

August 16, 2001

COMMISSION VOTING RECORD

DECISION ITEM: SECY-01-0097

TITLE: FINAL RULE: INTERIM STORAGE FOR GREATER THAN
CLASS C WASTE

The Commission approved the subject paper as recorded in the Affirmation Session Staff Requirements Memorandum (SRM) of August 15, 2001.

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

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

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

VOTING SUMMARY - SECY-01-0097

RECORDED VOTES

| | APRVD | DISAPRVD | ABSTAIN | NOT PARTICIP | COMMENTS | DATE |
|------------------|-------|----------|---------|-----------------|----------|---------|
| CHRM. MESERVE | X | | | | X | 8/7/01 |
| COMR. DICUS | X | | | | X | 7/31/01 |
| COMR. McGAFFIGAN | X | | | | X | 8/2/01 |
| COMR. MERRIFIELD | X | | | | X | 7/20/01 |

COMMENT RESOLUTION

In their vote sheets, the Commission approved a final rule amending 10 CFR Parts 30, 70, 72, and 150. The amendments allow licensing for interim storage of power reactor-related greater than class C (GTCC) waste in a manner that is consistent with licensing the interim storage of spent fuel and would maintain Federal jurisdiction over the interim storage of reactor-related GTCC waste either on or off the reactor site. The amendments provide an option that simplifies and clarifies the licensing process and reduces the potential burden on licensees, the U.S. Nuclear Regulatory Commission (NRC), and Agreement States, with no adverse effect on public health and safety, or the environment. Subsequently, the comments of the Commission were noted in an Affirmation Session SRM issued on August 15, 2001.

Commissioner Comments on SECY-01-0097

Chairman Meserve

SECY-01-0097 concerns a final rule that would amend 10 CFR Parts 30, 70, 72, and 150 to allow licensing for storage of power reactor-related greater than Class C waste (GTCC waste) in a manner consistent with the licensing of spent fuel. The final rule would maintain exclusive Federal jurisdiction over the storage of reactor-related GTCC waste either on or off the reactor site. I approve the staff's proposed action, subject to edits to the notice.

The comments submitted by certain States suggest that the Commission's action in this matter might be seen as an intrusion on authority that has been relinquished to Agreement States. Most such waste is found at sites of power reactors licensed under part 50, where, pursuant to Section 274(c)(1) of the Atomic Energy Act and 10 C.F.R. §150.15(a)(1), it clearly is subject to exclusive NRC jurisdiction during operations. An argument might be made that the Commission has not previously excluded State jurisdiction over reactor-related GTCC waste after shut-down, nor excluded State jurisdiction over such waste that may be located away from the reactor site. But this argument arises only because the Commission has not previously had the opportunity to undertake a focused consideration of the matter. No agreement with a State includes language that provides explicit authority for a State to exercise jurisdiction over such material. And, because the Commission has sole jurisdiction over GTCC waste during reactor operations and, pursuant to Sections 3(b)(1)(D) and 3(b)(2) of the Low Level Radioactive Waste Policy Amendments Act, also has jurisdiction over the disposal of such waste, it is only reasonable for the NRC to retain jurisdiction during the interim period between reactor shut down and disposal. In this context, the language of Sections 274(c)(1) and (4) should be construed with sufficient flexibility as to allow the achievement of a sensible result.

My approval of the final rule is subject to the attached edits of the Federal Register notice. The edits are extensive and are intended to clarify various aspects of the notice.

Commissioner Dicus

With respect to the complexities associated with the technical nature and jurisdictional issues of this rulemaking activity, I want to commend the staff on doing an excellent job. I believe that amending the regulations of 10 CFR Part 72 to allow for the interim storage of reactor-related Greater Than Class C (GTCC) waste at an independent spent fuel storage installation or a monitored retrievable storage installation, will provide both efficiencies and burden reductions to both the NRC and Part 50 reactor licensees, while maintaining protection of the public, the worker, and the environment.

Additionally, with respect to fact that reactor-related GTCC waste is already under Federal jurisdiction during the operating life of the plant, and with the ultimate disposal of such GTCC waste also being under Federal jurisdiction, I remain supportive of maintaining Federal jurisdiction over GTCC waste during the period between Part 50 license termination and ultimate disposal. With current regulations requiring the disposal of such wastes in a geologic repository in the absence of specific disposal requirements, coupled with the knowledge that the Barnwell low-level waste disposal facility being the only disposal site accepting similar type wastes, but at significantly reduced concentrations (less than 1% above the Class C radionuclide concentration limits specified in Part 61.55), I do not believe that there would be any reduction in Agreement

State regulatory authority. I also believe that both the Atomic Energy Act of 1954, as amended, and the Low-Level Radioactive Waste Policy Amendments Act, 1985, appropriately clarify Federal responsibility over the regulation of GTCC waste.

Commissioner McGaffigan

I approve publication of the proposed amendments to 10 CFR Part 72 to allow for the interim storage of reactor-related Greater Than Class C (GTCC) waste at an independent spent fuel storage installation or a monitored retrievable storage installation. Since the Commission had its first opportunity in March 1997 to address this important issue, I have been a strong proponent of this rulemaking which provides for consistent regulatory control over the storage of reactor-related GTCC and flexibility for licensees in selecting a regulatory approach for storage of GTCC after termination of their Part 50 licenses. The final rule also reduces the regulatory burden both for NRC and its licensees while protecting public health and safety and the environment. It is for these reasons that I support the final rule and appreciate the staff's efforts to bring this issue to closure. I also offer specific edits to the Federal Register notice as indicated on the attached for the staff's consideration.

Commissioner Merrifield

I approve the staff's recommendation to publish in the Federal Register the final rule for interim storage of reactor-related greater than class C (GTCC) waste. While I am strongly supportive of States' 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 States' rights in this case.

The paper as currently written emphasizes the efficiency of NRC maintaining regulatory control over interim storage of GTCC waste. However, the Commission determined that this action would also maintain a more stable and predictable regulatory environment. Therefore the following paragraph should be inserted before the first full sentence on page 12.

The NRC requested Agreement State input on ways in which Agreement States, if permitted to take jurisdiction over reactor-related GTCC waste, would ensure consistency with a national regulatory scheme. Only two States responded to this request. Though both States asserted that their programs would be compatible with federal regulations, neither said that their programs would be identical. Indeed, one state argued that each state program should be evaluated on its own. The States have rightly pointed out that States have already developed regulatory programs for Class A, B, C, and non-reactor GTCC waste that adequately protect health and safety. The issue, however, is whether a regulatory scheme that would call for back and forth federal jurisdiction over reactor-related GTCC waste, and multiple States' jurisdiction over the same waste in between, promotes a reasonably predictable and stable regulatory environment. In our view, the better reading of the applicable statutes is that Congress' clear intent to give reactor-related GTCC waste special treatment, expressed especially in terms of federal responsibility for disposal of such waste, sets it apart from other waste and calls for exclusive federal jurisdiction over the storage of reactor-related GTCC waste.

In addition, the third paragraph on page 3 should be edited as follows: "...in order to treat GTCC waste **generated or used by commercial nuclear power plants** in a manner similar to that for

spent fuel.”

The last full sentence on page 11 should also be edited as follows: “...disposal of GTCC waste, is an inefficient approach, **that could lead to inconsistent regulation.**”