



OFFICE OF THE SECRETARY

UNITED STATES NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555

June 25, 1993

RELEASED TO THE PDR
3/23/94
date initials

MEMORANDUM TO: William C. Parler
General Counsel
James M. Taylor
Executive Director for Operations
FROM: Samuel J. Chilk, Secretary
SUBJECT: COMSECY-93-033 - REMANDED ISSUES CONTAINED IN FISCAL YEARS 1991-1993 ANNUAL FEE RULES

On the passthrough issue, the Commission (with the Chairman and Commissioners Rogers, Curtiss and de Planque agreeing) has approved Option 2 which will no longer consider cost passthrough when deciding whether to exempt licensees from annual fees. Commissioner Remick disapproved Option 2.

On the educational issue, the Commission (with the Chairman and Commissioners Rogers and Curtiss agreeing) has approved Option 2 which abandons the nonprofit educational exemption for annual fees for both previous and future years, and refunds fees accordingly. Because this is a change from previous policy, the staff should advise licensees who will no longer be covered by this exemption of the possibility for installment payments as a means of debt collection under 10 CFR 15.35(b). The Federal Register notice which announces the final rule should include information on the installment method of debt collection and on the procedures to use in requesting an exemption. The annual fee rule permits the Commission to grant such exemptions as are "in the public interest." Consistent with the normal exemption process, consideration will be given to any case-by-case exemption requests for university research reactors. In considering whether or not to grant "public interest" exemption requests to university research reactor or other licensees, the Commission would expect the licensees to demonstrate severe financial hardship and a significant externalized benefit to other NRC licensees. The Commission also may modify the fee structure for nonprofit educational institutions for FY 1994 and thereafter, particularly for those with research reactors, as a

THIS SRM WILL BE MADE PUBLICLY AVAILABLE ONCE THE FEDERAL REGISTER NOTICE ANNOUNCING THE FINAL RULE IS PUBLISHED.

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result of the ongoing review of the annual fee system mandated by the Energy Policy Act. This global study should include a discussion of the special contribution of the university nuclear programs.

Commissioner Remick approved Option 3 on the educational issue. Commissioner de Planque, while initially agreeing with the majority view on the educational exemption issue, was persuaded by Commissioner Remick's vote, and careful examination of the Federal Register notice, to choose Option 3. They would have preferred to continue the exemption for the present, based on the "externalized benefits" arguments, and to reconsider it carefully in the context of our response to the Energy Policy Act of 1992. They believe that no commenter could have concluded from the notice that commenters were being expected to provide the basis for the Commission's proposal to continue the exemption. They also believe that, consistent with directions in the SRM on COMSECY-93-016, the agency should itself have developed an administrative record that would have been adequate to determine whether the classic argument on markets and education, outlined by the court, applies to our own licensees.

On the LLW issue, the Commission (with the Chairman and Commissioners Curtiss and Remick agreeing) has approved Option 1b -- a two-tier flat fee approach -- for Fiscal Years 1991, 1992 and 1993. Commissioners Rogers and de Planque would have preferred Option 3 on this issue.

The staff should incorporate the decisions discussed above and implement a final rule for 1993 fees without further Commission review. Commissioners Remick and de Planque will also have views for publication in the Federal Register with the final rule.

(EDO)

(SECY Suspense: 7/23/93)

