



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

April 28, 2006

SECRETARY

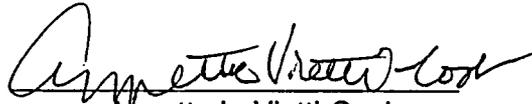
COMMISSION VOTING RECORD

DECISION ITEM: SECY-06-0049

TITLE: ACTIONS RELATED TO REGULATION OF MAXIMUM  
CONTAMINATION LEVELS FOR URANIUM IN DRINKING  
WATER

The Commission (with Chairman Diaz and Commissioner McGaffigan approving in part and disapproving in part, Commissioners Merrifield and Lyons approving, and Commissioner Jaczko disapproving) acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of April 27, 2006.

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 Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
Commissioner Jaczko  
Commissioner Lyons  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-06-0049

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X	X			X	3/28/06
COMF. McGAFFIGAN	X	X			X	3/24/06
COMF. MERRIFIELD	X				X	3/28/06
COMF. JACZKO		X			X	4/4/06
COMF. LYONS	X				X	3/30/06

COMMENT RESOLUTION

In their vote sheets, Chairman Diaz and Commissioner McGaffigan approved in part and disapproved in part, Commissioners Merrifield and Lyons approved, and Commissioner Jaczko disapproved 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 April 27, 2006.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: CHAIRMAN DIAZ  
SUBJECT: **SECY-06-0049 - ACTIONS RELATED TO  
REGULATION OF MAXIMUM CONTAMINATION  
LEVELS FOR URANIUM IN DRINKING WATER**

Approved  *NJD* Disapproved  *NJD* Abstain \_\_\_\_\_  
Not Participating \_\_\_\_\_

COMMENTS:

See attached comments.

*Nils J Diaz*  
\_\_\_\_\_  
SIGNATURE  
*March 28, 06*  
\_\_\_\_\_  
DATE

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

### Chairman Diaz's Comments on SECY-06-0049

I appreciate the staff's comprehensive analysis of the issue, and the full presentation of the pros and cons of all of the available options. I approve the following staff recommendations:

- Develop a new general license specific to drinking water treatment facilities;
- Use of enforcement discretion until a new general license is implemented, provided certain provisions are met to protect public health and safety;
- Issue a generic communication to describe NRC expectations with regard to water treatment facilities, and;
- Continue to review the R.M.D. Operations, LLC, license application as a multi-site service provider.

I disapprove the recommendation to develop the new general license as an interim final rule. The NRC has not regulated this industry before, and I believe that we should fully engage the water treatment industry and other external stakeholders, the Environmental Protection Agency, and the Agreement States on a proposed rule. Therefore, the staff should follow the normal rule development process for implementation of a new general license specific for drinking water treatment facilities.

Concerning the license application from R.M.D. Operations, LLC, there may be policy issues which need to be addressed before this application review can be completed (e.g., decommissioning responsibility). I expect that the staff will provide an analysis and recommendations regarding all policy matters to the Commission.

Since water treatment facilities are a new category of licensees, the NRC has a unique opportunity to utilize our communication tools to their full advantage. I urge staff to carefully consider the best ways to engage stakeholders in the rulemaking process and make this effort a positive example of NRC public outreach.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

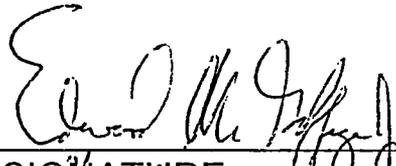
SUBJECT: **SECY-06-0049 - ACTIONS RELATED TO  
REGULATION OF MAXIMUM CONTAMINATION  
LEVELS FOR URANIUM IN DRINKING WATER**

Approved X <sup>in part</sup> <sup>w/comments</sup> Disapproved X <sup>in part</sup> Abstain \_\_\_\_\_

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

COMMENTS:

See attached comments.

  
\_\_\_\_\_  
SIGNATURE  
March 27, 2006  
\_\_\_\_\_  
DATE

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

### Commissioner McGaffigan's Comments on SECY-06-0049

First of all, I believe that this paper, the staff requirements memorandum (SRM), and the Commission voting record should be made publicly available immediately upon completion of the SRM. There is nothing in this paper that should be kept from our EPA colleagues, Agreement States, or public stakeholders. The sooner this problem and our planned approach for addressing it are aired, the better the decision-making will be at the State and local level.

