

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN DICUS

SUBJECT: **SECY-99-174 - FINAL RULE: EXPAND APPLICABILITY OF  
10 CFR PART 72 TO HOLDERS OF, AND APPLICANTS  
FOR, CERTIFICATES OF COMPLIANCE, AND THEIR  
CONTRACTORS AND SUBCONTRACTORS**

Approved <sup>w/comment</sup>   x   Disapproved        Abstain       

Not Participating       

COMMENTS:

SEE ATTACHED COMMENTS

  Peta Jay Dicus    
SIGNATURE

  August 6, 1999    
DATE

Entered on "AS" Yes        No

### Chairman Dicus' Comments on SECY-99-174

I approve the issuance and publication of the final 10 CFR Part 72 rule and Federal Register notice of final rulemaking in the Federal Register, subject to the attached changes proposed by staff. I also approve the revised NRC Enforcement Policy. I continue to concur with staff that the extension of the requirements of 10 CFR Part 72 to holders of, and applicants for, certificates of compliance, and their contractors and subcontractors would make clear the Commission's intention that the standards in this area are enforceable requirements. Although I recognize that these changes are a deviation from the way in which we have regulated in the past, they are necessary to address performance problems that have occurred in the relatively young spent fuel storage industry.

I believe it is critically important for the NRC to take these additional enforcement measures at this time, in view of past fabrication problems coupled with the expected significant increase in the demand for spent fuel storage casks as more nuclear power plants reach their spent fuel pool capacity. Current DOE projections indicate that there will be a significant loss of full core reserves over the next ten years. Given the spent fuel storage industry's limited capacity to fabricate spent fuel storage casks, it is imperative that a regulatory framework containing adequate enforcement provisions be in place that will help minimize the number of delays caused by fabrication problems similar to those experienced in the past.

Although a comprehensive Quality Assurance program may not be needed in all cases, the attached revisions help to clarify to what extent contractors and subcontracts must

implement a Quality Assurance program. I commend the staff on its efforts in completing this final rule.

**Suggested changes to Part 72 Expanded Scope FRN to address concerns raised in 7/20/99 TA brief**

At the TA brief last Tuesday (7/20) on the Part 72 expanded scope final rule (SECY-99-174), a concern was raised, based on the proposed final rule language in 72.140(b), that contractors and subcontractors might believe that they needed a comprehensive QA program to comply with the regulations. At the brief, the staff agreed to look at the language in the rule regarding QA requirements for contractors and subcontractors. We have revised the language in 72.140(b) and 72.144(a) and the corresponding Statements of Consideration.

**Suggested changes to Statements of Consideration**

Page 19: revise the first paragraph under the summary of final amendments to:

72.140(a) and (b) should read only 72.140(a)

In the second paragraph under summary of final amendments, revised to read:

In the final rule, 72.140(b), (c) and (d), 72.144(a) and 72.242(d) have been revised in response to comments received on the proposed rule and are discussed below.

Add new third paragraph as the next paragraph:

"Section 72.140(b): It is not the intent to require that all contractors and subcontractors establish a complete quality assurance program unless their activities warrant implementation of a full program. Section 72.140(b) is revised to make it clear that contractors and subcontractors are only required to have a quality assurance program limited solely to activities performed under contract. "

Page 20: Revise stand-alone sentence to read:

"In the final rule, §§ 72.140(b), (c), and (d) are revised to read as follows:

Insert:

(b) Establishment of program. Each licensee, applicant for a license, certificate holder, applicant for a CoC, and their contractors and subcontractors shall establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of this subpart, and satisfying any specific provisions which are applicable to the licensee's, applicant's for a license, certificate holder's, applicant's for a CoC, and their contractor's and subcontractor's activities. The licensee, applicant for a license, certificate holder, applicant for a CoC, and their contractors and subcontractors shall execute the applicable criteria in a graded approach to an extent that is commensurate with the importance to safety. The quality assurance program shall cover the activities identified in this subpart throughout the life of the activity. For licensees, this includes activities from the site selection through decommissioning prior to termination of the license. For certificate holders, this includes activities from development of the spent fuel storage cask design through termination of the CoC. For contractors and subcontractors, this requirement is limited solely to the activities performed under contract.

Page 21: Insert after first paragraph:

Section 72.144(a) is revised to clarify that contractors and subcontractors need only establish those quality assurance requirements applicable to their activities.

Suggested changes to rule language:

Page 41: Add sentence at the end of 72.140(b) that reads:

"For contractors and subcontractors, this requirement is limited solely to the activities performed under contract."

Will now read:

**§ 72.140 Quality assurance requirements**

(b) Establishment of program. Each licensee, applicant for a license, certificate holder, applicant for a CoC, and their contractors and subcontractors shall establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of this subpart, and satisfying any specific provisions which are applicable to the licensee's, applicant's for a license, certificate holder's, applicant's for a CoC, and their contractor's and subcontractor's activities. The licensee, applicant for a license, certificate holder, applicant for a CoC, and their contractors and subcontractors shall execute the applicable criteria in a graded approach to an extent that is commensurate with the importance to safety. The quality assurance program shall cover the activities identified in this subpart throughout the life of the activity. For licensees, this includes activities from the site selection through decommissioning prior to termination of the license. For certificate holders, this includes activities from development of the spent fuel storage cask design through termination of the CoC. For contractors and subcontractors, this requirement is limited solely to the activities performed under contract.

Page 43: Under 72.144(a) fourth line, insert the word "applicable" between "the" and "requirements".

Will now read:

**§ 72.144 Quality assurance program.**

(a) The licensee, applicant for a license, certificate holder, applicant for a CoC, and their contractors and subcontractors shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program which complies with the applicable requirements of this subpart. The licensee, applicant for a license, certificate holder, applicant for a CoC, and their contractors and subcontractors shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with these procedures throughout the period during which the ISFSI or MRS is licensed or the spent fuel storage cask is certified. The licensee, applicant for a license, certificate holder, applicant for a CoC, and their contractors and subcontractors shall identify the structures, systems, and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.