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FINAL REPLY:

Senator Maria Cantwell

TO:

Chairman Diaz

FOR SIGNATURE OF :

** PRI **

CRC NO: 06-0166

Chairman Diaz

DESC:

ROUTING:

GAO Transport of Radioisotope Cesium-137

Reyes
Virgilio
Kane
Silber
Dean
Cyr/Burns
Miller, OEDO
Zimmerman, NSIR

DATE: 03/29/06

ASSIGNED TO:

CONTACT:

NMSS

Strosnider

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate with NSIR.

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MARIA CANTWELL
WASHINGTON

8603



United States Senate

WASHINGTON, DC 20510-4705

March 29, 2006

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

The Honorable Michael Chertoff
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Chairman Diaz and Secretary Chertoff:

I was deeply troubled by yesterday's revelation that investigators from the Government Accountability Office (GAO) were able to transport quantities of the radioisotope Cesium-137 across our nation's Northern and Southern borders, in sufficient quantities to produce two radiological "dirty bombs." This demonstration made clear that a number of gaping holes exist in the protocols used to track the purchase and supply of high-risk radiological materials, as well as to license and verify the legitimacy of entities seeking to import radiological materials into the United States. It also appears that the GAO investigation hit on a serious gap in communication between the U.S. Nuclear Regulatory Commission (NRC)—the federal entity in charge of licensing the transport of radiological materials—and the Department of Homeland Security (DHS), charged with securing our borders through U.S. Customs and Border Protection (CBP).

In reviewing GAO's testimony, it is clear that we need to continue to expedite the deployment of equipment and personnel necessary to safeguard our borders from radiological threats. But it also bears mentioning that during the investigators' recent Northern and Southern Border crossings, it was not that the CBP agents failed to detect the presence of Cesium-137, but that they failed to verify fraudulent licensing documents of the sort issued by NRC. As I understand it, the Department of Homeland Security does not presently require CBP agents to verify the authenticity of these licensing documents. The NRC, in turn, does not have a database to enable CBP agents to do so if they tried. For multiple reasons, I find this to be a shocking oversight. A gas station next door to the border crossing in Blaine, Washington, can verify the validity of a credit card in a matter of seconds; yet it appears DHS and the NRC have failed to put in place the necessary systems to efficiently verify a radiological materials license.

The need to address this issue is not new, as it is consistent with both the previous recommendations of a DOE-NRC task force, as well as the expressed will of Congress. As former NRC Chairman Richard Meserve testified before a House subcommittee more than three years ago, the elements of the system recommended by the DOE-NRC working group included "verification of the legitimacy of the applicants for licenses; requirements governing the security of high risk sources while in transit...requirements for tracking and inventorying of high-risk sources to ensure that the source has not been lost or stolen; export and import controls..." and a number of other measure to "establish cradle-to-grave security" for these radiological materials. It's clear from the ease with which the GAO investigators breached our border security that these recommendations have not been implemented.

Likewise, the Energy Policy Act of 2005 (EPACT 05) signed into law just last August provided new requirements for strengthening controls over radiological materials. In particular, NRC was supposed to issue regulations governing the transport of radiological materials across the border within six months; yet those regulations have not yet been issued or implemented. In addition, the NRC is supposed to issue additional regulations by August 2006 to establish a system to track radiological materials within the United States. Given the Commission's delay and the seeming lack of inter-agency coordination to date, I am concerned that those regulations will similarly fall by the wayside.

As such, I request your expedited reply to the following questions:

- When will the NRC's overdue rules governing the import of radiological materials be finalized?
- Has DHS participated in the development in these regulations, and what mechanisms will these rules contain to ensure enforcement by CBP?
- Will NRC complete the implementation of the tracking system envisioned by EPACT 05 by this summer's statutory deadline? Given that a need for this tracking system has been identified by DOE-NRC since 2003, what can be done to further expedite its implementation?
- Has DHS participated in the development of this system, to ensure it will be adequate to track in real-time the origins of radiological materials and the legitimacy of licensees attempting to enter the United States?

Ensuring we have in place the appropriate controls on the transport of radiological materials is crucial to the security of Washington State residents. As the GAO investigation has made clear, we cannot allow the lack of competent, interagency coordination and the failure to deploy widely-available technology jeopardize the security of our citizens any longer. As such, I look forward to your timely replies.

Sincerely,



Senator Maria Cantwell