

November 19, 2003

COMMISSION VOTING RECORD

DECISION ITEM: SECY-03-0186

TITLE: OPTIONS AND RECOMMENDATIONS FOR NRC
DEFERRING ACTIVE REGULATION OF
GROUND-WATER PROTECTION AT IN SITU
LEACH URANIUM EXTRACTION FACILITIES

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 19, 2003.

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
 OGC
 EDO
 PDR

VOTING SUMMARY - SECY-03-0186

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X					11/5/03
COMR. McGAFFIGAN	X					11/13/03
COMR. MERRIFIELD	X				X	11/12/03

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on November 19, 2003.

Commissioner Comments on SECY-03-0186

Commissioner Merrifield

Since visiting two *in situ* mining facilities in Wyoming during the summer of 2001, I have been convinced that this was an area that was ripe for the elimination of dual regulation. It is for this reason that I strongly endorse the staff's recommendation to reduce dual regulation of groundwater protection at *in-situ* leach (ISL) uranium extraction facilities through the adoption of option 2 using approach 2(a). This option and approach would defer NRC active regulation of ground water protection at ISLs to EPA-authorized non-Agreement States¹ through development of MOUs. Surface water concerns involving spills or settling ponds containing 11e(2) material would continue to be actively regulated by NRC. I also approve the development and issuance of a Regulatory Issue Summary (RIS) to inform the public about this proposal and then proceeding to develop a memorandum of understanding with each appropriate State. NRC management should ensure the development of these memorandums of understanding involves minimum resource expenditures by both the State and the NRC.

On the surface, it would appear that the issue of dual regulation could be easily resolved. But this is a complex issue and it took time and effort to reach a workable solution. I compliment the staff on their efforts and resolve on this issue. The prime objective has always been to maintain adequate protection of the public health and safety, and, if possible, to reduce or eliminate dual regulation to the extent practical. Although it was not possible to reach an agreement with EPA to reduce dual regulation at the federal level, staff did find a method to reduce dual regulation through agreements with individual States. Utilizing a memorandum of understanding, NRC would defer active regulation of ground water in areas adequately addressed under the State regulatory authority, which is partially based on EPA-authorized authority by the State to regulate ground water. NRC would still retain overall authority over the ground water and would actively regulate any area identified in the memorandum of understanding where the State's program was not considered by NRC as adequate to meet its needs. In addition, NRC would still be responsible for including the ground water in its National Environmental Protection Act (NEPA) review, actively regulating surface waters containing 11e(2) material, and defending the NRC conclusions in any potential license hearing.

While maintaining our shared commitment to protect the environment, this effort helps to demonstrate that the NRC has the ability and determination to search out innovative and practical methods of reducing the burden of our regulations where they no longer make sense. This effort should embolden us to seek out similar areas of jurisdictional overlap and duplication.

¹Non-Agreement States in this context means a State which does not have authority to regulate 11e(2) material through a specific agreement with NRC. It is possible to be an NRC Agreement State through agreements to regulate other materials areas and not have authority over 11e(2) material. Where such agreements exist, those states would be considered non-Agreement States for the purpose of this paper and vote.