



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

June 30, 2005

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-05-0073

TITLE: IMPLEMENTATION OF NEW USNRC RESPONSIBILITIES  
UNDER THE NATIONAL DEFENSE AUTHORIZATION ACT  
OF 2005 IN REVIEWING WASTE DETERMINATIONS FOR  
THE USDOE

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of June 30, 2005.

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

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
Commissioner Jaczko  
Commissioner Lyons  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-05-0073

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	6/22/05
COMR. McGAFFIGAN	X				X	6/7/05
COMR. MERRIFIELD	X				X	5/17/05
COMR. JACZKO	X				X	6/23/05
COMR. LYONS	X				X	6/13/05

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on June 30, 2005.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN DIAZ

SUBJECT: **SECY-05-0073 - IMPLEMENTATION OF NEW U.S. NUCLEAR REGULATORY COMMISSION RESPONSIBILITIES UNDER THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2005 IN REVIEWING WASTE DETERMINATIONS FOR THE U.S. DEPARTMENT OF ENERGY**

Approved <sup>w/comments</sup> XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS:

I approve, subject to the attached comments.

*Annette Vietti-Cook*  
SIGNATURE

June 22, 05  
DATE

Entered on "STARS" Yes  No

05 MAY - 3 AM 11:05  
CHAIRMAN REC'D

## CHAIRMAN DIAZ'S COMMENTS ON SECY-05-0073

I approve the staff's plans for implementing the NRC's new responsibilities under the National Defense Authorization Act of 2005 in reviewing waste determinations for the U.S. Department of Energy, as described in SECY-05-0073, subject to the following comments. First, I agree with Commissioner Merrifield that the staff should continue to brief the Commission Technical Assistants as additional reviews are completed until the Standard Review Plan (SRP) is implemented and thereafter only for reviews involving unusual or unique circumstances. Second, I agree with Commissioner Merrifield that the staff should ensure that it informs the Commission, through a Technical Assistants briefing or other mechanism, how the staff intends to implement the unique monitoring activities to ensure compliance, report findings of noncompliance, and coordination with affected State representatives. Third, similar to Commissioner Merrifield, I recommend that the staff utilize ICRP-26 methodology to the extent feasible in assessing dose, even if the staff also has to calculate certain doses using outdated ICRP-2 methodology. Finally, the staff should provide the completed Standard Review Plan to Commission for information and brief the Commission or the Commission's Technical assistants prior to its adoption.

I would also note, however, that ACNW has indicated to NMSS that they will need .9 FTE and \$10,000 for travel in FY06 and FY07. The Commission approved ACNW's action plan for FY2005-2006, including WIR as a tier-one topic, under the assumption that it would be accomplished with currently budgeted resources. The Commission's envisioned that ACNW would focus on the overall staff process for addressing WIR and not every specific WIR review. Given the NMSS staff's limited resources for this activity and the conditions of Commission approval, ACNW should re-prioritize the activities in its action plan so as to support its activities regarding WIR with currently budgeted resources.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

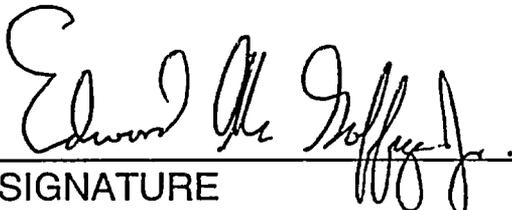
SUBJECT: **SECY-05-0073 - IMPLEMENTATION OF NEW U.S. NUCLEAR REGULATORY COMMISSION RESPONSIBILITIES UNDER THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2005 IN REVIEWING WASTE DETERMINATIONS FOR THE U.S. DEPARTMENT OF ENERGY**

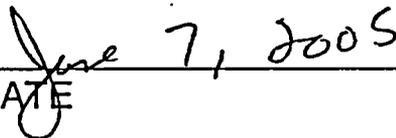
Approved  <sup>w/comments</sup> Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS:

See attached comments.

