

POLICY ISSUE NOTATION VOTE

July 14, 2003

SECY-03-0119

FOR: The Commissioners

FROM: Janice Dunn Lee, Director
Office of International Programs

SUBJECT: PROPOSED LICENSE AMENDMENT TO EXPORT NUCLEAR GRADE GRAPHITE TO VARIOUS COUNTRIES FOR NON-NUCLEAR END USE (XMAT0400/02)

PURPOSE:

To request Commission review of the proposed issuance of a license amendment to Poco Graphite involving the export of nuclear grade graphite. The application is being referred to the Commission in accordance with 10 CFR 110.40(b)(3).

DISCUSSION:

Poco Graphite produces a product which meets the definition of nuclear grade graphite in 10 CFR 110.2, having a boron equivalent content of less than 5 parts per million and density greater than 1.5 grams per cubic centimeter. Bulk shipments of such graphite are controlled by the United States and other members of the Nuclear Suppliers Group to help prevent its use as a moderator or reflector material in an unsafeguarded reactor.

On January 8, 2003, as revised on January 23, 2003, Poco Graphite applied for an amendment to replace existing license, XMAT0400/01, which expired on January 29, 2003 (Attachment 1). The amendment, XMAT0400/02, requests authority to: 1) increase the total amount of nuclear grade graphite for export from 750 short tons (680,385 kilograms) to 1,500 short tons (1,360,791 kilograms); 2) increase the maximum allowable individual shipment from 18,000 kilograms to 54,000 kilograms; 3) add Charmilles Diffusion, a manufacturer/distributor in Russia through the facility in France, as a party to the export; and 4) extend the expiration date to February 10, 2005. The graphite will be used by small businesses in various general non-nuclear commercial and industrial applications.

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In response to NRC's request for its views under 10 CFR 110.41(b), the Executive Branch (EB), in a letter dated June 3, 2003 (Attachment 2), recommends that the license be issued to Poco Graphite, but limited to the quantities specified above and to the following destinations: member states of the European Union, Canada, Czech Republic, Japan, New Zealand, Romania, Singapore, Switzerland and Taiwan. This recommendation excludes Russia which has not provided the necessary assurances to the U.S. Government on retransfers to permit exports above the amount authorized by NRC's general license. However, the applicant, aware of the lack of Russian assurances and the limits of the general license, has decided to withdraw its request to add Russia to avoid delaying the issuance of the license authorizing exports to the other destinations (Attachment 3).

It is the EB's judgement that the proposed exports under the new license will not be inimical to the common defense and security of the United States and are consistent with the provisions of the Atomic Energy Act (AEA), as amended, if limited to the quantities and destinations specified above. The EB letter notes that, as parties to the Nuclear Non-proliferation Treaty (NPT), all of the countries/destinations have committed to maintaining International Atomic Energy Agency safeguards on all of their peaceful nuclear activities and have pledged not to produce or otherwise acquire any nuclear explosive device, therefore satisfying criteria (1) and (2) of Section 109(b) of the AEA, as amended, for exports of nuclear components, substances and items. With regard to Criterion (3) of the AEA Section 109(b), agreement not to retransfer any of the U.S.-supplied nuclear grade graphite without prior U.S. consent has been satisfied by receipt of broad generic assurances from all the destinations listed in the above EB proviso, except Russia and Singapore.

The EB advises that the validity of the license for Poco Graphite should be limited to the expiration date of the current Singapore two-year Import and Delivery Verification Certificate (IDVC), issued on February 10, 2003. This agreement confirms that there will be no retransfer of the U.S.-supplied graphite to any other country without prior U.S. Government consent except to ASEAN countries (Brunei, Indonesia, Malaysia, Philippines, and Thailand), all of which are parties to the Nuclear Non-Proliferation Treaty. In addition, re-exports by Singapore are to be limited to manufactured non-nuclear articles or general license quantities of bulk graphite (Attachment 4).

CONCLUSION:

The staff concurs with the Executive Branch's judgment that the issuance of the proposed license amendment, as conditioned above, would not be inimical to the common defense and security of the United States and it also meets the three specific export licensing criteria of Section 109(b) of the Atomic Energy Act of 1954, as amended. There are no applicable physical protection requirements for the export of nuclear grade graphite for non-nuclear end use.

RECOMMENDATION:

It is recommended that the Commission authorize the issuance of the amended license with the modifications or conditions requested by the EB, as follows:

1. The total amount of nuclear grade graphite for export will be increased to 1,500 short tons (1,360,791 kilograms).
2. The maximum allowable individual shipment will be 54,000 kilograms.
3. Exports will be limited to ultimate consignees in the countries of the European Union, Canada, Czech Republic, Japan, New Zealand, Romania, Singapore, and Switzerland, and the destination of Taiwan for use by small businesses in non-nuclear end use commercial and industrial applications.
4. The license will expire on February 10, 2005.

/RA/

Janice Dunn Lee, Director
Office of International Programs

- Attachments:
1. Poco Graphite Application to Amend XMAT0400/01, dtd 1/23/03
 2. DOS ltr., RJStratford to JDLee, Executive Branch Views, dtd 6/03/03
 3. Poco Graphite ltr. Amending the Application to Withdraw Russia, dtd 7/2/03
 4. Government of Singapore IDVC, dtd 2/10/03

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* See previous concurrence

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