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CORRESPONDENCE CONTROL TICKET

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AFFILIATION: NCI
ADDRESSEE: CHRM Nils Diaz
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NUCLEAR CONTROL
INSTITUTE

1000 Connecticut Avenue NW, Suite 400, Washington DC 20036

February 26, 2004

The Honorable Nils J. Diaz, Chairman
Nuclear Regulatory Commission
One White Flint North Building
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Diaz,

We are writing with regard to the request by Nordion, Inc. for the remaining, second tranche of 15 kg of highly enriched uranium (HEU) under the fourth amendment to export license XSNM 03171, for production of medical isotopes at its NRU reactor and associated processing facility in Canada.

As you know, the Nuclear Control Institute has never previously opposed export of HEU for targets for production of medical isotopes at the NRU, despite the fact that HEU can be used for weapons and despite the restrictions on such exports in the 1992 Energy Policy Act (Schumer Amendment). This is because isotope production at the NRU was portrayed by Nordion as only a short-term bridge until the commencement of isotope production at Canada's new MAPLE reactors and associated New Processing Facility (NPF), which Nordion indicated it planned to convert to utilize targets of low-enriched uranium (LEU), which is not suitable for weapons. So long as Nordion ostensibly was cooperating in the conversion of the MAPLE facilities to LEU targets, one could at least argue that Nordion satisfied the Schumer Amendment requirements for interim exports of HEU to the NRU.

However, recent information indicates that, at least since September 2003, Nordion has ceased all cooperation, work, and intention towards converting the MAPLE facilities from HEU targets to LEU targets. This includes a halt to cooperation with the U.S. Argonne National Laboratory, a fact that the Commission can and should confirm independently. Nordion informed U.S. officials it was abandoning its plan to convert the NPF to process LEU targets after the start-up of production with HEU targets, on grounds that such conversion would interrupt production for a year. Nordion claimed that the only way to convert to processing LEU targets without such an interruption would be to build an entirely new, second processing line, at a reported cost of \$90 million.

We remind you that NCI warned the Commission five years ago that, if the NPF were not converted prior to start-up, its conversion costs would escalate and this would be cited as an excuse not to convert.¹ Accordingly, we urged that the NPF be converted prior to start-up. Nordion rejected this option at the time on the ostensible grounds that immediately converting the facility would interrupt the supply of isotopes by delaying the start-up of the NPF beyond what Nordion claimed was an imminent and unavoidable end to production at the NRU for technical reasons. The fact that production at the NRU

¹ See Transcript, *Public Meeting, Briefing on Proposed Export of High Enriched Uranium to Canada*, U.S. NRC, June 16, 1999, p. 86, where Alan Kuperman testified: "If you start up the new processing facility with HEU, make it hot and then the producer says, 'well, we can't shut it down to convert it to LEU because that will interrupt the supply of medical isotopes,' then you have gone down the HEU path and you are on that path in perpetuity." The following year, he explained to Nordion and the Commission that, "if you made modifications prior to startup, it would be, one, less expensive and, two, it would avoid the problem of interrupting production of isotopes, as compared with trying to make those modifications after the startup of the facility." See Transcript, *Public Meeting, Briefing on Proposed Export of High Enriched Uranium to Canada*, U.S. NRC, July 10, 2000, p. 52.

continues five years later proves that this earlier excuse not to convert was specious, as we warned at the time.² In fact, Nordion never has wanted to convert to LEU targets, but only has feigned interest, and offered bogus claims that it was unable to convert, in order to continue receiving HEU from the United States.

The more the Commission acquiesces to such chicanery from Nordion, the more it is likely that Nordion never will convert and instead will request and receive HEU in perpetuity, thereby unnecessarily raising the risk that some of this material will be diverted for weapons by terrorists. Moreover, tolerating Nordion's recalcitrance could undermine efforts to persuade other isotope producers to phase out HEU, multiplying the risk several-fold. We therefore request that you communicate to Nordion, in the strongest possible terms, that unless it resumes cooperation with the United States towards expeditious conversion to LEU targets, it will obstruct its ability to receive any further exports of HEU from the United States. We also urge you to underscore to Nordion that there is currently excess global production capacity for medical isotopes, including among producers who already rely on or are converting to LEU targets, so that if Nordion's production were to be hindered, other producers quickly could make up the difference and Nordion could lose its share of the U.S. isotope market, possibly irreparably.

We are not in a position at this time to evaluate Nordion's reported claim that a second processing line would cost \$90 million, but we would highlight several points. First, Nordion could have avoided any possible need for a second processing line by converting the first one prior to start-up as we argued to Nordion and the Commission at the time. Nordion chose not to do so and therefore should bear all responsibility and cost for the consequences. Second; NCI specifically asked at a public meeting of the Commission how Nordion intended to convert its processing line after start-up, but Nordion repeatedly indicated it had a plan to do so. It now appears that Nordion simply lied before the Commission. Third, if the cost of a second processing line indeed were \$90 million, this cost would have to be viewed in light of the total cost of the MAPLE facilities, which already include two purpose-built reactors and one new processing facility, and in light of the market price of isotopes over the lifetime of the facility. From this perspective, even a cost of \$90 million should not be viewed as prohibitive or exceeding the requirements of the Schumer Amendment, especially given that Nordion could have reduced this cost substantially by converting prior to start-up. Finally, it is quite possible that Nordion intends to build a second processing line in any case, to provide redundancy against problems at the first, just as it built two identical reactors. If so, the marginal expense of converting the second line would be minimal.

Nordion deliberately took actions that increased the cost of converting its facility to LEU, and now claims an exemption from conversion because the costs are too high. This is tantamount to the classic case of the child who kills his parents, then asks the court for mercy because he is an orphan. The Commission should not tolerate such specious logic, intended to avoid accountability and the law.

We urge you to take the above-requested action to enforce the letter and spirit of the Schumer Amendment. We stand ready to provide further information upon request. Thank you for your consideration.

Sincerely,



Alan J. Kuperman
Senior Policy Analyst



Paul L. Leventhal
Founding President

² See Transcript, June 16, 1999, p. 91, where Paul Leventhal testified: "There is a question of fact here as to how long the NRU processing facility is available because of a supposedly filled waste tank or a waste tank that is going to be filled by the end of the year 2000, and, again, we think you should independently establish that situation." See also, pp. 62-63.

cc: NRC Commissioners
Senator Charles E. Schumer
John R. Bolton, Under Secretary of State for Arms Control and International Security
Linton Brooks, Administrator, National Nuclear Security Administration

1-301-415-1672

TO: Chairman Diaz
(+ circulation to
all commissioners)

Fm: Alan Kuperman

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