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Federal Emergency Management Agency
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USNRC

Washington, D.C. 20472

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Mr. John W. N. Hickey, Chief
Enrichment Branch
Division of Fuel Cycle Safety
and Safeguards, NMSS
U. S. Nuclear Regulatory Commission

Dear Mr. Hickey:

I am responding to your February 16, 1994, letter to Mr. Megs Hepler, Director, Exercises Division, forwarding the proposed rule "Certification of Gaseous Diffusion Plants." I have attached a copy of comments on the proposed rule offered by the Federal Emergency Management Agency's (FEMA) Office of General Counsel.

If you have any questions regarding the attached comments, please contact Nancy Goldstein of my staff at (202) 646-4285.

Sincerely,

Linda Vasta
Regulatory Services Coordination Unit
Preparedness, Training, and Exercises
Directorate

Attachment

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Federal Emergency Management Agency

Washington, D.C. 20472

March 28, 1994

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MEMORANDUM FOR: Linda Vasta
Chief, Regulatory Services

FROM: Elaine I. Chan *Mike Hirsch (for)*
General Attorney

SUBJECT: NRC Proposed Rule, 10 CFR Part 76:
"Certification of Gaseous Diffusion Plants"

In response to your March 19, 1994, request for comments on the above-noted proposed rule, the Office of General Counsel offers the following comments:

Section 76.91, "Emergency Planning", does not provide for any offsite emergency planning except for a minimal notification procedure to offsite response organizations and a request for offsite assistance. See Section 76.91(h). This omission infers that no offsite consequences will occur and that FEMA has no role in, or responsibilities for, offsite emergency planning it has traditionally performed in the case of nuclear generating facilities. This would account for the limited classifications of accidents--alert and site area emergency. This inference appears inconsistent with the language of Section 76.91(i), "Information to be Communicated", which states in relevant part that it will include "description of the types of...recommended protective actions, if necessary, to be provided to offsite response organizations." This suggests that offsite response organizations will be expected to take protective actions, but not pursuant to any prearranged plan.

The prospect that offsite response organizations will be expected to take protective actions without any plan, requisite training (training under Section 76.91(j) is offered to fire, police, medical, and other emergency personnel, but not required) is disconcerting. If offsite response organizations or individuals might be called on to respond to an accident or take protective actions, an emergency plan and mandatory training and exercising are indispensable.

In addition, while Section 76.91(l) provides for critiques of exercises, the critiques will be done using "individuals that do not have direct implementation responsibility for the plan." There should be some effort made to provide a more independent and

impartial critique so that the results would be more credible. As proposed, as long as individuals did not have direct responsibility for implementation, they would be able to critique the performance of fellow employees. As currently worded, this would also allow an individual to evaluate his or her own performance or effectiveness in any of the areas to be reviewed, as long as they were not directly responsible for implementation.

We also recommend clarification of the notification requirements in the proposed rule. Section 76.91(c) provides for two accident classifications--alert and site area emergency. Section 76.91(h) provides that the Corporation notify the NRC Operations Center "not later than one hour after the Corporation declares an emergency." The term "emergency" is not defined in Section 76.91(c). This can be interpreted to mean that neither the offsite response organizations nor the NRC will be notified of an accident classified as an alert, or for that matter, a site area emergency.

Finally, the proposed rule should address the concerns set forth in Executive Order 12898, which is entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (copy attached). See Section 3-302(c), which calls for each Federal agency:

whenever practicable and appropriate, to collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act...and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations.

It is not clear that the protective actions described in Section 76.91(i) of the proposed rule do not affect offsite populations. Therefore, it is appropriate to take the directives of the new Executive Order into account in this proposed rule.

Thank you for the opportunity to comment on the proposed rule. Kindly address any questions concerning these comments to me at extension 3941.

Attachment