



NATURAL RESOURCES DEFENSE COUNCIL

June 27, 2000

Richard A. Meserve, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Meserve:

We understand that the Department of State has requested the Nuclear Regulatory Commission ("NRC") to expand its support for KEDO's efforts to enhance nuclear safety in the People's Democratic Republic of Korea, particularly NRC's participation in training future North Korean safety regulators.

We believe such participation would be most unwise for the following reasons:

- (1) Conflict of interest. The Commission has a well-defined statutory obligation to review and determine the adequacy of proposed nuclear exports to North Korea. An involvement in the KEDO project at this stage, even if restricted to training regulators, will involve the Commission in the very kind of conflict of interest that it was set up to avoid. The Executive Branch often seeks to take the Commission down the garden path of short-term political expediency. It is up to the Commission to guard its own independence and integrity.
- (2) Legitimizing the North Korean safety review. In training North Korean regulators, the Commission would be lending legitimacy to the notion that these people are in some sense providing independent oversight, which we know cannot be the case in an ultra-Stalinist totalitarian state. The NRC involvement will be exploited to give credence to safety reviews by the North Koreans, over which the NRC will exercise no control.
- (3) Grid problems. Inherent structural safety problems in the grid, such as the obvious inadequacy of off-site power, make it especially inadvisable for the NRC to be lending implicit approval to the North Korean effort.
- (4) Legal issues: On its face, Section 129 of the Atomic Energy Act precludes export of nuclear materials and equipment or sensitive nuclear technology to the North Korea, because it prohibits such exports to any country that has abrogated IAEA inspection or "materially violated an IAEA safeguards agreement." The U.S. government has determined that the North Korea has engaged in such conduct and has subsequently failed

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to rectify the resulting uncertainties surrounding the possible diversion of nuclear material from its nuclear program for military purposes. The only way around Section 129 is a presidential waiver.

The Department of State would of course prefer to finesse this legal requirement by encouraging the Commission's direct involvement in the safety aspects of the KEDO program, in the hope that commissioners will buy into the project and thus overlook this Sec. 129 requirement when favorable export licensing determinations are sought for U.S. nuclear suppliers to the project. (The relevant subsection is attached from 42 U.S.C. § 2158, "*Conduct Resulting in Termination of Nuclear Exports.*") While the provision of nuclear reactor safety training to the North Korea is not by itself precluded by law, transfer of nuclear equipment or any sensitive nuclear technology associated with such training could well be precluded in the absence of a Presidential waiver. This is the very issue upon which the Commission will likely have to pass judgment, and the Commission's prior endorsement of nuclear safety cooperation with the government of North Korea will create at least a public perception, if not the reality, of biasing this decision.

We also have concerns relating to the fact that the NRC safety inspection system is designed for an arms-length relationship between technically competent independent entities, and is heavily dependent for its effectiveness on the careful maintenance of detailed records maintained by the "operator" for periodic inspection by the "regulator." Such an arms-length, largely records-based inspection relationship is not plausible to us in the current North Korean political context. To the extent that this issue emerges with time, its development would appear to be primarily a South Korean, Japanese, Chinese, or Russian responsibility, as these nations would be the ones most immediately affected by any serious North Korean reactor accident.

For the immediate future, the most pressing need will be for the acquisition and training of construction inspectors with experience in reinforced concrete and welded pipe construction, and building a construction project quality control organization. Specialized technical inspection services, such as ultrasonic and radiographic inspection of welds, are available commercially worldwide. South Korea has an active nuclear power construction program and should be able to provide links to the necessary construction inspection services and training.

Further down the road, the most important issue is for North Korea to have properly trained reactor operators. This training could be more effectively provided or supervised by the Institute for Nuclear Power Operations or the World Association of Nuclear Operators, thereby avoiding any compromise of NRC's independent export licensing function.

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In sum, the demand that NRC involve itself more deeply in the safety aspects of the KEDO project is inappropriate given North Korea's level of political development and technically unnecessary at the current stage of the project. For these reasons, we ask that you decline to involve the NRC in such activities.

Sincerely,



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Senior Researcher



Thomas B. Cochran
Director, Nuclear Program
Wade Green Chair of Nuclear Policy

Enclosure

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Section 129, 42 U.S.C. § 2158, Conduct Resulting in Termination of Nuclear Exports—

No nuclear materials and equipment or sensitive nuclear technology shall be exported to—

(1) any non-nuclear-weapon state that is found by the president to have, at any time after the effective date of this section,

(A) detonated a nuclear explosive device; or

(B) terminated or abrogated IAEA safeguards; or materially violated an IAEA safeguards agreement; or engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient toward terminating such activities;

(2) any nation or group of nations that is found by the President to have . . . materially violated and agreement for cooperation . . . unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security: Provided, That prior to the effective date of any such determination, the President's determination, together with a report containing the reasons for his determination, shall be submitted to the Congress