I approve the various staff recommendations with one possible exception. I simply do not understand why we can not complete a final rule in 20 months. This is not a profound rulemaking. Deep new technical insights are not required. The process of concentrating uranium at community water systems (CWSs) is extremely unlikely to expose workers or members of the public to anything more than a very small fraction of the public dose limit. The real issue seems to be disposal of the uranium once it is concentrated. It may prove to be a very attractive alternative feed for uranium mills. Or it may need to be disposed of at a low-level waste site or RCRA Subtitle C disposal site. We and our Agreement State colleagues presumably do not want this material going to landfills.

Coordination with the Agreement States will be necessary in the rulemaking, and that may result in some delay in getting a proposed rule before the Commission. But if the staff is transparent in developing this proposed rule, for example by putting draft rule language on the web site as soon as possible to identify issues and to obtain comments from EPA, the States, community water systems, and others, the proposed rule comment period and final rule development may proceed very quickly. In short, I would like to follow the normal proposed rule / final rule process and have that fail, before resorting to an interim final rule. If I were Director of NMSS, I would expect my staff to have draft proposed rule language on the NRC web page by June of this year.

I would also note that the fundamental problem here is that EPA's rule has inadvertently caused a fair number of entities to be brought under NRC regulatory authority. As discussed briefly in enclosure 4, three years ago the staff proposed seeking legislation to limit NRC authority to uranium and thorium that is extracted or purposely concentrated for the use of that material. I have great confidence that if the CWS uranium-bearing material had met the definition of technologically-enhanced naturally-occurring radioactive material (TENORM), the States and EPA would have been able to cope with this issue under their regulations and guidance. It may be time once again to reconsider the Commission's SECY-03-0068 decision not to seek such legislation, a decision which I opposed. That is not a solution that will take care of this problem in time for the community water systems. But I am more convinced now than in 2003 that it is the right thing to do.

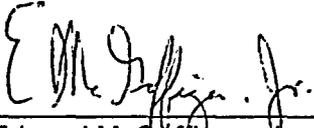
I would also note that I wish that the staff had talked with the Agreement States about this issue before sending us this paper, as is the normal process for an NMSS paper. The staff has experience with a particular pilot project in Virginia, but the States, particularly Western Agreement States and New Hampshire, may have similar experiences. And the staff's solutions will only make sense if followed by the Agreement States as well as NRC.

I approve the staff's recommendation to issue a generic communication (GC) in partnership with the Agreement States to each CWS on EPA's mailing list which describes NRC's expectations of CWSs while staff prepares a proposed rule. Among the items that staff identified in Option 3 of Enclosure 5 for inclusion in a GC, the staff should take particular care

to clearly address NRC's expectations for disposal of uranium-bearing materials. Compliance with NRC-approved alternative feed or waste disposal practices should be a principal consideration in NRC's decision to keep a CWS under enforcement discretion. Hopefully, the Agreement States will also take this approach for CWSs in their jurisdiction.

Under Option 2 of Enclosure 5, the staff states that it would be extremely difficult to identify which CWSs would require a specific license under NRC's current regulations. However, by working with EPA and the Agreement States, the staff should generate a list of CWSs that could fall in this category, ranked by the expected source material accumulation rate at each facility. This information should be used to risk-inform NRC's Regional inspection program (and hopefully the Agreement States inspection programs) for CWSs that are under enforcement discretion.

Finally, the staff should continue processing the R.M.D. Operations, LLC, license application. I personally see no extraordinary impediments to issuing such a license. Indeed, R.M.D. may well prove to be a very efficient means of dealing with the disposal issue, particularly if, as I suspect, the uranium-bearing material proves to be an attractive alternate feed for uranium mills. The staff should explore with Agreement States the reciprocity issue raised in the discussion of Option 1A in Enclosure 4.

