

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MERRIFIELD

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 ✓ in part Disapproved ✓ in part Abstain _____

Not Participating _____

COMMENTS: *See attached comments.*

[Signature]
SIGNATURE

8/6/99
DATE

Entered on "AS" Yes ✓ No _____

COMMISSIONER MERRIFIELD'S COMMENTS ON SECY 99-174

I approve in part and disapprove in part issuance of the final rule, the revised NRC Enforcement Policy and the associated Federal Register Notices presented in SECY 99-174 as discussed below:

I approve the proposed revisions to 10 CFR Part 72 which serve to clarify the regulatory requirements imposed on holders of, or applicants for, a certificate of compliance under this Part. The proposed revisions to Part 72 and related changes to the NRC's Enforcement Policy will improve the NRC's regulatory framework, consistent with strategies in the Nuclear Materials Safety strategic arena, by providing a clear articulation of the responsibilities of certificate of compliance holders and applicants and by providing a more measured tool (issuance of Notices of Violation) to enforce compliance than has been possible under the current framework. I find the staff's arguments supporting the efficacy of using Notices of Violation, as opposed to Notices of Nonconformance or Orders, to be persuasive with regard to certificate holders and applicants. The staff is to be commended for its efforts in this regard.

However, I disapprove the staff's recommendation to extend NRC's regulatory requirements under Part 72, Subpart G, to contractors and subcontractors. Such an extension for cask manufacturing and design would be inconsistent with the way in which we regulate quality assurance in other arenas including reactor parts and equipment. Yet, I can see no logical distinction that would justify treating the two situations differently. In both instances there is a potential that deficiencies in the quality assurance program could lead to safety related problems. However, NRC's longstanding regulatory approach has been to make it clear that licensees are responsible for ensuring that the parts and equipment are safe. We do not take the extra step of extending our enforcement arm to reach contractors and subcontractors of reactor parts and equipment in a way contemplated under this rulemaking. I do not believe we have a sufficient basis to take the step of changing this long-standing policy as it relates to contractors and subcontractors of casks.

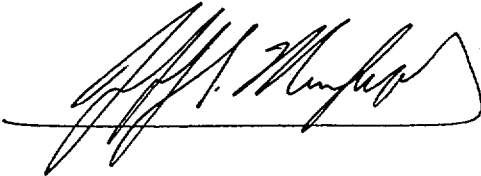
In contrast, certificate holders are similarly situated to licensees in that they also have primary responsibility under our existing regulations for ensuring the components they design and manufacture meet applicable safety standards (modifications to Subpart G under this rulemaking will make this point clearer with respect to certificate holders). Thus, it makes sense to extend our enforcement reach over them.

I also agree with Commissioner Diaz that it is difficult to discern the safety benefit to be achieved by this rulemaking, as it applies to contractors and subcontractors. The NRC already has effective tools at its disposal to assure compliance with quality assurance requirements. Indeed, we will rely on these tools for most other quality assurance matters. Further, holding contractors and subcontractors responsible as contemplated by this rulemaking could dilute the message that our regulations will otherwise make clear -- that licensees and certificate holders are ultimately responsible for assuring quality. Consequently, if the new policy were implemented, licensees and certificate holders may not be as vigilant about identifying problems as we would expect them to be. To me, it would be better to continue our present policy of clearly conveying to licensees and certificate holders that they ultimately will be held responsible, and that we expect more vigilance on their part to identify problems. For these reasons I believe the NRC's

enforcement policy, modified as it relates to certificate holders, will provide the tools necessary to enforce our quality assurance requirements.

Therefore, before issuing the final rule, the staff should revise the proposed final rule language and supporting discussion in the Federal Register Notice to delete the proposed changes which reference contractors and subcontractors. Note that any references to contractors and subcontractors in the existing regulations need not be changed (e.g., in existing section 72.148).

Again, the staff is to be commended for its efforts to improve the regulatory framework in this very important and dynamic arena.



8/6/99