



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

SECRETARY

June 26, 2008

COMMISSION VOTING RECORD

DECISION ITEM: SECY-08-0077

TITLE: OPTIONS FOR U.S. NUCLEAR REGULATORY
COMMISSION INVOLVEMENT WITH THE NAVY'S
REMEDICATION OF THE HUNTERS POINT NAVAL
SHIPYARD SITE IN CALIFORNIA

The Commission (with Chairman Klein and Commissioner Svinicki agreeing and Commissioners Jaczko and Lyons agreeing in part and disagreeing in part) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of June 26, 2008.

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 long horizontal stroke extending to the right.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
Commissioner Svinicki
OGC
EDO
PDR

VOTING SUMMARY - SECY-08-0077

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X				X	6/23/08
COMR. JACZKO	X	X			X	6/12/08
COMR. LYONS	X	X			X	6/6/08
COMR. SVINICKI	X				X	6/11/08

COMMENT RESOLUTION

In their vote sheets, Chairman Klein and Commissioner Svinicki approved and Commissioners Jaczko and Lyons approved in part and disapproved in part the staff's recommendations and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on June 26, 2008.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN KLEIN

SUBJECT: SECY-08-0077 – OPTIONS FOR U.S. NUCLEAR
REGULATORY COMMISSION INVOLVEMENT
WITH THE NAVY'S REMEDIATION OF THE
HUNTERS POINT NAVAL SHIPYARD SITE IN
CALIFORNIA

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

6/ **23** /2008

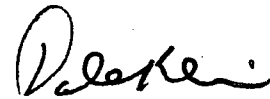
DATE

Entered on "STARS" Yes No _____

**Chairman Klein's Comments on SECY-08-0077, Options for U.S. Nuclear Regulatory
Commission Involvement with the Navy's Remediation of the Hunters Point Naval
Shipyard Site in California**

I approve the staff's recommendation to rely on the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process and Environmental Protection Agency (EPA) oversight with limited NRC involvement to stay informed about the ongoing CERCLA process. It is prudent to apply the very limited resources needed to ensure the agency remains current on the progress of this complex remediation project.

In their votes on this paper, my colleagues direct the staff to evaluate the California Department of Public Health's request for technical assistance using the process outlined in Management Directive 5.7, "Technical Assistance to Agreement States." From my perspective, the NRC's ability to provide such assistance may be tenuous because the remediation is being done under the auspices of CERCLA, and not under the Atomic Energy Act's authority, which is the legal basis for California's agreement with the NRC. Therefore, as part of this evaluation, the staff should explicitly consider the appropriateness of the NRC's providing technical assistance to a CERCLA remediation project.



Dale E. Klein 6/23/2008

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER JACZKO

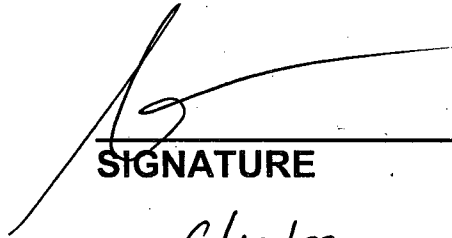
SUBJECT: SECY-08-0077 – OPTIONS FOR U.S. NUCLEAR REGULATORY COMMISSION INVOLVEMENT WITH THE NAVY'S REMEDIATION OF THE HUNTERS POINT NAVAL SHIPYARD SITE IN CALIFORNIA

Approved X Disapproved Y Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached _____ None _____

I concur with Commissioner Lyons approval of option 2 and his disapproval of the staff denial of technical assistance to the state of California.



SIGNATURE

6/12/08

DATE

Entered on "STARS" Yes _____ No _____

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: SECY-08-0077 – OPTIONS FOR U.S. NUCLEAR REGULATORY COMMISSION INVOLVEMENT WITH THE NAVY'S REMEDIATION OF THE HUNTERS POINT NAVAL SHIPYARD SITE IN CALIFORNIA

Approved X ^{in part} Disapproved X ^{in part} Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____


