

May 11, 2004

COMMISSION VOTING RECORD

DECISION ITEM:      SECY-04-0035

TITLE:                RESULTS OF THE LICENSE TERMINATION RULE  
                         ANALYSIS OF THE USE OF INTENTIONAL MIXING OF  
                         CONTAMINATED SOIL

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of May 11, 2004.

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 Diaz  
         Commissioner McGaffigan  
         Commissioner Merrifield  
         OGC  
         EDO  
         PDR

VOTING SUMMARY - SECY-04-0035

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	3/17/04
COMR. McGAFFIGAN	X				X	4/30/04
COMR. MERRIFIELD	X				X	4/12/04

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 May 11, 2004.

## Commissioner Comments on SECY-04-0035

### Chairman Diaz

I approve the staff recommended Option 3 subject to the following comment. Contrary to the staff suggestion that the Commission be consulted, it should be left to the staff's discretion to make decisions regarding sites where the licensee proposes to use clean soil outside the contaminated area footprint to meet the License Termination Rule (LTR) release criteria. Clearly, there may be sites where this approach is the most practical and cost effective way to meet the LTR release criteria. I also approve modifying the Regulatory Information Summary and guidance, currently under development to address other License Termination Rule (LTR) issues, to include the Commission's decision on intentional mixing. The staff has conducted a very comprehensive and detailed analysis of this important matter, and has developed a reasonable and workable solution consistent with the intent of the LTR. Finally, the staff is encouraged to continue working with the Environmental Protection Agency on its Advanced Notice of Proposed Rulemaking, on management of low-activity radioactive waste disposal at certain EPA sites, to determine the implications of intentional mixing of contaminated soil, particularly using the mixing so as to meet waste acceptance criteria at a disposal site.

### Commissioner McGaffigan

I approve the staff's recommended Option 3 for consideration of intentional mixing of contaminated soil to meet the release criteria in the LTR on a case-by-case basis. The staff should also continue its current approach of allowing intentional mixing for meeting waste acceptance criteria at offsite disposal facilities. By approving the staff's recommended option, I am also approving the staff's proposal to include intentional mixing of contaminated soils in the RIS and to develop guidance documents.

### Commissioner Merrifield

I approve the staff's recommended option 3 in SECY-04-0035 concerning the intentional mixing of contaminated soil under limited circumstances. Specifically, the staff can consider intentional mixing of contaminated soil to meet the release criteria in the license termination rule on a case by case basis under limited circumstances and continue the current practice of allowing intentional mixing for achieving waste acceptance criteria at offsite disposal facilities for limited waste disposals.

In making this vote, I want to affirm my positions on some issues which were discussed in the paper. It is still my position that dilution of waste material solely for the purpose of altering the classification of waste is unacceptable. I recognize that actions taken to process a waste stream for safety or technological reasons that are justified may result in reclassification of the waste produced, and such operation is acceptable to me. I also recognize and accept the physical reality that some inevitably mixing of contaminated soil may occur in excavation operations associated with the cleanup of some sites.

I am not opposed to the idea of mixing contaminated material of various concentrations to achieve the acceptance criteria for either the license termination rule or an approved disposal facility so that a specific site can complete decommission. Meeting the waste acceptance criteria for a specific disposal facility or the license termination rule is not the same issue as

changing the waste classification. But I do not want the intentional mixing of material to be the first or only option a licensee considers when decommissioning a site or facility. Mixing of contaminated material should be considered in the overall approach to site cleanup, which includes the application of the as low as reasonably achievable (ALARA) principal and considers only those cases where it can be demonstrated that removing the soil would not be reasonably achievable. An example might be a site with a severe shortfall of funding to complete cleanup and insufficient funds are available to remove the contaminated material but allowing mixing of contaminated soil may allow disposal at a less expensive disposal facility or allow achieving the license termination rule criteria. For this reason, I can support the staff's proposed option 3, which would review site specific applications on a case by case basis. However, when it comes to intentionally mixing clean soil (particularly if the clean soil comes from off-site) with contaminated soil to achieve a waste acceptance criteria, I have serious reservations; and the Commission should be directly consulted if such a proposal is submitted by a licensee. This consultation should occur after the staff has conducted a technical review and is prepared to make a recommendation on the application. Again, this action is consistent with the staff's proposed option 3.