

April 25, 2000

COMMISSION VOTING RECORD

DECISION ITEM: SECY-00-0021  
TITLE: PROPOSED RULE: INTERIM STORAGE FOR GREATER THAN CLASS C WASTE

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum ([SRM](#)) of April 25, 2000.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

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Annette Vietti-Cook  
Secretary of the Commission

Attachments: 1. Voting Summary  
2. Commissioner Vote Sheets

cc: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
OGC  
EDO  
PDR

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VOTING SUMMARY - SECY-00-0021

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	3/14/00
COMR. DICUS	X				X	3/9/00
COMR. DIAZ	X				X	2/11/00
COMR. McGAFFIGAN	X				X	3/10/00
COMR. MERRIFIELD	X				X	3/2/00

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on April 25, 2000.

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**Commissioner Comments on SECY-00-0021**

**Chairman Meserve**

I approve publication of a proposed rule to amend Parts 72, 150, and 171 to allow licensing for interim storage of reactor-related greater than class C (GTCC) waste in a manner that is consistent with licensing the interim storage of spent fuel. However, the staff should make the following changes to the FRN prior to publication of the proposed rule:

1. I agree with Commissioner Diaz that the staff should expand the statements of consideration to include discussion of Agreement State comments and concerns on the draft rulemaking plan, in particular with respect to the relinquishment of authority for GTCC waste. The text of pp 13-14 of the Federal Register notice might be expanded to respond to the

comments.

2. The Federal Register notice seeks comment (at pp 11-12) for a variety of issues (commingled waste, liquid waste) that are not encompassed by the proposed rule (p 15). The text should be modified to indicate that, guided by the comments, these matters may be addressed in the final rule.
3. Page 16 of the Federal Register notice should be revised to clarify when the reviewer guidance will be available.
4. Suggested editorial changes to the FRN are attached.

## Commissioner Dicus

I approve publication of the Proposed Rule, Interim Storage for GTCC Waste, that would amend [10 CFR Parts 72, 150, and 171](#) to allow interim storage of 10 CFR Part 50 power reactor-related GTCC waste at an ISFSI or MRS under 10 CFR Part 72, and would retain NRC jurisdiction over power reactor-related GTCC waste. However, staff should address the following prior to publication of the Proposed Rule:

1. SECY Paper, page 3, second paragraph, modify third sentence to read, "The licensing process will be simpler with less regulatory burden if all GTCC radioactive waste to be stored at an ISFSI or MRS is stored under the authority of on Part 72 license."
2. FRN, Page 10, first paragraph, modify second sentence to read, "Therefore, information from DOE on disposal policies will be helpful in developing commingling storage criteria for 10 CFR Part 72 (and enable the NRC to preclude a storage option that would be unacceptable for permanent disposal)."
3. FRN, Page 20, under Compatibility of Agreement State Regulations, staff should include the Agreement State jurisdiction retention comments that were provided in response to the draft rulemaking plan from the States of Illinois, Texas, New York, and Utah.
4. FRN, Page 20, under Compatibility of Agreement State Regulations, staff should address the existing status of Agreement State licensees that possess GTCC waste under an existing Agreement State license (if any), and what path-forward would be necessary for NRC taking over jurisdiction.
5. As identified in the FRN, GTCC liquid wastes are precluded from being co-located with spent-fuel, however, this option can be evaluated and approved on a case-by-case basis. This same scenario exists with respect to commingling GTCC reactor-related solid waste with spent-fuel. For the spent-fuel commingling scenario, examples are provided of when commingling would be acceptable. For the GTCC liquid waste co-location scenario, no examples or guidance is provided. Staff should provide examples or scenarios for the GTCC liquid wastes similar to those provided for the spent-fuel commingling scenario so that the licensee has some idea of what and what not may be acceptable.
6. Revise the DOE letter to be signed-out by the NMSS Office Director and make the necessary adjustments in the letter to accommodate the signature change.

