

April 12, 1999

COMMISSION VOTING RECORD

DECISION        SECY-99-043  
ITEM:  
TITLE:            ORGANIZATIONAL CONFLICT OF INTEREST REGARDING DEPARTMENT OF ENERGY  
                    LABORATORIES

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of April 12, 1999.

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 April 12, 1999.

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Annette Vietti-Cook  
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-99-043

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACKSON	X				X	3/3/99
COMR. DICUS	X				X	2/23/99
COMR. DIAZ	X				X	3/1/99
COMR. McGAFFIGAN	X					2/24/99
COMR. MERRIFIELD	X				X	2/23/99

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on April 12, 1999.

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[Commissioner Comments on SECY-99-043](#)

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**Chairman Jackson's comments on SECY-99-043**

I approve the staff's proposal to use the existing waiver process to address Conflict of Interest concerns and continue to apply NRC's current COI procedures to the work the DOE performs for the NRC. Additionally, in light of the possibility that DOE could take title to the spent fuel at each of the reactor sites, in lieu of building a centralized interim storage facility, I recommend that the staff follow this issue closely and be prepared to expand the Federally Funded Research and Development Center, if necessary, to provide additional capabilities in this area.

**Commissioner Dicus' comments on SECY-99-043**

I approve the staff's proposal to use the existing waiver process to address COI concerns, with continued application of the current COI procedures implementing Section 170A of the Atomic Energy Act to the work the DOE performs for the NRC. However, I am concerned that the frequent granting of waivers may degrade the credibility of the NRC's COI policy and may appear to create a lesser standard for COI considerations for DOE activities. As such, I believe the Commission should amend its policy, rather than deviate from it by the frequent granting of waivers, should a noticeable increase in the number of waivers occur. Therefore, my approval is made with the following conditions:

The staff should monitor the issuance of waivers granted as a result of DOE COI. Should a noticeable increase in the number of waivers occur, the staff should:

- (1) Promptly notify the Commission, and
- (2) Propose legislative changes, as discussed in alternative 2 in [SECY-98-003](#), to amend the AEA, consistent with OGC's recommendation in its May 18, 1998 memorandum to the Commission on this issue.

**Commissioner Diaz's comments on SECY-99-043**

I approve the staff's proposal to address potential future conflict of interest at Department of Energy laboratories and facilities. I agree with Commissioners Dicus and Merrifield, that, should there be a noticeable increase in the use of waivers, the staff should inform the Commission and propose legislative language along the lines proposed by OGC (i.e., provide for conflict of interest considerations to be evaluated by the NRC as it places work with DOE laboratories and facilities, but allow NRC flexibility in dealing with conflict of interest).

**Commissioner Merrifield's comments on SECY 99-043**

I approve of staff's proposal to use the existing waiver procedures to deal with conflict of interest (COI) considerations related to DOE laboratories. I also concur with Commissioner Dicus' comments. Particularly, I support the monitoring of issued waivers to determine whether a noticeable increase in the number of waivers occur. Based on staff's market research they determined that under current COI procedures, there could be a significant increase in the use of the waiver procedures. This could give an inappropriate and false perception of NRC holding DOE to a lesser standard for COI. In the end, the legislative proposal (alternative 2 in SECY 98-003) may prove to be a more prudent alternative.