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

SECRETARY

January 28, 2009

COMMISSION VOTING RECORD

DECISION ITEM: SECY-08-0144

TITLE: FINAL RULE: DECOMMISSIONING PLANNING (10 CFR PARTS 20, 30, 40, 50, 70, AND 72; RIN: 3150-AH45)

The Commission (with Chairman Klein and Commissioner Svinicki disapproving and Commissioners Jaczko and Lyons approving) acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of January 28, 2009.

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

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:
1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
Commissioner Svinicki
OGC
EDO
PDR

VOTING SUMMARY - SECY-08-0144

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN		X			X	1/7/09
COMR. JACZKO	X				X	11/18/08
COMR. LYONS	X				X	10/14/08
	X				X	1/15/09
COMR. SVINICKI		X			X	1/14/09

COMMENT RESOLUTION

In their vote sheets, Chairman Klein and Commissioner Svinicki disapproved SECY-08-0144 without prejudice and supported returning the matter to the staff. Commissioner Lyons approved the staff's request to withdraw SECY-08-0144 and returning the paper to the staff. Commissioner Jaczko approved 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 January 28, 2009.

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN KLEIN

SUBJECT: SECY-08-0144 – FINAL RULE: DECOMMISSIONING PLANNING (10 CFR PARTS 20, 30, 40, 50, 70, AND 72; RIN: 3150-AH45)

Approved _____ **Disapproved** __xx__ **Abstain** _____

Not Participating _____

COMMENTS: **Below** __xx__ **Attached** ___ **None** ___

I disapprove SECY-08-0144 without prejudice to consideration of a staff proposal for further action after the staff completes its deliberation on the issues raised in its memorandum to the Commission on November 28, 2008. As explained in that staff request to withdraw SECY-08-0144, the staff believes that it needs to develop an expanded discussion of the proposed requirement relating to Parent Company Guarantees and determine whether to propose the removal or retention of that provision. A possible outcome is a proposal for limited re-noticing of the rule. I do not prejudge the outcome. My vote also should not be interpreted to imply that formal procedures are required to address a staff request for withdrawal of a staff voting paper before the Commission.

_____
SIGNATURE

1/7/09
DATE

Entered on "STARS" **Yes** ✓ **No** ___

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER JACZKO

SUBJECT: SECY-08-0144 – FINAL RULE: DECOMMISSIONING PLANNING (10 CFR PARTS 20, 30, 40, 50, 70, AND 72; RIN: 3150-AH45)

Approved __X__ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached _X_ None ___

SIGNATURE

11/18/08

DATE

Entered on "STARS" Yes _X_ No ___

Commissioner Jaczko's Comments on SECY-08-0144

I approve the staff's request to publish a final rule to amend Parts 20, 30, 40, 50, 70, and 72 of Title 10 of the Code of Federal Regulations to improve decommissioning planning activities during active facility operations. I commend the staff on their hard work on this issue. The final rule is a good first step towards prompting licensees to remediate spills that may challenge decommissioning dose limits. I continue to believe that the Agency should undergo a rulemaking to consider requiring licensees to immediately remediate residual radioactively contaminated areas that would not meet the restricted release dose limits applied at the time of final decommissioning. I look forward to the staff's technical bases that will be a precursor for a proposed rule to include requirements for licensees to remediate residual radioactive contaminated areas and thereby minimize the creation of legacy sites, as directed in the Staff Requirements Memorandum for SECY-07-0177.

Reducing the risks to decommissioning funds through eliminating the use of certain financial assurance mechanisms and strengthening others helps to ensure that funds will be available for decommissioning. Staff should continue to evaluate the soundness of financial assurance mechanisms, other than trust funds, to ensure that the risks of other mechanisms are no greater than those inherent to trust funds. Additionally, I believe the staff should continue to periodically interact with the U.S. Environmental Protection Agency (EPA) to take advantage of any lessons learned that the EPA may have gained regarding financial assurance for sites.

I think that the proposed definition for "significant" residual radioactivity is a reasonable and performance-based approach, and should be included in the rule itself rather than just the proposed rule's preamble.

In addition, I have the following specific comments on the Federal Register Notice:

In the response to Comment D.4 (p. 64), the staff should specifically respond to the comment regarding impacts on research and test reactor licensees, similar to how the response already addresses the impacts to materials and power reactor licensees.

In the response to Comment F.2 (p. 74), the staff should specifically mention that the Commission has previously directed the staff to undertake a rulemaking to address immediate remediation, although it is separate from this rulemaking.

In the response to Comment G.27 (p. 108), the staff should expand the answer to include any reporting requirements that already exist. This would give a more complete answer to the commenters' concerns.

