

NOTATION VOTE

RESPONSE SHEET

1/24/94
Date

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Initials

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION
FROM: COMMISSIONER REMICK
SUBJECT: SECY-93-285 - PROPOSED RULEMAKING - NEW PART 76, "CERTIFICATION OF GASEOUS DIFFUSION PLANTS"

w/comment

APPROVED DISAPPROVED _____ ABSTAIN _____
NOT PARTICIPATING _____ REQUEST DISCUSSION _____

COMMENTS:

Please see attached

9401310100 931102
PDR COMMS NRCC
CORRESPONDENCE PDR

270021

[Signature]
SIGNATURE

2 Nov 93
DATE

RELEASE VOTE

WITHHOLD VOTE

ENTERED ON "AS" Yes No _____

LFB
1/1

Commissioner Remick's Comments on SECY 93-285:

I approve publication of the proposed rule as modified by the following comments:

Approved Initial Application: Sections 76.31 and 76.35 create an unnecessary paperwork burden. Section 76.31 requires an annual application. Section 76.35 requires that the information in each application include the safety analysis report, management controls, QA program, description of plant site, etc. This is a voluminous amount of material to include in each annual application, or even to reference item-by-item in each annual application. It would be better for the NRC to issue a document which indicates approval of the initial application. This approval document should be separate from the certificate of compliance, because the approval document would be issued only once. It could then be referenced as a whole in each subsequent annual application. Section 76.68, which describes the 50.59 type process for making changes to the plant, should refer to what we might call the "approved initial application." Section 76.68 might then better be entitled "Plant Changes and Changes to the Approved Initial Application." In conformance with this change, line 4 of Section 76.68(b) need not refer to the safety analysis report, because the safety analysis report is a part of the initial application.

Training: The proposed rule is devoid of any requirement for personnel to be trained to recognize and cope with safety hazards and safeguards requirements which they will encounter in their jobs and it is devoid of any requirement that personnel be appropriately trained and qualified to perform their nuclear safety-related functions. The proposed rule should have a section which requires training programs necessary to provide personnel qualified to operate and maintain the facility in a safe manner in all modes of operation. Section 76.35 "Contents of Applications," should include a requirement that applications contain information on the training programs that will be provided to personnel to enable them to perform the functions of their jobs, and information on the positions for which such training will be provided.

Backfitting: I believe that the proposed regulations should contain a backfit provision which is as much like § 50.109 as possible. I would think, for instance, that all of § 50.109(a)(2)-(7) and (c) could apply in the new context. We should make use of the experience embodied in the backfit rule. Doing so will add some consistency to our regulatory practices. The only flexibility it will deprive us of is the flexibility to impose ill-considered backfits. Below I expand on these remarks.

The staff has stated three reasons for not wanting to propose a backfitting provision. The staff argues first that we do not have enough experience with the gaseous diffusion facilities. We

didn't have much experience with nuclear power plants before the first backfit rule was in place (1970) either, but even assuming that a good backfit rule cannot be written without a great deal of experience, we've got the experience: It is embodied in § 50.109. There is nothing specific to power plants about the notions that we should impose backfits necessary for adequate protection without consideration for cost, that increases beyond adequate protection should be non-trivial and cost-effective, and that we should consider the impact of the backfit on occupational exposure, plant complexity, and our resources.

The staff's second argument is that we need flexibility at the start. At best, this argument reduces to the argument that the backfit rule hampers regulation. That's a view that the Commission rejected recently in responding to SECY-93-086, "Backfit Considerations". The backfit rule has never blocked the Commission from doing something which was really important. Besides, much of the labor of doing backfit analyses is in doing regulatory analyses, and no one is proposing not doing regulatory analyses for new standards we impose on these facilities. At worst, the flexibility argument reduces to saying that we need flexibility 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. That's a hard argument to justify.

The staff's third argument is that it would be inconsistent to apply backfitting provisions to the gaseous diffusion facilities and yet not to other major fuel-cycle facilities. But there is a greater inconsistency in our current practice of applying the backfit rule to Part 50 licensees but not to other licensees. Applying backfitting provisions to the USEC facilities would remove some of this greater inconsistency.

If drafting a proposed backfit provision might significantly delay issuing the proposed rule, the statement of considerations for the proposed rule should discuss backfitting issues in sufficient depth to enable the Commission to consider adding a backfitting provision to the final rule. The current draft of the *Federal Register* notice says nothing about backfitting.

Scope: In the proposed addition to Section 26.2, "Scope," the references to "individual, partnership" or "other entity" are superfluous, because Section 76.2 indicates that "[t]he regulations in this part apply only to the gaseous diffusion plants ... leased by DOE to the Corporation," and Section 76.4 defines the Corporation to mean "... the United States Enrichment Corporation" Further, Section 26.2 should contain, or at least refer to, the limitation in Section 76.60(f).

Definition: Inasmuch as the draft rule vacillates between "certificate of compliance" and "certificate," it might be best to define "certificate" also, by adding "or certificate" just after the phrase "certificate of compliance" in Section 76.4.

Detectors: Taken at face value, Section 76.89(b)(1) asks too much. It seems to require that every spot in gaseous diffusion facilities be covered by two detectors, but these facilities are enormous and include areas where detectors are not needed. To clarify what I would think is the intent of the rule, line 4 of Section 76.89(b)(1) should be modified to read "Coverage of all areas in which special nuclear material is handled, used or stored must be provided by two detectors."