 3/24/06  
Edward McGaffigan, Jr. (Date)

NOTATION VOTE

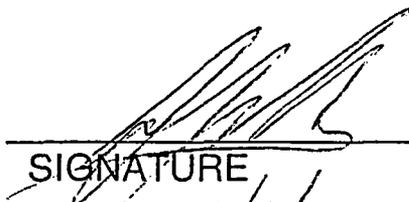
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER MERRIFIELD  
SUBJECT: **SECY-06-0049 - ACTIONS RELATED TO  
REGULATION OF MAXIMUM CONTAMINATION  
LEVELS FOR URANIUM IN DRINKING WATER**

Approved  Disapproved  Abstain

Not Participating

COMMENTS: *See attached comments*

  
\_\_\_\_\_  
SIGNATURE  
\_\_\_\_\_  
DATE *3/28/06*

Entered on "STARS" Yes  No

Comments from Commissioner Merrifield on SECY-06-0049:

I approve, with one exception and several comments provided below, the staff recommendations provided in SECY-06-0049, Actions Related to Regulation of Maximum Contamination Levels for Uranium in Drinking Water. This effort is a result of an unintended impact on the NRC of a regulatory change by EPA to its drinking water standards as a result of Congressional action. It could create a large number of new NRC licensees from a group of entities who never intended to become NRC licensees and could have a significant impact on them both operationally and financially. I complement the staff for developing proposed actions for adequately protecting the public health and safety and at the same time minimize the impact on this new community.

Although I approve the staff's plans to develop a new general license specific to drinking water treatment facilities, the effort should be a final rule not an interim final rule. While I acknowledge the potential challenges that must be addressed in the final rule, I believe it can be done in a shorter time frame than 30 months for many of the same reasons outlined in Commissioner McGaffigan's vote. Staff should proceed with a goal of 20 months for this effort. I believe if staff adequately communicates the purpose of the rulemaking and articulates the potential consequences of alternatives that there will be more general acceptance from the potential new licensees.

I agree with Commissioner McGaffigan that it would have been better for the staff to have worked with the Agreement States earlier in this process. Staff will need to expeditiously involve the Agreement States in future activities on this issue. In addition, staff should consider some type of communication to non-Agreement States. Even though the NRC regulates activities in these states, our actions could have a direct impact on an industry vital to the State's interest; and we should inform them of our activities and the justification for these actions.

I also approve the judicious use of enforcement discretion to minimize the impact on the drinking water treatment industry, NRC, and Agreement States until a new general license is implemented. A key to the granting of the enforcement discretion is the site owner agreeing to protecting the health of the public and its workers, safely managing the radioactive material, and appropriately disposing the material. The expectations of this effort should be clearly detailed in an overall generic communication to the water treatment community, as recommended by the staff.

Staff should continue to process the R.M.D. Operations, LLC license application as a multi-site provider and keep the Commission informed of this effort. Policy and legal issues should be elevated quickly through the management chain so that a decision can be reached in a timely manner on this license application.

Finally, I have no objection to the public release of this SECY paper, the final Staff Requirements Memoranda, and the Commission voting record.

  
3/28/06

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER JACZKO  
SUBJECT: **SECY-06-0049 - ACTIONS RELATED TO  
REGULATION OF MAXIMUM CONTAMINATION  
LEVELS FOR URANIUM IN DRINKING WATER**

Approved \_\_\_\_\_ Disapproved  x  Abstain \_\_\_\_\_

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

COMMENTS:

See attached comments.

*Joshua C. Mattson for*  
*Gregory B. Jaczko*  
\_\_\_\_\_  
SIGNATURE  
*4/4/06*  
\_\_\_\_\_  
DATE

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



NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER LYONS  
SUBJECT: **SECY-06-0049 - ACTIONS RELATED TO  
REGULATION OF MAXIMUM CONTAMINATION  
LEVELS FOR URANIUM IN DRINKING WATER**

Approved   x   Disapproved        Abstain       

Not Participating       

COMMENTS:

See attached comments.

Peter B. Lyons   
\_\_\_\_\_  
SIGNATURE  
3/ 30 /06  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes   ✓   No

**Commissioner Lyons' Comments on SECY-06-0049**

I approve the staff recommendations provided in SECY-06-0049 with the exception of development of a new general license specific to drinking water treatment facilities as an interim final rule. I agree with Commissioners McGaffigan and Merrifield that the rule should follow the normal proposed rule/final rule process because it is important that we obtain comments from the various stakeholders. I also agree with their comments on Agreement States coordination as early as possible and throughout the rulemaking process. I realize that going through the normal process might take longer, but the result will be a well coordinated and informed product. I also agree with Commissioner McGaffigan that the rulemaking could be shorter than 30 months by taking the various steps outlined by Commissioner McGaffigan as well as forgoing the rulemaking plan.

Staff should continue to process the R.M.D Operations, LLC license application as a multi-site service provider license. Staff should notify the Commission of any policy or legal issues that might arise during the license review process.

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Peter B. Lyons                      Date