## Commissioner Diaz

I approve publication of a proposed rule that would amend Parts 72, 150, and 171 to allow storage of reactor-related GTCC waste under Part 72 and would retain NRC jurisdiction over reactor-related GTCC waste. However, the staff should make the following changes to the FRN prior to publication of the proposed rule:

- In response to a request for comments on a draft rulemaking plan for this proposed rule, four Agreement States provided comments, of which three of these States indicated that they were opposed to voluntarily relinquishing their authority and preferred to maintain their licensing authority for GTCC waste. The staff should expand the "Compatibility of Agreement State Regulations" section of the FRN to specifically address the comments and concerns raised by the Agreement States that would prefer to maintain their licensing authority for GTCC waste and provide additional justification for why NRC should retain jurisdiction over reactor-related GTCC waste.
- The staff should expand the "Compatibility of Agreement State Regulations" section of the FRN to state that NRC is not aware of current Agreement State licensees that possess reactor-related GTCC waste. This section should specifically request whether the Agreement States are aware of such licensees in their States and, if so, how NRC should handle the licensing of these facilities.
- The staff should modify the FRN to include a discussion of alternatives for 10 CFR Part 50 licensees that want to terminate their license but possess reactor-related non-solid GTCC waste that is not appropriate for storage under the proposed modifications to 10 CFR Part 72.

## Commissioner Merrifield

I approve the staff's request, with modifications as described below, to publish a proposed rule allowing licensing for interim storage of reactor-related greater than class C (GTCC) waste under 10 CFR Part 72. In addition, this rulemaking would

maintain Federal jurisdiction over the interim storage of reactor-related GTCC waste either on or off the reactor site. This rulemaking does raise a fundamental question of what should take priority between State's rights and regulatory efficiency. Both issues are important to me. However, in this particular instance, the NRC has (1) sole regulatory authority to regulate this material while the licensee has a license issued under 10 CFR Part 50, (2) sole regulatory authority under 10 CFR Part 72 to license the spent fuel storage facility (where this GTCC material is most likely to be stored), and (3) sole regulatory authority to regulate the final disposal facility for this GTCC waste. The possibility of regulation by an Agreement State of this GTCC waste only exists during the time of interim storage after the operating license is terminated. Therefore, it is appropriate for NRC to retain regulatory authority during the interim storage period between the end of the final operating phase and final disposal. While I am strongly supportive of State's rights and their responsibility to control issues within the State borders, I believe the need for consistent regulatory control over this specific GTCC waste outweighs the State's rights in this case.

However, there are several changes that need to be made to the package before it is published.

1. On page 16 of attachment 1, the two sentence paragraph describing the changes to the fee structure in 10 CFR Part 171 appears to be contradictory and should be clarified. The first sentence states that an annual fee for receipt and storage of GTCC waste would be included on the fee schedule and the second sentence says that there would be no additional charge for receipt and storage of GTCC waste. The staff should more clearly explain the intent of this paragraph.
2. Both the Environmental Assessment (attachment 3) and the Regulatory Analysis (attachment 4) contain a discussion of three alternatives. For alternative 2, there are two sentences located together which may create an incorrect impression (refer to attachment 3, page 8, second paragraph and attachment 4, page 8, second paragraph). The first sentence states that alternative 2 meets the request of the petitioner and the second sentence says that alternative 2 would allow dual regulation of a facility licensed under Part 72. The request of the petitioner was to include the definition of GTCC waste under Part 72 and did not discuss the possibility of dual regulation. A potential fix would modify the two sentences to read as follows: "Allowing interim storage of GTCC waste under a 10 CFR Part 72 specific license would meet the request of the petitioner. However, without additional changes in the regulations (not requested by the petitioner), one result of this alternative is the potential dual regulation of the licensed facility by both the NRC and an Agreement State."
3. Several times in the attachments (including the letter to DOE), the staff makes a definitive statement that "the proposed rule is not structured to permit commingling of spent fuel and GTCC waste in the same storage cask" (attachment 1, page 15, first full sentence and the same thought is communicated in attachments 2 through 4). But in other paragraphs, physically separated from this discussion, the staff states that it intends to continue allowing components of spent fuel rods to be commingled in the same storage cask with the spent fuel (refer to attachment 1, page 10, first paragraph and the same thought is in attachments 3 and 4). Although not stated in the paragraph, these components of the fuel rod may be GTCC. While I have no problems with allowing this practice to continue, the statement that commingling will not be permitted needs to be modified to indicate except for GTCC components integral to the fuel rod itself or other appropriate wording proposed by the staff.