

April 26, 2000

COMMISSION VOTING RECORD

DECISION SECY-00-0023

ITEM:

TITLE: RULEMAKING PLAN TO STANDARDIZE THE PROCESS FOR ALLOWING A LICENSEE TO RELEASE PART OF ITS REACTOR FACILITY OR SITE FOR UNRESTRICTED USE BEFORE RECEIVING APPROVAL OF ITS LICENSE TERMINATION PLAN

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum ([SRM](#)) of April 26, 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-00-0023

RECORDED VOTES

|                  | <b>APRVD</b> | <b>DISAPRVD</b> | <b>ABSTAIN</b> | <b>NOT PARTICIP</b> | <b>COMMENTS</b> | <b>DATE</b> |
|------------------|--------------|-----------------|----------------|---------------------|-----------------|-------------|
| CHRM. MESERVE    | X            |                 |                |                     | X               | 4/10/00     |
| COMR. DICUS      | X            |                 |                |                     |                 | 4/1/00      |
| COMR. DIAZ       | X            |                 |                |                     |                 | 3/31/00     |
| COMR. MCGAFFIGAN | X            |                 |                |                     | X               | 4/3/00      |
| COMR. MERRIFIELD | X            |                 |                |                     | X               | 3/27/00     |

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 26, 2000.

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**Commissioner Comments on SECY-00-0023**

**Chairman Meserve**

I approve the staff's rulemaking plan for the release of part of a reactor facility or site for unrestricted use subject to the

following:

- 1) The development of this rule should be coordinated with NMSS and RES to ensure that a consistent approach to partial site release and dose modeling is applied across strategic arenas;
- 2) Because one is not included in SECY-00-0023, the staff should submit a schedule for completion of the rulemaking;
- 3) Because the nature and scope of the proposed evaluation of "synergistic" effects is unclear, the staff should, as it finalizes the rulemaking plan, more clearly define the possible role of "synergistic" effects. In addition, the staff should ensure that this effort is coordinated, as necessary, with NMSS' development of the standard review plan for license termination;
- 4) Although the staff's proposal to apply Section 2.1201(a)(3) of Part 2, Subsection L appears reasonable, staff should ensure that the approach taken in this rulemaking is consistent with the Commission decision on the revision of Part 2 (currently under consideration)

## Commissioner McGaffigan

I approve the staff's plan to proceed with rulemaking to standardize the process for allowing a licensee to release part of its reactor facility or site for unrestricted use before receiving approval of its license termination plan. As a matter of ensuring public confidence in NRC, we must close the regulatory gap described in SECY-00-0023. In the interim, the staff should continue to review requests for partial site release on a case-by-case basis, and consider issuing a generic communication informing reactor licensees of this approach.

Clearly, early partial site release involves a host of complex process and technical issues that will need to be thoroughly considered during the rulemaking phase. On one hand, there is likely to be a strong economic incentive for a number of our reactor licensees to release portions of their sites for other uses well before the license termination plan is approved. In such cases, assuming there are no radiological health and safety issues involved, we should be timely in our regulatory response. On the other hand, where the radiological health and safety may be involved, we must not act prematurely. As I understand it, in some extreme cases more than 50 years could separate the early partial site release from the final license termination plan. In any event, I strongly support a consistent regulatory approach that requires an affirmative NRC response prior to partial site release. I also applaud the staff's approach for ensuring the public's voice is heard, regardless of whether an opportunity for a hearing is required by regulation.

There are several issues discussed in the paper that I believe should be further elaborated in the Statements of Consideration accompanying the proposed rule, perhaps followed by focus questions soliciting stakeholder feedback. For example, releasing "impacted" areas with residual radioactivity levels distinguishable from background raises many questions about demonstrating compliance with the license termination rule in Part 20, such as how the dose contribution from the "released" portion of the site will be considered at license termination. Specifically: 1) Would the dose contribution from the released portion of the site need to be calculated, particularly in cases where residual radioactivity has significantly decayed, thereby reducing the potential public dose? 2) What would happen in cases where subsequent owners of the released portion of the site engage in activities (licensed or unlicensed) that result in a higher dose contribution from this portion of the site--would this dose "count against" the Part 20 allowable dose limit for unrestricted use? and 3) Would the contribution from the groundwater pathway need to be recalculated, if years have elapsed between the partial site release and license termination?

I am not completely persuaded by the staff's assertion that the technical issues involved in partial site release have been resolved in other rulemakings. The notion of "synergistic dose effects" strikes me as a unique concept that may give rise to some new technical issues. By the staff's own admission, approximately \$250K for technical assistance will be needed in FY 2001 to address "synergistic dose effects."