  
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SIGNATURE

  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

Commissioner McGaffigan's Comments on SECY-05-0073

I approve the staff's recommended approach for implementing the NRC's responsibilities under the National Defense Authorization Act of 2005. I believe it is important that the staff endeavor to make interactions with the Department of Energy during the review and monitoring of the waste determinations as open to the public and interested stakeholders as possible. The process outlined by the staff in this paper appears to do just that.

I agree with Commissioner Merrifield that the staff should continue to brief the Commissioner Technical Assistants as reviews are completed until the Standard review plan is implemented. I also agree with Commissioner Merrifield that the staff's approach should include the flexibility to use the latest dose methodologies and calculational methods. The staff should work with OGC to ensure this flexibility is maintained.

*EMG*

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MERRIFIELD

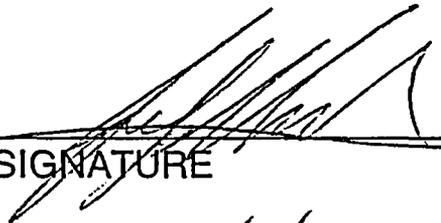
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Approved  Disapproved  Abstain

Not Participating

COMMENTS:

*See attached comments.*

  
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SIGNATURE

*5/17/05*  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

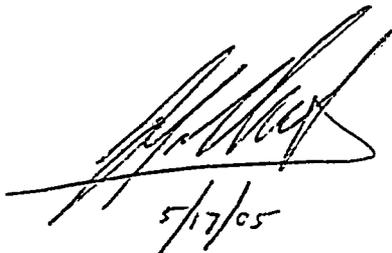
Comments from Commissioner Merrifield on SECY-05-0073:

I approve, as revised in the following paragraphs, the staff recommendations provided in SECY-05-0073, Implementation of New U.S. Nuclear Regulatory Commission Responsibilities Under the National Defense Authorization Act of 2005 in Reviewing Waste Determinations for the U.S. Department of Energy.

First, I approve the staff recommendation to transform these activities into the normal review process where the Commission does not need to get involved into the details of the review. The staff proposal is to brief the Commissioner Technical Assistants on the first review and implement a Standard Review Plan. However, the Standard Review Plan is not scheduled to be implemented until sometime in 2006. Because of the high level of Congressional interest in this program, until the Standard Review Plan is implemented, staff should continue to brief the Commissioner Technical Assistants as additional reviews are completed. Once the Standard Review Plan is implemented, these routine Commissioner Technical Assistants briefings can be limited to reviews involving unusual or unique circumstances. The completed Standard Review Plan should be provided to the Commission for informational purposes. I believe this is also an area that could warrant a future Commission meeting, perhaps just before the Standard Review Plan is completed.

Unique aspects of this Congressional direction include NRC monitoring activities to ensure compliance (with no enforcement authority), findings of noncompliance being reported to Congress, and coordination of our activities with the affected State representatives. If these unique activities are not addressed in the Standard Review Plan, at the appropriate time staff should inform the Commission, either through a Commissioner Technical Assistants briefing or some other mechanism, how the staff intends to implement these additional responsibilities.

However, one aspect of the staff recommendations is of concern. Specifically, the staff plan to implement a very strict interpretation of the performance objectives of 10 CFR 61 (specifically subpart C) and its related guidance. I understand that this position is the most easily defensible position from a plain reading of the Congressional language, but it is not the only defensible position. A strict interpretation of 10 CFR Part 61 and its guidance would provide dose limits of 25 mrem to the whole body, 75 mrem to the thyroid, and 25 mrem to any other organ using the International Commission on Radiological Protection - 2 (ICRP-2) methodology. ICRP-2 methodology represents outdated science and I do not believe that Congress conscientiously directed the Commission to use outdated science. The only reason that 10 CFR Part 61 has not been updated to the latest standards is that the NRC has not licensed a low level waste disposal facility and it was not efficient to expand resources in an area where no NRC activity is occurring. The Commission's current radiological protection requirements use ICRP-26 methodology, which basically uses a standard of 25 mrem total effective dose equivalent (TEDE). I would expect this staff review to use the latest science to the extent practical. Even if for some reason the staff does have to calculate a dose to the thyroid or some other organ, I would expect the calculations to be conducted with the latest proven scientific methods and not be restricted to methods employed in ICRP-2. Staff and OGC should work closely together to ensure that we are not being forced to implement outdated science simply because that is the easiest path to take.



