

**OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET**

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AUTHOR: Mr. Paul Leventhal
AFFILIATION: NCI
ADDRESSEE: CHRM Nils Diaz
SUBJECT: Concerns highly enriched uranium in export license applications

ACTION: Signature of Chairman
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NUCLEAR CONTROL
INSTITUTE

1000 Connecticut Avenue NW, Suite 600, Washington, DC 20036. Tel. (202) 822-8444

June 12, 2006

The Honorable Nils J. Diaz
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Chairman,

Thank you for your 26 April 2006 response to our concerns about the Commission's policy, adopted in the wake of the events of 11 September 2001, of redacting the amount of highly enriched uranium in export license applications before releasing them to the public.

We are gratified by your statement that after a review the Commission now recognizes "that the general screening criteria are not necessarily appropriate for every situation." We also appreciate the Commission's decision to disclose to us the amount of HEU in the two licenses that we specifically asked about.

However, we have continuing concerns about the redaction policy. Your letter's disclosure of the amount of HEU requested in these two license applications came too late for meaningful public comment prior to approval of the licenses. Indeed, one of the licenses (XSNM-03427, requesting HEU for use as targets for the production of medical isotopes in Canada's NRU reactor) was approved on 14 April 2006, prior to your disclosure of the amount requested. The other license (XSNM-03404, requesting HEU for use as fuel in Belgium's BR-2 reactor) was approved on 3 May 2006, just a week after you posted your letter to us (and before we actually received it, due to an address error).

Accordingly, we urge the Commission to take the following steps to restore the public's right to comment meaningfully on license applications prior to their approval, as required under the Atomic Energy Act (42 U.S.C. § 2155a. and 10 C.F.R. §§ 110.40(c), 110.80-110.91, 110.100):¹

1. The Commission should routinely disclose to the public in a timely manner the amount of HEU in any export license application it receives. This

¹ The Commission's regulations, it should be noted, include specific recognition that public participation and input are encouraged. 10 C.F.R. § 110.81(a).

disclosure should be published in the *Federal Register*, ideally at the same time that the application is published. Given the Commission's acknowledgement "that the general screening criteria are not necessarily appropriate for every situation," failure to routinely disclose such amounts would in at least some cases deprive the public of information to which it is entitled by statute.

2. The statutory deadline for public comment on a license application to export HEU should be counted starting from the date of publication in the *Federal Register* of the amount requested, not of the redacted application. This is essential to ensuring that the public has sufficient time to comment meaningfully, and that the Commission has sufficient time to consider such comments, prior to approval of the license.

As we noted in our letter of 13 February 2006, in the years prior to the current redaction policy the Nuclear Control Institute alerted the Commission when we determined that the amount of HEU requested for export in a license application exceeded the applicant's demonstrated need or entitlement under U.S. law. In several of these cases, the Commission either reduced the amount approved for export or did not approve the license at all. The preexisting disclosure policy thereby reduced the likelihood of foreign accumulation of surplus HEU, helping to promote U.S. national security. We urge a return to this enlightened policy of openness and public disclosure, in accordance with the Atomic Energy Act.

In closing, as you prepare to conclude your tenure as Chairman, we express our appreciation for your years of service to the Commission and your responsiveness to public concerns about the safety and security of nuclear activities under your purview. We wish you the best of luck in your future endeavors.

We look forward to the Commission's response to our request and stand ready, as always, to meet with the Commission and to provide further information upon request.

Sincerely,



Alan J. Kuperman
Senior Policy Analyst
Nuclear Control Institute



Paul L. Leventhal
Founding President
Nuclear Control Institute

cc: NRC Commissioners
The Honorable Charles E. Schumer, U.S. Senate
The Honorable Edward J. Markey, U.S. House of Representatives