Peter B. Lyons

SIGNATURE

6/6/08

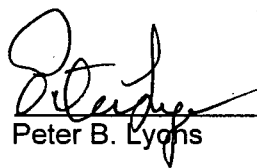
DATE

Entered on "STARS" Yes X No _____

Commissioner Lyons' Comments on SECY-08-0077

I approve in part and disapprove in part the staff's recommendation to approve Option 2, thereby, relying on CERCLA and EPA oversight with NRC maintaining only awareness about the ongoing CERCLA activities. This option will eliminate dual NRC and EPA regulation of CERCLA activities while ensuring the protection of public health and safety and the environment. I also approve preparation of the letters to EPA, the Navy and the Air Force, and publishing notice in the Federal Register of the Commission's decision on this issue. I do not, however, approve the negative response to the State of California's request for technical assistance. I believe that staff should work with California in accordance with Section C of the Handbook, Management Directive 5.7, "Technical Assistance to Agreement States" to determine if special technical expertise assistance could be provided. Any NRC assistance would be cost-reimbursable and, as resources permit, looking agencywide for the necessary technical expertise.

I appreciate the staff's effort to clearly and concisely present its analysis of a multidimensional and complex issue in this paper.


Peter B. Lyons

6/6/08
Date

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-08-0077 – OPTIONS FOR U.S. NUCLEAR
REGULATORY COMMISSION INVOLVEMENT
WITH THE NAVY'S REMEDIATION OF THE
HUNTERS POINT NAVAL SHIPYARD SITE IN
CALIFORNIA

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE

6/11/2008

DATE

Entered on "STARS" Yes No

Commissioner Svinicki's Comments on SECY-08-0077

I approve the staff's recommended option 2 to rely on the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process, as implemented with Environmental Protection Agency (EPA) oversight, to ensure adequate protection of the public health and safety in the decommissioning of the Hunters Point Naval Shipyard. While it is reasonable to assume, as staff has done, that terminated Atomic Energy Commission-licensed material could be present at Hunters Point Naval Shipyard, such materials would now be inextricably commingled with atomic weapons testing material over which the NRC has no jurisdiction. Since this site is now being remediated by the U.S. Navy under the CERCLA process, there is no clear benefit to unscrambling this egg or imposing dual EPA-NRC regulation. I do support, however, staff's recommendation to maintain a limited involvement in this remediation via existing mechanisms, such as standard Navy distributions and availability of the administrative record, as well as limited participation in site visits and progress meetings.

I also approve staff's recommendation to send letters to EPA, the Navy, and the Air Force informing them of the Commission's decision, as well as publishing notice of the decision in the Federal Register. However, the sample letter attached to the paper is, in my view, incomplete and does not describe the bases for NRC decision-making in this matter. I would modify the letter in the following ways. First, the letter needs to respond directly to the question asked by the Navy regarding NRC's new jurisdiction for radium-226 under the Energy Policy Act of 2005 by including the following statement from the SECY paper: "[T]he Statements of Consideration (SOC) for NRC's recently-established Naturally Occurring and Accelerator Produced Radioactive Materials (NARM) rule states that radium-226, still in control of the military and that was used for military operations, is outside of NRC's jurisdiction." Second, the letter should explain more fully the bases upon which the NRC "has decided that the most effective and efficient approach is to defer its authority." These bases are described in the paper [i.e., that although terminated AEC-licensed material may be present at Hunters Point Naval Shipyard, such materials would now be inextricably commingled with atomic weapons testing material over which the NRC has no jurisdiction and that over-layering NRC requirements on the CERCLA process already underway provides no clear public health and safety benefit].

I agree with Commissioner Lyons that staff should not summarily reject the request for assistance from the California Department of Public Health (DPH) and that staff should invoke the existing process for evaluating and responding to "Requests for Special Technical Expertise Assistance" as outlined in Section C of Management Directive 5.7, "Technical Assistance to Agreement States." I would note, however, that under this directive, DPH will be required to document more fully how it meets the criteria for requesting technical assistance. Specifically, DPH would need to document (1) the specific limited and focused assistance requested from the NRC, (2) how this request relates to a licensing or inspection activity under California's Agreement with the NRC, and (3) that DPH has attempted to obtain this assistance without success from other Agreement States, the Organization of Agreement States (OAS), or the Conference of Radiation Control Program Directors (CRCPD).



Kristine L. Svinicki 6/11/2008