



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

December 10, 2007

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-07-0177

TITLE: PROPOSED RULE: DECOMMISSIONING PLANNING (10  
CFR PARTS 20, 30, 40, 50, 70, AND 72; RIN: 3150AH45)

The Commission (with Chairman Klein and Commissioner Lyons agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of December 10, 2007. Commissioner Jaczko approved in part and disapproved in part.

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 Vietti-Cook", with a horizontal line underneath.

Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein  
Commissioner Jaczko  
Commissioner Lyons  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-07-0177

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X				X	10/30/07
COMR. JACZKO	X	X			X	11/20/07
COMR. LYONS	X				X	10/25/07

COMMENT RESOLUTION

In their vote sheets, Chairman Klein and Commissioner Lyons approved the staff's recommendation and provided some additional comments. Commissioner Jaczko approved in part and disapproved in part. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on December 10, 2007.

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary

**FROM:** CHAIRMAN KLEIN

**SUBJECT:** SECY-07-0177 – PROPOSED RULE:  
DECOMMISSIONING PLANNING (10 CFR  
PARTS 20, 30, 40, 50, 70, AND 72; RIN: 3150  
-AH45)

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

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

**COMMENTS:** Below \_\_\_\_\_ Attached  None \_\_\_\_\_

See attached comments.

  
\_\_\_\_\_  
**SIGNATURE**

10/30/07  
\_\_\_\_\_  
**DATE**

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

### Chairman Klein's Comments on SECY-07-0177

I approve the staff recommendations in SECY-07-0177 concerning a proposed rule on decommissioning planning. The ultimate goal of preventing future legacy sites<sup>1</sup> in the decommissioning process is important to the nuclear program, particularly as it directly relates to increasing public confidence that the overall process, including decommissioning, will be safely managed. Because this rulemaking addresses both technical and financial issues, there are many subtle issues that will have consequences, both intended and potentially unintended. I commend the staff in its efforts to reach out to the affected stakeholders as part of the rulemaking development process. The staff has done a good job defending the various positions taken in the draft rule language and it is now time to seek formal public comments. Because of the complexity of this rulemaking, staff should aggressively encourage public comments so that the decision on the final rule will appropriately consider all relevant issues and identify and resolve unintended consequences if they exist. I also strongly agree with the staff's proposal that the outreach process include the release of draft guidance documents concurrently with publishing the proposed rule.



Dale E. Klein

10/13/07

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<sup>1</sup> A legacy site is a facility that is in a decommissioning status with complex issues and where the owner cannot complete the decommissioning work for technical or financial reasons.

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER JACZKO  
SUBJECT: SECY-07-0177 – PROPOSED RULE:  
DECOMMISSIONING PLANNING (10 CFR  
PARTS 20, 30, 40, 50, 70, AND 72; RIN: 3150  
-AH45)

Approved  Disapproved  Abstain

Not Participating

COMMENTS: Below  Attached  None

  
\_\_\_\_\_  
SIGNATURE

11/20/07  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

**Commissioner Jaczko's Comments on SECY-07-0177**  
**Proposed Rule: Decommissioning Planning**  
**(10 CFR Parts 20, 30, 40, 50, 70, and 72)**

I approve in part and disapprove in part of the staff's recommendation to publish, in the *Federal Register*, the proposed rule on decommissioning planning. Decommissioning Nuclear Regulatory Commission (NRC) licensed facilities is one of the most important tasks undertaken by this agency. While I believe that the proposed amendments would make improvements to the planning process, I am concerned about leaving the residual radioactivity within the site and its environs where it has the potential to become an even larger liability for decommissioning in the future.

My primary concern with the rule involves the reluctance of the staff to apply the requirements in the proposed section 20.1406 to more broadly require existing licensees to remediate accidental releases of radiological more quickly. The change proposed by the staff would only apply to such contamination that violated other existing regulatory requirements. Therefore, the staff proposed change would not require any additional more immediate remediation of inadvertent spills. To reduce future liability and facilitate eventual decommissioning the proposed amendments should be modified to require licensees to remediate residual radioactive contaminated areas that would not meet the restricted release dose limits applied at the time of final decommissioning.

Spills that occur on the owner controlled area of licensed facilities or licensee facilities do not in general create consequences for members of the public. These spills, however, do pose potential financial consequences for the licensees which could prevent the complete decommissioning of certain facility, an issue that is important for the commission's ultimate responsibility to protect public health, public safety and the environment. More importantly, not remediating these spills has been demonstrated to complicate future decommissioning. Any activity which complicates decommissioning ultimately adds cost to the decommissioning process.

