

April 26, 2006

Mr. Paul L. Leventhal, Founding President  
Nuclear Control Institute  
1000 Connecticut Avenue, NW  
Suite 600  
Washington, D.C. 20036

Dear Mr. Leventhal:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of February 13, 2006, regarding two license applications seeking authorization for the export of high enriched uranium (HEU) for use as fuel in Belgium's BR2 reactor (XSNM03404) and for use as targets to produce medical isotopes in Canada's NRU reactor (XSNM03427). You expressed concern that "...the opportunity for meaningful public comment on these applications...has been vitiated by the Commission's new policy of withholding from the public both the amount of HEU requested and the applicant's documentation that its existing inventory of HEU is insufficient to satisfy its imminent needs."

Although public access to information has been and remains a cornerstone of its regulatory philosophy, the NRC has also withheld certain types of information from public disclosure, including security-related, personal privacy, and proprietary information. In response to the events of September 11, 2001, the NRC re-examined existing security policies and practices. Among various actions taken to enhance the security of nuclear facilities and materials, the Commission concluded that information voluntarily released to the public should be more judiciously screened for potential security significance to avoid inadvertently assisting those who might use the information for malevolent purposes.

Recognizing that the general screening criteria are not necessarily appropriate for every situation, the NRC staff interacts with licensees and others on a case-by-case basis to resolve issues, including consideration of requests for information such as those contained in your letter. With respect to the two pending applications for export of HEU, the NRC has decided that the total quantity of material requested in the particular export applications may be released.

- The U.S. Department of Energy/National Nuclear Security Administration (DOE/NNSA) applied for a license (XSNM03404) to export a total of 85.5 kg of HEU (79.814 kg of U-235) to Belgium for use as fuel at the BR2 reactor. It is estimated that this quantity of material will sustain BR2 operation from about 2007 through 2010, at which time the Belgian Nuclear Research Center expects to convert the reactor to high density low enriched uranium (LEU) fuel that has been qualified for that facility.
- DOE/NNSA also applied for a license (XSNM03427) to export a total of 15.5 kg of HEU (14.469 kilograms of U-235) to Canada for use as targets, which are needed to sustain production and supply of medical isotopes using the NRU reactor.

You also urged the Commission "to restore its pre-existing policy of publicly disclosing both the amount of HEU requested and the applicant's imminent need for the requested material, including an accounting of its existing HEU inventory and annual requirements" in support of an export application. There has been no change in Commission policy in this area. The general category of information you describe has usually been withheld, upon an applicant's request, as proprietary information under 10 CFR § 2.390. Any prior release of this type of supplemental information submitted by applicants was only when an applicant did not request that the information be withheld from the public as proprietary information.

You also expressed a concern regarding retransfer of exported HEU "to an unauthorized end user." In this context, you indicated that NRC should prohibit HEU exported from the United States to EURATOM for a specified end user from being transferred to other end users within EURATOM without the prior notification and approval of the United States. The current U.S.-EURATOM Agreement for Cooperation under Section 123 of the Atomic Energy Act (AEA) is between the United States and the entire group of EURATOM nations, as specifically authorized under Section 124 of the AEA. Therefore, under the current U.S.-EURATOM Agreement, movement of items subject to the Agreement between member states of the EURATOM community does not constitute a "retransfer" either under the AEA or under the Agreement. Under the U.S.-EURATOM Agreement, a "retransfer" is the movement of items to a country outside of the EURATOM community. Congress reviewed the U.S.-EURATOM Agreement before it entered into force and did not enact legislation requiring the Agreement to be modified to include the condition you seek. NRC determinations on export license requests to EURATOM countries, including the imposition of license conditions, must be consistent with the framework for nuclear cooperation established by the U.S.-EURATOM Agreement. The license condition you request as applied to HEU exports to EURATOM would not be consistent with the U.S.-EURATOM Agreement, nor does anything in the "Schumer amendment" authorize the NRC to impose license conditions or reach export licensing determinations that are not consistent with the current U.S.-EURATOM Agreement.

Finally, you suggested that conditions on transfer from one EURATOM country to another may be made by contract. Contract matters are between DOE/NNSA, the potential HEU supplier, and the Belgian recipient. NRC has forwarded a copy your letter to DOE/NNSA.

I trust this letter is responsive to your concerns.

Sincerely,

/RA/

Nils J. Diaz

Identical letter sent to:

Paul L. Leventhal, Founding President  
Nuclear Control Institute  
1000 Connecticut Avenue, NW  
Suite 600  
Washington, D.C. 20036

Mr. Alan J. Kuperman, Senior Policy Analyst  
Nuclear Control Institute  
1000 Connecticut Avenue, NW  
Suite 600  
Washington, D.C. 20036