

March 4, 2015

MEMORANDUM TO: Chairman Burns

FROM: Commissioner Svinicki /RA/

SUBJECT: REVISED *FEDERAL REGISTER* NOTICE FOR 10 CFR PART 61

In notation vote paper SECY-13-0075, the staff provided to the Commission for approval, “Proposed Rule: Low-Level Waste Disposal (10 CFR Part 61)(RIN 3150-AI92).” The Commission acted on the paper as recorded in its Staff Requirements Memorandum (SRM) of February 12, 2014. In this SRM, the Commission communicated its approval of the publication of the proposed rule and draft guidance for public comment subject to certain comments and changes. Among these instructions, the Commission directed that the revised *Federal Register* Notice (FRN) arising from the direction in the SRM should be provided to the Commission for its review no later than 10 business days prior to its transmittal for publication. In accordance with this direction, the revised FRN is before us now.

Direction providing for the advance notification and review of revised documents (in this case, the FRN) can generally be construed to have as its purpose the opportunity for the Commission to assess the revisions for conformance with the Commission’s SRM direction. This direction frequently takes a very detailed form, such as line in/line out edits, as some of it did in this case. But also, of necessity, sometimes this direction consists of more general instruction to revise the document in some aspect and “make conforming changes” throughout. Such general instruction is what typically prompts the Commission’s direction to see a revised document prior to publication.

While such general instructions will require some use of staff judgment in making those revisions, what should not be found and yet is present in the revised FRN for the proposed rule for 10 CFR Part 61 is an entirely new and original regulatory requirement that was neither the subject of Commission review and approval in voting on the proposed rule itself (in SECY-13-0075) nor an outgrowth of the Commission voting process as a provision of the SRM. The new proposed regulatory requirement – for a “defense-in-depth analysis” – is an entirely new matter, introduced by the staff at a stage in the rulemaking process where the staff lacks authority to introduce new requirements. The unilateral authority to introduce new matter at this stage would, of course, render meaningless the Commission’s review and approval of proposed rules prior to their publication for public comment.

Under your authorities as Chairman, you are responsible for ensuring that the Executive Director for Operations (EDO) and the staff are responsive to the requirements of the Commission. In this capacity, I respectfully request that you direct the EDO to develop a revised FRN that is in conformance with the Commission's existing SRM. I do not seek – nor do I believe it to be constructive precedent – to re-open the Commission's vote on the proposed rule itself. Rather, it is my view, that the Commission that issued the existing SRM has a right to have its instructions on this matter carried out. Thank you for your attention to my request.

cc:

Commissioner Ostendorff

Commissioner Baran

Margie Doane, OGC

Annette Vietti-Cook, SECY

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cc:

- Commissioner Ostendorff
- Commissioner Baran
- Margie Doane, OGC
- Annette Vietti-Cook, SECY

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\*SEE PREVIOUS CONCURRENCE

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DATE	03/04/15	03/04/15	03/04/15		

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