on SECY-06-0143:

I approve the staff recommended actions to address the two specific policy issues raised in this document. The rest of the SECY paper discusses how staff intends to address public comments on decommissioning guidance in a number of areas. The staff believes the changes staff proposes to the decommissioning guidance is within previous Commission direction and does not require further Commission interaction. With one exception, I have no objection to the staff's proposed solutions and believe they are within previous Commission guidance.

The one exception involves the intentional mixing of contaminated material to achieve the dose criteria of the license termination rule. The staff proposes two changes in the guidance to allow more flexibility in its implementation. The first change is to remove a description that intentional mixing will be a 'rare' occurrence. The second change is to allow intentional mixing of clean soil from outside the site boundary. I am not going to quibble about the deletion of the word "rare", but the guidance should be clear that intentional mixing is not an automatic solution that every license can use as a default value as the most cost effective method for license termination. Intentional mixing should only be used when all other practicable options are exhausted. However, I disagree with the staff position that using clean soil from outside the site boundary for mixing with contaminated soil is an acceptable resolution or is fully within previous Commission guidance.

I acknowledge that the staff requirements memorandum (SRM) for SECY-04-0035 states "Contrary to the staff suggestion that the Commission be consulted, the staff should make decisions regarding sites where the licensee proposes to use clean soil outside the contaminated area footprint to meet the LTR release criteria." I also acknowledge that I was in the minority opposing this paragraph in the SRM. I believe that it is poor policy to allow intentional contamination of clean soil as part of decommissioning without involving the Commission in the decision. However, there is a considerable difference between mixing clean soil from within the site boundary with soil in a contaminated footprint in the site boundary as compared to mixing clean soil from outside the NRC licensed area with contaminated soil within the site boundary as the staff proposes. In my opinion, once the staff proposes importing clean soil so the site can achieve license termination criteria it goes beyond the previous Commission direction. Other Commissioners may interpret the SRM differently.

I support the concept, under limited circumstances, of mixing contaminated soil within the site boundary with contaminated soil of a lower concentration still within the site boundary to achieve license termination release criteria. However, in my opinion, it is exceptionally poor public policy to state that as part of normal guidance the Commission will allow clean soil from offsite to be contaminated so that a site can be released for unrestricted use. We would open ourselves to all kinds of justifiable criticism, both public and political, by implying that we will allow intentional contamination of clean soil originating outside the site boundary on a routine basis. I recognize that there may be a unique case where it may be justified as being in the public interest to allow mixing of clean soil from offsite with contaminated soil onsite to meet the site release criteria, but those instances should be the results of a fully informed Commission decision. As the Commission is ultimately answerable for this issue, the staff guidance should clearly indicate that the Commission will be directly involved in such decisions.



7/27/06

NOTATION VOTE

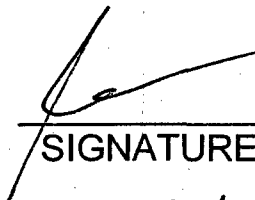
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER JACZKO
SUBJECT: **SECY-06-0143 - STAKEHOLDER COMMENTS
AND PATH FORWARD ON DECOMMISSIONING
GUIDANCE TO ADDRESS LICENSE
TERMINATION RULE ANALYSIS ISSUES**

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE

8/14/06

DATE

Entered on "STARS" Yes No

**Commissioner Jaczko's Comments on SECY-06-0143
Stakeholder Comments and Path Forward on Decommissioning Guidance
to Address License Termination Rule Analysis Issues**

I approve in part and disapprove in part the staff recommended actions to finalize the decommissioning guidance. The staff, in this paper, is seeking Commission approval to constrain on-site disposals under 10 CFR 20.2002 to doses that result in a few millirem per year, and to specify that when a long-term control (LTC) license is used to provide institutional control for restricting future use an operating license be converted to an LTC license by amendment.

I approve of the staff recommended action to revise the decommissioning guidance to constrain doses from routine onsite disposals to a few millirem per year. Keeping these doses low is consistent with off-site disposals under 10 CFR 20.2002 and makes it more likely that decommissioned sites can be returned to productive use.

I disapprove, at this time, of the use of a LTC license as a means to restrict the future use of sites that are decommissioned. I believe that licensees should take prompt action to clean up contamination on-site that result from spills or leaks during operation. Keeping a site "clean" by remediating contamination when it occurs over the period of operation will increase the likelihood that a particular site will be released for unrestricted use following decommissioning.

What concerns me about the staff's proposal is that it would make a statement of finality concerning the decommissioned site, and at the same time not terminate the license. Instead of terminating the license as required by the regulations in Subpart E to 10 CFR 20, the staff proposes that the existing license be amended to become a LTC license, which would be somehow analogous to a possession only license to ensure institutional controls remain in perpetuity. Further, it is unclear to me under the LTC license option who will be responsible for ensuring the necessary controls and maintenance at a site released for restricted use. Also, it is unclear who would be accountable for five-year periodic rechecks. Thus, the staff should go back and clarify (i) how a statement of finality can be made, and (ii) who will be responsible for maintaining institutional controls and periodic five-year rechecks under the proposed LTC license option.



Gregory B. Jaczko



Date

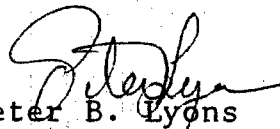
NOTATION VOTE
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: **SECY-06-0143 - STAKEHOLDER COMMENTS
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TERMINATION RULE ANALYSIS ISSUES**

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached None _____



Peter B. Lyons

SIGNATURE

7/18/06

DATE

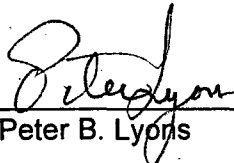
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Commissioner Lyons' Comments on SECY-06-0143

I commend the staff and very much support staff working with the Agreement States and other stakeholders to capitalize on lessons learned to inform future decommissioning guidance and regulatory activities.

I approve staff recommendation # 1 and agree that onsite disposal licensing decisions should be made case-by-case and based on the merits of the licensee's submission.

I support the staff's recommendation # 2 to convert an existing license, by amendment, to a Long Term Care - Possession Only License as opposed to terminating one license and issuing a new one while preserving the public's hearing rights associated with such licensing determinations.


Peter B. Lyons

7/18/06
Date