Finally, the proposed rule package should clearly discuss: 1) the role of the timeliness rule relative to partial site release; 2) the fact that the staff does not intend to allow [10 CFR 20.2002](#) disposals on those portions of the site proposed for release; 3) that this rulemaking narrowly focuses on power reactor licensees to be responsive to current industry needs; and 4) that a separate rulemaking is needed to address the wide variety of materials sites, many of which are technically more complex from a decommissioning perspective than reactor sites, to provide a uniform and consistent agency approach to partial site release.

I am also enclosing edits to the proposed rule language in attachment 1 to the paper. Since this rulemaking is at a very early stage, the edits are for the staff's consideration.

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### SUGGESTED CHANGES TO 10 CFR PARTS 2, 20, AND 50 FOR RELEASING PARTS OF A REACTOR SITE

Additions and revisions to existing regulations are indicated in redline. No deletions are considered necessary. Note that the

language below is suggested for discussion purposes only. The suggested rule language can be expected to change based on stakeholder input and further staff evaluation.

1. In § 2.1202, paragraph (a)(4) is added to read as follows:

§ 2.1201 Scope of subpart.

(a) \* \* \*

(4) The amendment of a Part 50 license to release part of a facility or site for unrestricted use in accordance with § 50.83(a)(3). Subpart L hearings for the partial site release plan, if conducted, must be complete before the property is released for use.

\* \* \* \* \*

2. In § 20.1401, paragraph (a) is revised to read as follows:

§ 20.1401 General provisions and scope.

(a) The criteria in this subpart apply to the release of part of a facility or site for unrestricted use in accordance with § 50.83 of this chapter and decommissioning of facilities licensed under Parts 30, 40, 50, 60, 61, 70, and 72 of this chapter, as well as other facilities subject to the Commission's jurisdiction under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended. For high-level and low-level waste disposal facilities (10 CFR Parts 60 and 61), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities. The criteria do not apply to uranium and thorium recovery facilities already subject to Appendix A to 10 CFR Part 40 or to uranium solution extraction facilities.

\* \* \* \* \*

3. Section 50.2 is revised by adding "Historical site assessment," "Impacted areas," and "Non-impacted areas" in alphabetical order to read as follows:

§ 50.2 Definitions.

\* \* \*

*Historical site assessment* means the identification of potential, likely, or known sources of radioactive material and radioactive contamination based on existing or derived information for the purpose of classifying a facility or site, or parts thereof, as impacted or non-impacted.

*Impacted areas* are areas with some potential for residual contamination.

\* \* \*

*Non-impacted areas* are areas with no reasonable potential for residual contamination.

4. In § 50.75, paragraph (g)(4) is added to read as follows:

§ 50.75 Reporting and record keeping for decommissioning planning.

(g) \* \* \*

(4) Within 1 year of the effective date of this regulation, the licensee shall maintain property records containing the following information:

(i) Records of the site boundary, as originally licensed, which shall include a site map;

(ii) Records of any acquisition or use of property outside the originally licensed site boundary for the purpose of receiving, possessing, or using licensed materials;

(iii) The licensed activities carried out on the acquired or used property; and

(iv) Records of the disposition of any property recorded in paragraphs (4)(i) or (4)(ii) of this section, the historical assessment performed for the disposition, radiation surveys performed to support release of the property, notifications submitted to the NRC in accordance with § 50.83, and the methods employed to assure that the property met the radiological criteria of 10 CFR Part 20 Subpart E at the time the property was released.

\* \* \* \* \*

5. In § 50.82, paragraph (a)(9)(ii)(H) is added and paragraph (a)(11)(ii) is revised to read as follows:

§ 50.82 Termination of license.

(a)(9)(ii)(G) \* \* \*

(H) Identification of parts, if any, of the facility or site that were released for use before approval of the license termination plan.

\* \* \*

(11) \* \* \*

(ii) The terminal radiation survey and associated documentation demonstrate that the facility and site, including any parts released for use before approval of the license termination plan, are suitable for release in accordance with the criteria for decommissioning in 10 CFR Part 20 Subpart E.

\* \* \* \* \*

6. A new § 50.83 is added to read as follows:

§ 50.83 Release of part of a facility or site for unrestricted use.

