

December 8, 1998

COMMISSION VOTING RECORD

DECISION ITEM: SECY-98-192

TITLE: RESOLUTION OF ALLEGATIONS CONCERNING THE PERFORMANCE OF AGREEMENT STATE PROGRAMS

The Commission (with Commissioners Dicus, Diaz, McGaffigan, and Merrifield agreeing) approved Option 3 in the subject paper as recorded in the Staff Requirements Memorandum (SRM) of December 8, 1998. Chairman Jackson would have preferred Option 2.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commissioners, and the SRM of December 8, 1998.

John C. Hoyle
Secretary of the Commission

Attachments: 1. Voting Summary
2. Commissioner Vote Sheets
3. Final SRM

cc: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR
DCS

VOTING SUMMARY - SECY-98-192

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACKSON		X			X	10/23/98
COMR. DICUS	X				X	11/12/98
COMR. DIAZ	X				X	8/19/98
COMR. McGAFFIGAN	X					9/9/98
COMR. MERRIFIELD	X					11/3/98

COMMENT RESOLUTION

In their vote sheets, Commissioners Dicus, Diaz, McGaffigan, and Merrifield approved Option 3 as recommended by the staff and some provided some

additional comments. Chairman Jackson approved Option 2. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on December 8, 1998.

Chairman Jackson's comments on SECY-98-192

I approve option 2. It provides a more consistent approach to processing and tracking Agreement State Performance and Wrongdoing Allegations. I recognize the staff's desire to no longer track these allegations because of the NRC's limited authority to require Agreement States to take action in the absence of a public health and safety concern, and the resources required to continue to follow the Agreement State resolution of these actions. However, I believe that NRC should continue to track these allegations to ensure that these programs, to which the NRC has agreed to discontinue its regulatory authority, are as effective in providing a regulatory program as the NRC. Regarding the appearance of a lack of timeliness of the resolution of these allegations, the staff should ensure that, although NRC will continue to track resolution of these issues, the allegeders are properly informed of the respective NRC and Agreement State's responsibility and authority to resolve these allegations.

Commissioner Dicus' comments on SECY-98-192

I approve Option 3 modified as follows. Allegations concerning employee wrongdoing, except that of the radiation control program (RCP) director, should be initially referred to the RCP director. It is inappropriate to not refer such allegations to the RCP director since that individual has first line responsibility for the conduct of employees in the program. Should NRC subsequently find the matter to not have been appropriately followed up, the matter can be re-referred by the NRC to the line management over the RCP director or to the State IG or AG.

Option 3 strikes a proper balance between the need of the NRC to follow up and be responsive to allegations concerning the Agreement States and the need to recognize the fundamental difference of the relationships between NRC and its licensees and NRC and the Agreement States. While oversight of the latter is our responsibility, the States themselves are regulatory entities having standards for performance and ethics. While procedural implementation of the States' standards may not necessarily be identical with that of the NRC, the standards have in common the goal of creating and maintaining public confidence and trust in the States' programs. Option 3 provides a policy that is in keeping with the NRC goal of striving for a performance based approach in our programs by providing flexibility when dealing with Agreement State allegations.

Commissioner Diaz's comments on SECY-98-192

I approve Option 3 and request staff to inform me immediately if the current level of effort

(0.25 FTE) needs to be augmented because of an increase in the number of allegations or if the reprogramming from other budgeted agreement state activities were to affect Commission priority items, e.g., procedure development.