11/18/08

Gregory B. Jaczko Date

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER LYONS

SUBJECT: SECY-08-0144 – FINAL RULE: DECOMMISSIONING PLANNING (10 CFR PARTS 20, 30, 40, 50, 70, AND 72; RIN: 3150-AH45)

Approved _X___ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached _X___ None ___

Peter B. Lyons
SIGNATURE

10/ 14 /08
DATE

Entered on "STARS" Yes _X_ No ___

Commissioner Lyons' Comments on SECY-08-0144

I appreciate the NRC staff and Agreement State staff efforts to develop this very complex and lengthy proposed final rule. I found the discussion of the action NRC will be taking and why, as well as the responses to the public comments, very complete and understandable. The rulemaking and associated guidance documents demonstrate the importance of highly credible decommissioning plans to the public stakeholders and to the NRC. The small number of legacy sites in existence today, as compared to a few years ago, reinforces the importance of credible decommissioning plans.

Decommissioning plans presume adequate surveys to obtain knowledge of contamination challenges to be faced in decommissioning and adequate financial resources to complete the task. This rule and associated guidance will ensure that adequate surveys are conducted in the future. In that guidance, I strongly encourage staff, to the maximum extent possible, to minimize licensees' burden from these proposed rule changes if they do not have a credible release path within their operations.

I concur with staff's recommendation to publish the final decommissioning planning rule and agree that the rule will not have a significant impact on a substantial number of small entities, subject to the following:

1) Revise 20.1501 as follows to remove any ambiguity in proposed 20.1501(b), when compared to existing 20.2103(a). I note that corresponding changes to the Federal Register Notice would also be needed.

   20.1501 (b) **Notwithstanding § 20.2103(a) of this part,** records from surveys describing the location and amount of subsurface residual radioactivity identified at the site must be kept with records important for decommissioning, **and such records must be retained in accordance with §§ 30.35(g), 40.36(f), 50.75(g), 70.25(g), or 72.30(d), as applicable.**

2) Extend the implementation period for the rule to 1.5 years after the date of publication to allow sufficient time for licensees to make use of the final version of the guidance documents. This change would result in about 7 months for licensees to use the Regulatory Guide to prepare for compliance with the changes to 10 CFR Part 20 proposed by staff.

Peter B. Lyons 10/14/08
Date

SUPPLEMENT

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER LYONS

SUBJECT: SECY-08-0144 – FINAL RULE: DECOMMISSIONING PLANNING (10 CFR PARTS 20, 30, 40, 50, 70, AND 72; RIN: 3150-AH45)

Approved __X__ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached __X__ None ___

Peter B. Lyons
SIGNATURE

1/ 15 /09
DATE

Entered on "STARS" Yes __X__ No ___

Commissioner Lyons' Supplement to SECY-08-0144

Based on the new information contained in staff's November 28, 2008, memorandum, I approve staff's request to withdraw SECY-08-0144, "Final Rule: Decommissioning Planning," from Commission consideration because staff needs additional time to develop an expanded discussion for its evaluation of Parent Company Guarantees. Additionally, return of SECY-08-0144 to the staff will obviate the need for Commission response on COMSECY-08-0038, which should be withdrawn.

I appreciate the stakeholder's input, in this case the Nuclear Energy Institute (NEI), and the staff's continued vigilance to ensure that the Commission has the best information available as it deliberates policy issues. While I don't agree with NEI's assertions that there is no need for the rule or that this action would constitute "backfitting," I do support staff ensuring that any change in policy is accurately reflected in the rulemaking package and, therefore, agree with returning the paper to staff without prejudice.

1/15/09

Peter B. Lyons Date

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: SECY-08-0144 – FINAL RULE: DECOMMISSIONING PLANNING (10 CFR PARTS 20, 30, 40, 50, 70, AND 72; RIN: 3150-AH45)

Approved _____ Disapproved __XX__ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached _XX__ None ___

SIGNATURE

01/14/09
DATE

Entered on "STARS" Yes _XX_ No ___

Commissioner Svinicki's Comments on SECY-08-0144
SECY-08-0144 – FINAL RULE: DECOMMISSIONING PLANNING (10 CFR PARTS 20, 30, 40, 50, 70, AND 72; RIN: 3150-AH45)

I disapprove SECY-08-0144 without prejudice and support returning the matter to staff. My action should not be interpreted as creating precedent to require using formal voting procedures to withdraw matters pending before the Commission or as supporting such a requirement. Return of SECY-08-0144 to the staff will obviate the need for Commission response on COMSECY-08-0038 which should be withdrawn forthwith.

Kristine L. Svinicki 01/14/09