

NOTATION VOTE

RESPONSE SHEET

RELEASED TO THE PDR

1/24/94
date

[Handwritten initials]
initials

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION
FROM: COMMISSIONER ROGERS
SUBJECT: SECY-93-285A - SUPPLEMENTAL INFORMATION ON PROPOSED PART 76, "CERTIFICATION OF GASEOUS DIFFUSION PLANTS"

APPROVED ^{SUBJECT TO} COMMENTS * KCN DISAPPROVED _____ ABSTAIN _____
NOT PARTICIPATING _____ REQUEST DISCUSSION _____

COMMENTS: See attachment.
KCN

9401310082 931210
PDR COMMS NRCC
CORRESPONDENCE PDR

270079

Kenneth C. Rogers
SIGNATURE

December 10, 1993
DATE

RELEASE VOTE

WITHHOLD VOTE

ENTERED ON "AS" YES _____ NO _____

LF02
all

Commissioner Rogers' comments on SECY-93-285A:

I approve publication of the proposed rule subject to the following comments:

1. Under Section 76.62, the Director of the Office of Nuclear Materials Safety and Safeguards would determine whether a certificate is to be issued. The Director's determination would be final unless the Commission were to take specific action to the contrary. I believe that this is an appropriate procedure for annual recertification. However, I expect that the initial certification is likely to involve significant policy issues that will require Commission consideration. Accordingly, I believe that, prior to publication of a proposed rule, Section 76.62 should be changed so that the Commission would make the determination about initial (only) certification based on a recommendation by the staff.
2. Section 76.76 includes conditions for backfitting that are similar to those of Section 50.109. I am concerned that these provisions may unduly restrict flexibility that we may need in regulating these particular facilities. I agree with the point made by Commissioner Remick in his vote on SECY-93-285 that flexibility should not be construed to allow us "... to impose trivial and cost-ineffective improvements, without regard for the impacts on risk, facility employees, plant complexity, our ability to regulate, and so on." Clearly, some discipline is needed. However, constraints on regulatory flexibility can cut two ways. The two step safety philosophy that underlies the provisions of 50.109 could unduly restrict what may prove to be needed flexibility in certification and enforcement as we learn more about both the gaseous diffusion plants and possible unintended consequences of the provisions of a new Part 76.

I would urge, therefore, that Section 76.76 not be modeled on Section 50.109. Instead, I recommend that the staff develop backfit provisions, which would apply after the first annual certification following initial certification, based on Section 1(b)(6) of Executive Order 12866 of September 30, 1993.

3. Section 76.85 contains a requirement for performance of a safety analysis of the potential releases of radioactive material from accidents. I endorse this approach provided that the term "existing systems intended to mitigate the release consequences" is understood to include not only hardware features, but procedures as well. I believe that the Supplementary Information should be made explicit about this point prior to publication.

KCA
12/10/93

I might also note that in our joint briefing by the staff on December 3, 1993, Commissioner de Planque raised a number of questions that left me with some concern about the choice of 10 milligrams as a limit for intake of soluble uranium. I believe that the staff should reexamine this limit prior to publication of a proposed rule.

4. Section 76.91 requires continuation of some current emergency preparedness practices that are not required by Part 70. While I believe the Corporation would be well advised to continue any practices that the surrounding community has come to expect, it would seem to be poor regulatory policy to require, after the fact, practices that the Corporation has voluntarily put in place. To do so could be a strong disincentive to licensees and the corporation to take worthwhile, but voluntary measures in the future. I believe that the additional requirements should be removed prior to publication of a proposed rule.

KCR
12/10/93