

May 27, 1999

MEMORANDUM FOR: William D. Travers  
Executive Director for Operations  
  
John F. Cordes, Acting Director  
Office of Commission Appellate Adjudication

FROM: Annette Vietti-Cook, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 11:30 A.M., THURSDAY, MAY 27, 1999,  
COMMISSIONERS' CONFERENCE ROOM, ONE WHITE FLINT NORTH, ROCKVILLE,  
MARYLAND (OPEN TO PUBLIC ATTENDANCE)<sup>(1)</sup>

**I. SECY-99-115 - Final Rule: Amendments to 10 CFR Part 72 - Miscellaneous Changes to Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste**

The Commission approved a final rule (with the attached changes) amending various sections of 10 CFR Part 72, Miscellaneous Changes to Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-level Radioactive Waste. These changes differentiate the requirements for the storage of spent fuel under wet and dry conditions, clarify requirements for the content and submission of various reports, and specify that quality assurance records must be maintained as permanent records when identified with activities and items important to safety.

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO)

(SECY Suspend: 6/25/99)

Should the rulemaking to revise 10 CFR 50.73(b) go forward, the staff should consider at that time whether conforming changes to Part 72 would be appropriate.

**II. SECY-99-138 - Hydro Resources, Inc. (HRI) - ENDAUM's & SRIC's Petition for Interlocutory Review of Presiding Officer's Order Seeking Additional Information (April 21, 1999) and ENDAUM's & SRIC's Motion for Reconsideration of a May 3, 1999 Order**

The Commission approved a Memorandum and Order responding to filings by Eastern Navajo Diné Against Uranium Mining (ENDAUM) and Southwest Research and Information Center (SRIC). The Memorandum and Order denies the Intervenor's May 14, 1999, petition for interlocutory review of the Presiding Officer's April 21, 1999, Memorandum and Order (Questions Concerning Radioactive Air Emissions) and grants Intervenor's May 13, 1999 motion for reconsideration of the Commission's May 3, 1999, order.

(Subsequently, on May 27, 1999, the Secretary signed the Memorandum and Order.)

Attachment: Changes and Comments on SECY-99-115

cc: Chairman Jackson  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
OGC  
CIO  
CFO  
OCA  
OIG  
OPA  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)

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Changes and Comments on SECY-99-115

1. On page 3 of the FRN, paragraph 3, revise line 1 to read 'The current regulations in ?? 72.122 and 72.124 ....'
2. On page 9 of the FRN, paragraph 1, revise line 1 to read ' ... four letters containing nineteen comments responding ....'
3. On page 12 of the FRN, last paragraph, revise line 2 to read ' ... fuel storage installations (ISFSI) reporting format and content requirements consistent with ....'
4. On pages 13-14, revise the response to comment 7 so that it reads as follows:

Response: Under ? 72.62, "backfitting" includes the modification, after the license has been issued, of procedures or organizations required to operate an ISFSI or MRS. This backfitting provision is very similar to the Backfit Rule in ? 50.109. The Commission has determined that reporting and record keeping requirements are not considered backfits even though they may result in changes to procedures. If the reporting or record keeping requirements had to meet the standards for a backfit analysis, the Commission would have to find that the information would substantially increase public health or safety or common defense and security without knowing the results of the request. In addition, the existence or non-existence of a record or report usually has no independent safety significance as compared to actions taken by the licensee or NRC as a result of the information contained in the record or report. It is this resulting action that affects public health and safety or the common defense or security that should be measured under the backfit standard and not the method for obtaining or maintaining the information.

Nevertheless, the Commission also recognizes that imposing reports or record keeping requirements may have a significant impact on a licensee's resources. The standard for authorizing reporting or record keeping requirements for NRC licensees that is contained in the Code of Federal Regulations should be the same standard as the regulations requiring the providing of information under 10 CFR 50.54(f). Namely, before the staff either changes existing requirements or issues new requirements affecting reporting or record keeping, a written analysis should be prepared that contains (a) a statement that describes the need for the information in terms of the potential safety benefit and, if appropriate, a discussion of possible alternatives and (b) the licensee actions required and the cost to develop a response to the information request. In addition, the imposition of the new or modified reporting or record keeping requirement should be approved by the appropriate level of senior management (namely the Executive Director for Operations or his or her designee) or the Commission itself in the case of rulemaking. For rulemaking, the analysis justifying either modifications to existing or new reporting and record keeping requirements shall be contained in the regulatory analysis. The regulatory analysis section of this rulemaking package adequately addresses the Commission's standards for this specific record keeping requirement.

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1. Section 201 of the Energy Reorganization Act, 42 U.S.C. Section 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Diaz was not present when these items were affirmed. Accordingly the formal vote of the Commission was 4-0 in favor of the decisions. Commissioner Diaz, however, had previously indicated that he would approve these papers and had he been present he would have affirmed his prior votes.