

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Gregory B. Jaczko

SUBJECT: SECY-12-0042 – COLORADO ALTERNATIVE  
STANDARDS; IMPLEMENTATION OF THE  
ALTERNATIVE STANDARDS PROVISION IN SECTION  
274o OF THE ATOMIC ENERGY ACT OF 1954, AS  
AMENDED

Approved  Disapproved  Abstain

Not Participating

COMMENTS: Below  Attached  None

  
\_\_\_\_\_  
SIGNATURE

4/30/12  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

**Chairman Jaczko's Comments on SECY-12-0042,  
"Colorado Alternative Standards; Implementation of the Alternative Standards Provision  
in Section 274o of the Atomic Energy Act of 1954, as Amended"**

I approve the staff's recommendation that the Commission approve the State of Colorado's proposed alternative standards for soil cleanup at the Uravan site. The Commission is rarely asked to make a determination in this area, and I appreciate the years of challenging work that went into this analysis, both by the NRC staff as well as the Colorado Department of Public Health and Environment (CDPHE) staff.

I do, however, have some concerns with the phrasing of the basis used by the staff to approve the proposal by the State of Colorado. Under the Atomic Energy Act (AEA), a State is allowed to utilize alternative standards for remediation of 11e(2) material (after offering a hearing opportunity) if the Commission determines that the alternative standards are either: 1) equivalent to the extent practicable, or 2) more stringent. These are two very different approaches in my mind. In the first instance the AEA allows a State to propose alternative standards that are essentially based on an as-low-as-reasonably-achievable (ALARA) approach. This would allow the remediation to be determined to be completed as long as the State demonstrates the remediation will be equivalent from an overall health and safety perspective.

The NRC staff states that this is exactly what Colorado has done in Enclosure 2; "The CDPHE believes the licensee has remediated the site to the extent practical and has identified four discrete areas that are *not in full compliance* [emphasis added] with the soil remediation standards in 6 CCR 1007-1, Part 18, Appendix A, Criterion B. The licensee has proposed, and the CDPHE agrees that it is not practical to conduct further remediation for these four areas." In this case, the alternative standard from Colorado appears to be based on being equivalent to the extent practicable (rather than more stringent), because further remediation would "either put workers at unreasonable risk or cause significant environmental harm greater than the benefits to be achieved by additional remediation" (Enclosure 2 to SECY-12-0042).

The second approach provided in 274o appears to be one in which a State can adopt truly more stringent standards and preempt federal authority after a specific process had been established. Since the actual standard is given as a *concentration limit* of 5/15 pCi/g for soil cleanup, then to be more stringent an alternative standard would appear to me to be one which actually sets a more restrictive *concentration limit* for the purposes of providing even more protection to the public. This does not appear to be the approach used by Colorado in this case.

The language in the Federal Register notice and the paper appear to interchange these two approval options, creating some potential for confusion about the actual basis for our approval. In my view it appears the alternate standard is acceptable under the "equivalent to the extent practicable" and the staff should simply clarify the responses throughout to make that clear.

  
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Gregory B. Jaczko

4/30/12  
Date