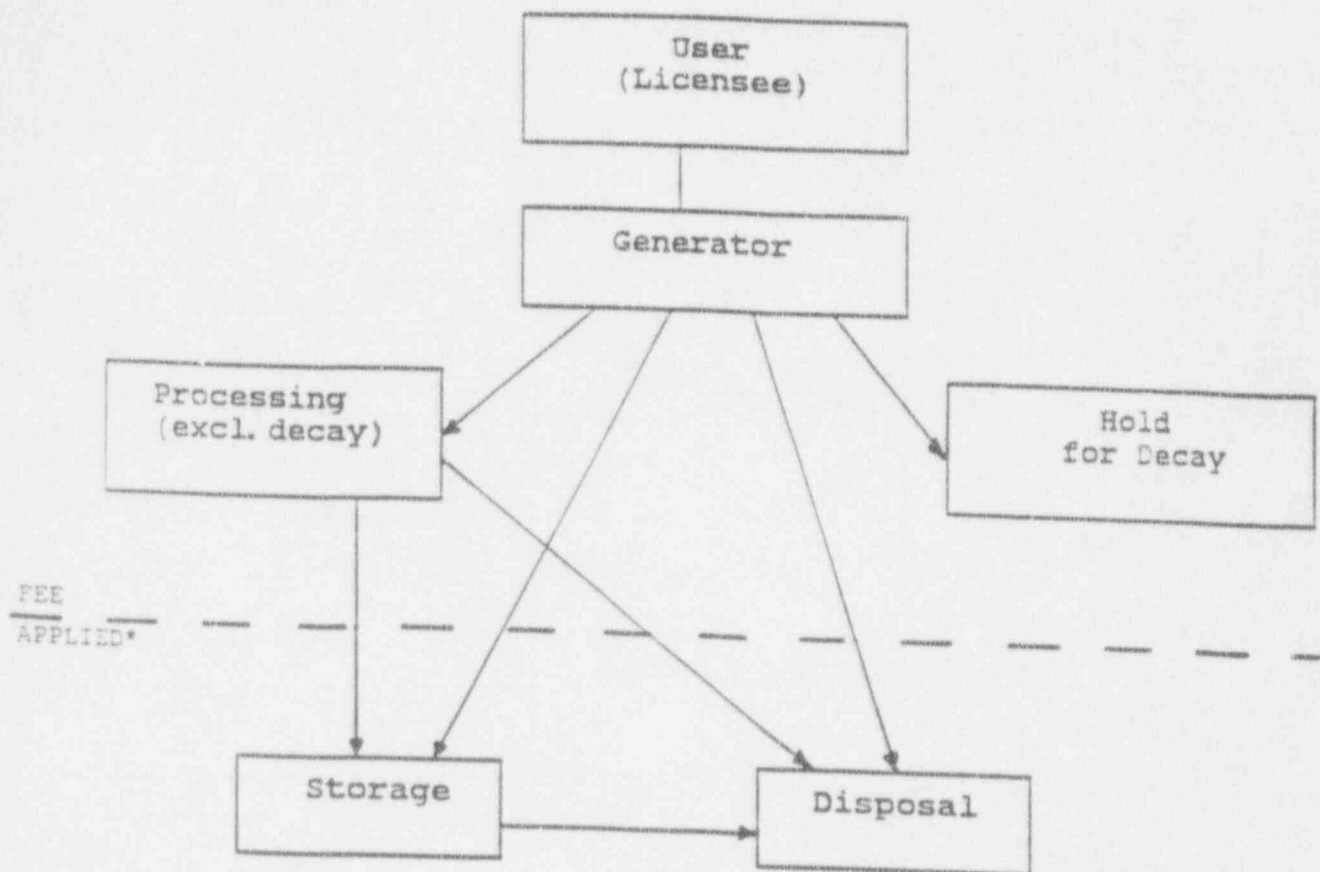
For Fiscal Years beyond 1993, the Commission (with Commissioners Rogers, Curtiss and de Planque agreeing) would like to consider variations on Option 3 for the LLW issue, as presented in the subject paper. Commissioner Curtiss suggested that fee allocation be based on LLW volume generated for each licensee and that the staff should obtain the necessary information from licensees on the amount (both volume and curie) of low-level waste generated by individual licensees. Commissioner de Planque suggested that fee assessment be based on a combination of volume and curies of waste ultimately destined for disposal (see attached diagram). Commissioner de Planque also requests evaluation of extending the fee assessment to general licensees who generate LLW that must be disposed of. The staff should evaluate these alternatives and provide the Commission with recommendations for consideration and approval as part of the global study required by the Energy Policy Act. The Chairman supports consideration of fee allocation on the basis of generation data, if it would be otherwise beneficial for the

staff on a programmatic basis to obtain such data. Commissioner
Remick would have preferred Option 1b for the years beyond FY 93.
(EDO) (SECY Suspense: 10/29/93)

Attachment:
As stated

cc: The Chairman
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
Commissioner de Planque
OGC
OIG

Proposed Approach For LLW Fees



* "Passthrough" fee for waste going to storage or to disposal based upon a combination of volume and activity of the waste.