

December 21, 1998

COMMISSION VOTING RECORD

DECISION        SECY-98-232

ITEM:

TITLE:            SEAMAN NUCLEAR'S APPLICATION FOR A LICENSE TO DISTRIBUTE PORTABLE MOISTURE  
                    DENSITY GAUGES TO GENERAL LICENSEES

The Commission (with all Commissioners agreeing) disapproved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of December 21, 1998.

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 21, 1998.

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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

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VOTING SUMMARY - SECY-98-232

RECORDED VOTES

	<b>APRVD</b>	<b>DISAPRVD</b>	<b>ABSTAIN</b>	<b>NOT PARTICIP</b>	<b>COMMENTS</b>	<b>DATE</b>
CHRM. JACKSON		X			X	11/4/98
COMR. DICUS		X			X	11/12/98
COMR. DIAZ		X			X	11/13/98
COMR. McGAFFIGAN		X			X	10/14/98
COMR. MERRIFIELD		X			X	11/6/98

## COMMENT RESOLUTION

In their vote sheets, all Commissioners disapproved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on December 21, 1998.

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### **Chairman Jackson's comments on SECY-98-232**

I disapprove the staff issuance of the license to Seaman Nuclear at this time. As directed in item 4 of the SRM on SECY 97-273, the Commission expected that the staff would review the basis for the general licenses for adequacy with respect to consideration of the consequences for off-site accidents, such as loss of shielding or melting in metal making furnaces. The Commission expected this basis to be reviewed following completion of the materials risk assessment study, which is due to the Commission in December. However, in the interim, lacking the results of this study on a generic basis, the staff should ensure that the applicants for these licenses to distribute generally licensed devices have addressed the consequences for off-site accidents.

The supplementary information provided by the staff for this particular application does not appear to rigorously demonstrate compliance with the requirements in 10 CFR 32.51(a)(2)(iii), particularly with regard to the considerations requested by the Commission. As such, the staff should request that the applicant, as well as other similar applicants, provide a more rigorous demonstration of compliance with this requirement, without any reliance upon the radiological safety training of the general licensee or notification of the NRC of any loss or damage to the device, as would be expected under a general license.

With regard to consultation with the Agreement States of California and North Carolina, to the extent that the staff would find such consultation beneficial in reviewing the application, the staff should do so. However, the determination of the adequacy of the application rests with the NRC; therefore, if the staff determines that such consultation is unnecessary, there should be no requirement to do so.

### **Commissioner Dicus comments on SECY-98-232**

I agree with Chairman Jackson and Commissioner McGaffigan that the NRC should not issue a license to Seaman Nuclear Corp. for distribution of portable moisture gauges to persons generally licensed at this time. I would support revisiting this issue only after the staff has consulted with the Agreement States of California and North Carolina and has provided the Commission with an assessment of the States' comments and after the Commission has had an opportunity to evaluate staff's risk assessment study that is due to the Commission next month. I can not overly stress the importance of obtaining feedback from the Agreement States most likely to be affected by our decisions. As a number of Agreement States continues to grow, so does the necessity to consider their input in matters that will directly affect them.

### **Commissioner Diaz' vote on SECY-98-232**

I disapprove, for the present time, the staff's plan to issue a license to Seaman Nuclear for distribution of portable moisture density gauges. Before the Commission considers this matter further, the staff should more extensively consult with the Agreement States regarding the Seaman application. To facilitate NRC consultations with Agreement States for future issues, a screening method should be established for program office managers to use in determining whether individual issues should be referred to the Office of State Programs for possible coordination with Agreement States.

### **Commissioner McGaffigan's Comments on SECY-98-232:**

At this time, I disapprove the staff's plan to issue a license to Seaman Nuclear for distribution of certain portable moisture density gauges to persons generally licensed. I am more concerned with the licensing process described by the staff rather than its results. Therefore, I offer the following for the staff's consideration.

The paper states that the staff intends to discuss with California and North Carolina-the Agreement States where the other two device distributors are located-the basis for the staff's plan to issue a distribution license to Seaman Nuclear for certain portable moisture density gauges, which contain sources that clearly meet the threshold for the proposed registration program. In other words, the staff intends to "inform" the Agreement States of NRC's decision in this matter. This limited approach to coordinating with the Agreement States does not appear adequate since two of the three U.S. distributors are located in Agreement States and, as stated in the paper, the staff's proposed action may establish a significant precedent by adding thousands of devices to the generally-licensed "pool" subject to the proposed registration program, assuming there is an industry shift to general licensing for this type of device. Also, it is not clear whether NRC would have a regulatory basis for imposing on other licensees a commitment similar to that made by Seaman Nuclear to annually "contact" users of such devices to confirm possession, or whether Agreement States would be willing to impose such requirements. The staff should more fully engage the interested and affected Agreement States by soliciting their input on these and related matters. The staff should then inform the Commission of its findings and provide their recommendation on whether to proceed with issuing a distribution license to Seaman Nuclear.

In addition, I am reluctant to make this decision prior to reviewing the results of the ongoing materials risk assessment study which has the potential to result in a restructuring of the current materials licensing program for several types of devices including the ones discussed in this paper. For example, the risk study could indicate that the device in question be authorized under a specific license for safety reasons rather than a general license as proposed in this paper. Currently, the staff is scheduled to provide its recommendations on how to proceed in this area by December 31, 1998. I would be willing to revisit the Seaman Nuclear issue at that time. Also, as part of the Agreement State consultation discussed above, the staff should share the risk study results and its preliminary recommendations on how to proceed with licensing these gauges with the Agreement States so that they can also

make informed decisions on this issue whether it is in the context of providing input to the staff or of their own licensing decisions.

If the Commission does not approve the proposal before us and the staff chooses to resubmit it, the staff should provide the Commission with an estimate of the resource impact of adding approximately 5,000 generally-licensed devices to the "pool" subject to the proposed registration program and whether the program's timeline as described in SECY-98-199 would be negatively impacted.

**Commissioner Merrifield comments on SECY-98-232**

I concur with the comments of Commissioner McGaffigan.