

March 4, 2003

COMMISSION VOTING RECORD

DECISION ITEM:       SECY-03-0028

TITLE:                   PROPOSED LICENSES TO EXPORT NUCLEAR  
GRADE GRAPHITE TO CANADA AND OTHER  
COUNTRIES FOR NON-NUCLEAR END USE  
(XMAT0403 AND XMAT0404, RESPECTIVELY)

The Commission (with Chairman Meserve and Commissioners Diaz and Merrifield approving in part and disapproving in part) approved the subject paper in part and disapproved in part as recorded in the Staff Requirements Memorandum (SRM) of March 4, 2003. Commissioners Dicus and McGaffigan approved the subject paper.

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 L. 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  
        OIP  
        OGC  
        PDR

## VOTING SUMMARY - SECY-03-0028

### RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	PARTICIP	NOT COMMENTS	DATE
CHRM. MESERVE	X					X 2/26/03
COMR. DICUS	X					X 2/25/03
COMR. DIAZ	X		X			X 2/27/03
COMR. McGAFFIGAN	X					2/24/03
COMR. MERRIFIELD	X		X			X 2/27/03

### COMMENT RESOLUTION

In their vote sheets, Chairman Meserve and Commissioners Diaz and Merrifield approved in part and disapproved in part. Commissioners Dicus and McGaffigan approved the subject paper. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on March 4, 2003.

## Commissioner Comments on SECY-03-0028

### Chairman Meserve

I approve the application for immediate shipment of graphite to Canada based on Canada's impeccable nuclear non-proliferation credentials, the Executive Branch's determination of non-inimicality to the common defense and security, and the need to provide relief to the shipper due to adverse weather conditions for alternate supply and shipping routes.

Further, I approve the applicant's request, as modified by the Executive Branch, for shipment of graphite to a limited subset of end-users. As with Canada, each of those countries are countries with strong nuclear non-proliferation credentials and have provided the U.S. Government with sufficient assurances for non-diversion to nuclear end-users.

I defer the request to approve shipment of the graphite to the other listed end users pending receipt by the Executive Branch of proper assurances of non-nuclear users and determinations of non-inimicality.

I am concerned that the applicant was unaware of export controls on the nuclear-grade graphite product. In addition to full resolution of the ongoing enforcement investigation, I urge the staff to work closely with the Executive Branch and exporting community to prevent similar lapses in seeking appropriate export licensing approvals.

### Commissioner Dicus

I approve the issuance of export license XMAT0403 for a period of five years to SGL Carbon, LLC for the shipment of up to 869,000.0 kg of bulk nuclear grade graphite for the production of various non-nuclear commercial articles by SGL affiliate, Spear Canada. I also approve the issuance of export license XMAT0404 for a period of five years to SGL Carbon, LLC for shipment of up to 11,617,833.0 kg of bulk nuclear grade graphite for the production of various non-nuclear commercial articles to the European Union countries, Czech Republic, Japan, New Zealand, Republic of Korea, and Taiwan. Amendments to XMAT0404 for other requested designations may be made contingent upon receipt of more specific contract information from the applicant on anticipated future exports, and favorable views from the Executive Branch, including U.S. assurances from foreign governments.

The Office of International Programs and the Office of Enforcement should keep the Commission apprized of potential enforcement actions resulting from the applicant's past unauthorized shipments of nuclear grade graphite before October 2002, when the applicant realized that it was in violation of NRC's regulations.

### Commissioner Diaz

I approve the staff's recommendations 1 and 2, *i.e.*, issuance of export license XMAT0403 (Canada) for a period of five years, and export license XMAT0404 (only European Union countries, Czech Republic, Japan, New Zealand, Republic of Korea, and Taiwan) for a period of five years, subject to continuing assurance from the staff that the pending consideration of

enforcement action does not raise grounds for which the applications should not be issued or should be revoked.

I note that OIP states that it has looked at “recent Department of State telegrams and other sources of information and found nothing which would preclude issuing the licenses to destinations approved by the Executive Branch.” Thus, my approval is also based on the understanding that the review of “other sources of information” has included any relevant information from the intelligence community.

At this time, I am not prepared to support any action on other requested destinations for requested export license XMAT404. Thus, I do not approve the staff’s recommendation number 3. Not only are government-to-government assurances for such destinations required, but the Executive Branch also indicates that it “will require more specific information from the applicant with respect to past and anticipated future exports before the assurances can be requested.” I believe that the Commission should review and formally approve or disapprove such additional amendments if and when all necessary information and views are obtained.

#### Commissioner Merrifield

I approve, in part, and disapprove, in part. I approve the staff’s recommendations 1 and 2 concerning the issuance of export license XMAT0403 to Canada for a period of five years, and export license XMAT0404 to the European Union countries, Czech Republic, Japan, New Zealand, Republic of Korea and Taiwan for a period of five years. I do not approve staff recommendation 3. I wish to associate myself with the very thoughtful analysis and comments provided by Commissioner Diaz.