The Commission has repeatedly been told by industry and technical experts that immediate remediation improves the prospects for decommissioning successfully. During the Commission briefing on decommissioning in 2005 Kurt Haas, a representative from Big Rock Point, indicated that rapid follow-up of contamination events would pay huge dividends when prior to decommissioning. Additionally, the Advisory Committee for Nuclear Waste and Materials in a briefing on November 14, 2007, indicated that spills into the subsurface do not get better with time other than through the natural decay of the radionuclides involved. To address this concern, the Committee stated that contamination should be cleaned up as soon as it is identified

As a result, I do not support the proposed modification to 20.1406. Instead the staff should modify the language to ensure the rapid remediation of spills that would challenge the decommissioning dose limits.

On the issue of financial assurance I also have some concerns with use of the parent guarantee and self-guarantee options. The guarantee and self-guarantee options are usually based on assets held by the guarantor that are not easily converted into funds for decommissioning. The need for a guarantor to sell-off assets to fund decommissioning could be significantly delayed by creditors and others with potential claims on the guarantor's assets if they were in financial distress. Thus, I believe that

the proposed amendments regarding financial assurance should be modified to disallow the guarantee and self-guarantee options because of the risk they pose to fully fund decommissioning.

In general, I appreciate the work of the staff in preparing this important rulemaking. The Commission, with many different members, has been working for some time to improve the decommissioning program to reduce the likelihood of legacy waste sites. This proposed rule makes significant progress in several areas. I am particularly pleased with the staff's efforts to reach out to stakeholders. I encourage them to continue these activities especially in areas where decommissioning has been completed or is ongoing. The staff should also hold a workshop and invite these stakeholders, including inviting state and local officials of non-Agreement States. I believe that reaching out to a broader group of stakeholders, specifically those impacted by the decommissioning of facilities in their communities, could improve public confidence in the planning process.

Lastly, I applaud the staff for how it employed the use of questions to discuss the proposed amendments and I would encourage the staff to continue to develop future proposed rulemakings in this fashion.

  
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Gregory B. Jaczko                      11/20/07  
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER LYONS  
SUBJECT: SECY-07-0177 – PROPOSED RULE:  
DECOMMISSIONING PLANNING (10 CFR  
PARTS 20, 30, 40, 50, 70, AND 72; RIN: 3150  
-AH45)

Approved  X  Disapproved   Abstain

Not Participating

COMMENTS: Below   Attached  X  None

  
Peter B. Lyons  
SIGNATURE

10/23/07  
DATE

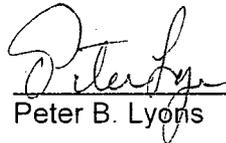
Entered on "STARS" Yes  X  No

Commissioner Lyons' Comments on SECY-07-0177

I approve the staff recommendation to publish the proposed amendments to 10 CFR Parts, 20, 30, 40, 50, 70, and 72 to improve decommissioning planning. The proposed rule is consistent with Commission direction and supports the Agency's safety goal to ensure protection of the public health and safety and the environment. The proposed rule would enhance environmental protection by improving licensee decommissioning planning activities, thereby reducing the likelihood of additional legacy sites and the high costs of enforcement and remediation. The proposed rule would also tighten NRC control of certain financial instruments to increase assurance that adequate funds will be available from the licensee to complete facility decommissioning. Staff engaged stakeholders through public meetings and a Working Group with both NRC and Agreement State participation in the development of the proposed rule. I appreciate the effort that the staff has undertaken in this endeavor and thank the staff for its work. My specific comments on draft *Federal Register Notice* are below.

- 1) The draft *Federal Register Notice* under section II.A, "What Action is the NRC Taking", should be augmented to highlight that changes are being proposed in Part 50.82.
- 2) Page 61, Section V.(e) is a request for information from the public on radium-226 sites for use in the final Regulatory Analysis. This Section should be relocated to Section T as a specific issue staff is seeking public input to.
- 3) Page 88, 20.1501, include text in the appropriate Section of the draft *Federal Register Notice* or in the draft licensing guidance that offers an explanation of the meaning of the term "in a timely manner." or delete the term from the proposed rulemaking.
- 4) Page 117, Delete 50.82 (a)(4)(i)(B), cost of safe storage is addressed in 50.82 (a)(4)(i)(A), with conforming changes to the text of the draft *Federal Register Notice*.
- 5) Page 127, the redesignation of paragraphs (c) and (d) in proposed changes to 72.30 will require conforming changes to 72.13(c) "Applicability."

I support the staff releasing the draft guidance documents concurrently with publishing the propose rule.

  
Peter B. Lyons      10/23/07  
Date