

November 20, 1998

COMMISSION VOTING RECORD

DECISION ITEM: SECY-98-209

TITLE: PROPOSED AGREEMENT WITH THE STATE OF OHIO AND COMPATIBILITY REQUIREMENTS OF 10 CFR PART 20, SUBPART E

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 20, 1998.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commissioners, and the SRM of November 20, 1998.

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John C. Hoyle  
Secretary of the Commission

Attachments: 1. Voting Summary  
2. Commissioner Vote Sheets  
3. Final SRM

cc: Chairman Jackson  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
OGC  
EDO  
PDR  
DCS

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VOTING SUMMARY - SECY-98-209

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACKSON	X					9/16/98
COMR. DICUS	X					11/10/98
COMR. DIAZ	X					9/29/98
COMR. McGAFFIGAN	X				X	10/16/98
COMR. MERRIFIELD	X					11/3/98

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and Commissioner McGaffigan provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on November 20, 1998.

**Commissioner McGaffigan's Comments on SECY-98-209:**

I approve the staff's position that Ohio's approach to decommissioning is compatible with NRC's radiological criteria for license termination (the cleanup rule) described in Subpart E of Part 20. My decision is based on the information contained in the staff paper, supplemental information provided by the staff in a note to Commissioner Assistants dated October 2, 1998, and discussions with the staff. Ohio stated that it intends to make its cleanup rule effective October 31, 1998. If Ohio promulgates a final rule that varies significantly from the draft rule, the Commission should be informed.

I also offer the following on two issues that were not specifically addressed in the paper-NRC-licensed sites remediated under the Site Decommissioning Management Plan (SDMP) or other sites with NRC-approved decommissioning plans, and formerly-licensed sites located in Ohio.

Regarding sites with NRC-approved decommissioning plans including SDMP sites:

While I continue to support compatibility category "C" for NRC's cleanup rule to provide Agreement States flexibility to impose more restrictive cleanup standards, I also firmly believe that licensed sites with NRC-approved decommissioning plans including SDMP sites should not be subject to a second set of cleanup criteria. To effect this, NRC promulgated specific provisions in the cleanup rule to "grandfather" such sites thereby providing finality for the sites. While the Commission may not have specifically contemplated applying Agreement State criteria to such sites when promulgating the rule, the Commission did intend to ensure finality for grandfathered sites by not subjecting them to a second set of cleanup criteria regardless of the source. It is not cost effective nor is it good public policy to do otherwise. Based on the information received, it is my understanding that Ohio will honor any decommissioning plan approved by NRC prior to the effective date of the Agreement. This approach will ensure that the intent of NRC's rule is met. In my opinion, the same approach should be used with future States entering into agreements with NRC. The staff and OGC should explore with Ohio whether it is necessary from a legal basis--as implied in Ohio's memorandum--to amend the licenses of sites with NRC-approved decommissioning plans to recognize those plans prior to transferring the license to Ohio. Resolution of this issue is particularly important in the case of the Shelwell site since the staff considers the probabilistic approach described in SECY-98-117 to be the "NRC-approved decommissioning plan" thereby eliminating the need for submittal of a formal license termination plan by the licensee.

While I recognize that the SDMP Shieldalloy site in Cambridge, Ohio may be subject to Ohio's cleanup rule since the licensee has not yet submitted a decommissioning plan for NRC approval, I am eager to receive the overdue staff paper on the technical issues associated with transfer of licensed material from both Shieldalloy sites (Ohio and New Jersey) to non-licensees. It is conceivable that the Commission's decision on these issues could influence Shieldalloy's decision on whether to submit a decommissioning plan to NRC or to Ohio once the agreement is in effect. In my opinion, it is unacceptable that the staff has not yet made a proposal to the Commission for resolution of Shieldalloy's 1995 proposal for transfer of certain materials for recycle. It is my understanding that while 10 CFR 40.13(a) on its face value appears to allow transfer and use of this material for recycling because it meets the 0.05 percent by weight limit for source material, the staff is concerned that potential doses resulting from such use might exceed Part 20 limits. If true, that would point to the potential need for Part 40 rulemaking and some interim measure to address these types of cases. The Commission needs a prompt proposal (or options paper) to resolve this matter on a fast track.

Regarding "formerly-licensed" sites:

The staff should ensure that information relevant to the formerly-licensed sites located in Ohio--that were identified as a result of the license file review conducted by the Oak Ridge National Laboratory (ORNL)--is shared with Ohio well in advance of the effective date of the agreement. This includes, but is not necessarily limited to, ORNL file review results, NRC followup actions and NRC's basis for its determination to "close the file" in each case. It is my understanding that most, if not all, of the sites identified by ORNL will be "closed out" prior to the agreement, and those that are not closed out by that time will be transferred to Ohio. While I understand that Ohio does not intend to require additional remediation in such cases, NRC should ensure that there is full disclosure of information associated with these sites.

I also request that the staff forward a copy to the Commission for information purposes of the final NUREG developed by ORNL that summarizes the file review and its findings.