5/17/05

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER JACZKO

SUBJECT: **SECY-05-0073 - IMPLEMENTATION OF NEW U.S. NUCLEAR REGULATORY COMMISSION RESPONSIBILITIES UNDER THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2005 IN REVIEWING WASTE DETERMINATIONS FOR THE U.S. DEPARTMENT OF ENERGY**

Approved  Disapproved  Abstain

Not Participating

COMMENTS:

Please see attached comments.

  
\_\_\_\_\_  
SIGNATURE

9/23/05  
\_\_\_\_\_  
DATE

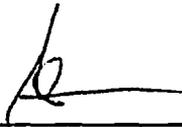
Entered on "STARS" Yes  No

**Commissioner Jaczko's Comments on SECY-05-0073  
Implementation of New U.S. Nuclear Regulatory Commission Responsibilities  
under the National Defense Authorization Act of 2005 in Reviewing Waste  
Determinations for the U.S. Department of Energy**

I approve, as modified by the below paragraphs, the staff recommendations in SECY-05-0073 for reviewing U.S. Department of Energy waste determinations under the National Defense Authorization Act (NDAA) of 2005. I appreciate the staff's effort in providing this paper to the Commission concerning the implementation of our new responsibilities under the NDAA. I also recognize the difficulty the staff faces in making these waste determinations given that there is no regulatory regime in place and the vague congressional guidance. In addition, the staff, in making its determination on the Department of Energy's waste disposal plans, should ensure that the technical basis for our decisions are transparent, traceable, and complete. Thus, the staff should take the time necessary to complete its reviews to ensure the protection of the public health and safety.

I appreciate the staff's awareness of the need to ensure that its interactions with the DOE are fully open to the public. I agree with the staff that the DOE be treated like a "licensee" in applying the criteria of Management Directive 3.5 for public attendance at meetings involving NRC staff. I do not agree, however, with the use of the guidelines established in SECY-00-0158, that would allow DOE to proposed alternate criteria for NRC review to potentially have an interaction closed to the public.

I appreciate the staff's comment concerning when it would seek Commission input on future reviews that raise unique policy issues given that we are in the process of determining how the Commission may proceed with implementing its new responsibilities. I believe the staff should provide each technical evaluation report to the Commission for review and approval until the staff has developed, and the Commission has approved, a standard review plan for implementing these new responsibilities under the NDAA.

  
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Gregory B. Jaczko

6/23/07  
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER LYONS

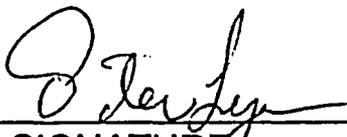
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Approved  Disapproved  Abstain

Not Participating

COMMENTS:

See attached comments.

  
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SIGNATURE

6/13/05  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

**Commissioner Lyons Comments on SECY-05-0073**

I approve the staff's proposed approach for implementing the new NRC's responsibilities under the National Defense Authorization Act of 2005. Since providing technical consultation and monitoring for waste determinations made by DOE is a new responsibility, it is essential that staff ensure all stakeholders are appropriately informed of NRC processes and activities.

I agree with Commissioner Merrifield that the staff should continue to brief the Commissioner Technical Assistants as reviews are completed until the Standard Review Plan is implemented. I also concur with Commissioner Merrifield that the Staff's approach should include the flexibility to use the latest dose modeling methodologies.