

September 6, 2012

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA by Andrew L. Bates/**

SUBJECT: STAFF REQUIREMENTS – COMSECY-12-0016 – APPROACH
FOR ADDRESSING POLICY ISSUES RESULTING FROM
COURT DECISION TO VACATE WASTE CONFIDENCE
DECISION AND RULE

The staff should proceed directly with development of a generic environmental impact statement (EIS) to support an updated Waste Confidence Decision and temporary storage rule. The staff should establish a schedule to publish a final rule and EIS within 24 months from the date of this staff requirements memorandum (the *Federal Register* Notice that announces the final rule would also satisfy the Commission's obligations related to a "Waste Confidence decision").

Recognizing that meeting this schedule will require an expenditure of agency resources that was not previously contemplated, the staff should provide the Commission with full information about how it plans to fund and staff this vital task and how it will impact other work, including redirecting resources in FY2013 and FY2014 that are currently planned to support a long-term Waste Confidence EIS and temporary storage rule. In addition, as this effort moves forward, the staff should come to the Commission if additional resources are needed to meet this schedule.

The NRC has a long, rich history with our Waste Confidence determinations that can and should be drawn upon in addressing the D.C. Circuit's directives on remand. The EIS and rule should build upon the existing Environmental Assessment that the NRC developed as part of the 2010 Waste Confidence Decision. Specifically, the staff should use the analyses in the 2010 Waste Confidence Decision to the extent possible and should primarily focus any additional analyses on the three deficiencies identified in the D.C. Circuit's decision. The staff, as appropriate, may adopt or incorporate by reference all or part of another agency's EIS. For example, the Department of Energy's (DOE) "no action alternative" in the Yucca Mountain EIS, which the agency adopted in 2008 as part of its review of DOE's license application, contains a foundation that the NRC should build upon. There are also numerous other technical documents and reports on related issues, such as the impacts of transportation and consolidated storage, that can, and should, be used to support the necessary analyses.

When developing the EIS, the staff should be mindful of the Council on Environmental Quality's Guidance on Improving the Process for Preparing Efficient and Timely Reviews Under NEPA, which states that:

- NEPA encourages straightforward and concise reviews of documentation that are proportionate to potential impacts and effectively convey the relevant considerations to the public and decision-makers in a timely manner while rigorously addressing the issue presented;

- NEPA shall be integrated into project planning to ensure planning and decisions reflect environmental considerations, avoid delays later in the process, and anticipate and attempt to resolve potential issues rather than become an after-the fact process that justifies a decision already made;
- NEPA reviews should coordinate and take appropriate advantage of existing documents and studies, including through adoption and incorporation by reference;
- Early and well-defined scoping can assist in focusing environmental reviews on appropriate issues that would be meaningful to a decision; and
- Agencies are encouraged to develop meaningful and expeditious timelines for environmental reviews and respond to comments in proportion to the scope and scale of the environmental issues raised.

The staff must also provide ample opportunity for public comment as it pursues a timely rulemaking on remand to ensure that the staff has a broad range of views to consider as it completes the analysis. There are efficiencies that can, and should, be gained that would still allow for fulsome stakeholder engagement. These efficiencies include the use of an inter-office team consisting of the agency's most accomplished NEPA practitioners to develop the EIS as well as holding public meetings and resolving comments in parallel with the comment period. Because of the high priority that this matter demands, and the high interest it has engendered, use of these and other new approaches within our existing process for EIS development will ensure that the agency acts with the urgency that this matter deserves.

The Commission supports maintaining the option to conduct some environmental analyses of waste confidence issues on a site-specific basis in support of licensing decisions, but cautions that such a step should be used only in rare circumstances in which there is an exceptional or compelling need to proceed otherwise and proceeding with the site-specific review would not delay or create inconsistencies with development of the generic EIS. Should the staff identify the need to conduct any site-specific analysis prior to the completion of the generic analysis, it should submit an information paper to the Commission prior to beginning the site-specific review. The information paper should include a description of what issues, if any, are delaying achievement of the 24 month schedule, what issues require completion of a site-specific analysis in advance of the generic analysis, and what other possible remedies could address these issues.

cc: Chairman Macfarlane
 Commissioner Svinicki
 Commissioner Apostolakis
 Commissioner Magwood
 Commissioner Ostendorff
 OGC
 CFO
 OCA
 OPA
 Office Directors, Regions, ACRS, ASLBP (via E-Mail)
 PDR