(a) For a power reactor licensee ~~that seeks~~ to release part of a facility or site for unrestricted use at any time before receiving approval of a license termination plan, the licensee shall

(1) Evaluate the effect of releasing the property to assure that:

(i) The dose to individual members of the public does not exceed the limits of 10 CFR Part 20;

(ii) There is no reduction in the effectiveness of emergency planning or physical security;

(iii) Effluent releases remain within regulatory limits;

(iv) The environmental monitoring program and offsite dose calculation manual are revised to account for the changes; and

(v) The siting criteria of 10 CFR Part 100 continues to be met.

(2) Perform a historical site assessment of the part of the facility or site to be released.

(3) For areas not classified as non-impacted, perform radiation surveys adequate to determine whether the area contains residual radioactivity that is distinguishable from background.

(4) If the area is either non-impacted or contains residual radioactivity that is not distinguishable from background, notify the NRC in writing at least 180 days before releasing the property. The notification shall include:

(i) The results of the evaluations performed in accordance with § 50.59 and paragraphs (a)(1) and (a)(2) of this section;

(ii) The methods used for and results obtained from the radiation surveys required by the provisions of paragraph (a)(3) of this section;

(iii) A description of the part of the facility or site to be released;

(iv) A supplement to the environmental report, pursuant to § 51.53, describing any new information or significant environmental change associated with the licensee's proposed release of the property; and

(v) The schedule for release of the property.

[Note: Creating a subsection (b) to delineate NRC responsibility]

(b)(1) (5) After notification by the licensee pursuant to paragraph (a)(4) of this section that it intends to release an area that is non-impacted or contains residual radioactivity that is not distinguishable from background, the NRC shall:

(i) Determine whether the licensee's proposed release of the property meets regulatory requirements;

(ii) Determine whether the licensee's historical site assessment is adequate;

(iii) Conduct a radiation survey of non-impacted areas as warranted to assure that the licensee's conclusion that the area is non-impacted is adequate; and

(iv) Upon determining that the licensee's notification is adequate, inform the licensee in writing that the release is approved.

[Note: Renumber as paragraph (5) of subsection (a) because it pertains to licensees]

(5) (6) If the area contains residual radioactivity that is distinguishable from background, the licensee shall submit an application for amendment of its license for the release of the property. The application shall include:

- (i) The information specified in subparagraphs (a)(4)(i) through (v) of this section; and
- (ii) The licensee's plan to demonstrate compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402.

~~(2)(7)~~ The NRC shall notice receipt of the notification of release pursuant to paragraph (a)(4) of this section or license amendment application pursuant to paragraph(a)(5) of this section, as appropriate, and make the notification or license amendment application available for public comment. ~~The NRC shall schedule a public meeting in the vicinity of the licensee's facility.~~ Before acting on a notification or license amendment request submitted in accordance with this section, the NRC shall schedule a public meeting in the vicinity of the licensee's facility. † The NRC shall publish a notice in the *Federal Register* and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site, announcing the date, time, and location of the meeting, along with a brief description of the purpose of the meeting.

**(Clean Version of revised text, above)**

- (v) The schedule for release of the property.
- (5) If the area contains residual radioactivity that is distinguishable from background, submit an application for amendment of its license for the release of the property. The application shall include:
  - (i) The information specified in subparagraphs (a)(4)(i) through (v) of this section; and
  - (ii) The licensee's plan to demonstrate compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402.
- (b)(1) After notification by the licensee pursuant to paragraph (a)(4) of this section that it intends to release an area that is non-impacted or contains residual radioactivity that is not distinguishable from background, the NRC shall:
  - (i) Determine whether the licensee's proposed release of the property meets regulatory requirements;
  - (ii) Determine whether the licensee's historical site assessment is adequate;
  - (iii) Conduct a radiation survey of non-impacted areas as warranted to assure that the licensee's conclusion that the area is non-impacted is adequate; and
  - (iv) Upon determining that the licensee's notification is adequate, inform the licensee in writing that the release is approved.

(2) The NRC shall notice receipt of the notification of release pursuant to paragraph (a)(4) of this section or license amendment application pursuant to paragraph(a)(5) of this section, as appropriate, and make the notification or license amendment application available for public comment. Before acting on a notification or license amendment request submitted in accordance with this section, the NRC shall schedule a public meeting in the vicinity of the licensee's facility. The NRC shall publish a notice in the *Federal Register* and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site, announcing the date, time, and location of the meeting, along with a brief description of the purpose of the meeting.

## **Commissioner Merrifield**

I encourage NRR and NMSS to work closely on this important rulemaking initiative. It is essential that we standardize the process for allowing a licensee to release part of its reactor facility or site for unrestricted use before receiving approval of its license termination plan. Standardization should help facilitate greater regulatory stability and predictability.