

April 12, 2006

The Honorable George V. Voinovich
Chairman, Subcommittee on Clean Air,
Climate Change, and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am pleased to provide a summary of actions taken by the NRC in response to recommendations contained in various United States Government Accountability Office (GAO) reports that address NRC activities. The enclosed summary, which is required by Section 236 of Public Law 91-510, the "Legislative Reorganization Act of 1970," describes the progress made in addressing recommendations remaining open as of, or not included in, our last summary report of April 27, 2005.

Sincerely,

/RA/

Nils J. Diaz

Enclosure:
Summary of NRC Actions

cc: Senator Thomas R. Carper

Identical letter sent to:

The Honorable George V. Voinovich
Chairman, Subcommittee on Clean Air,
Climate Change, and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510
cc: Senator Thomas R. Carper

The Honorable James M. Inhofe
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510
cc: Senator James M. Jeffords

The Honorable Ralph M. Hall
Chairman, Subcommittee on Energy
and Air Quality
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515
cc: Representative Rick Boucher

The Honorable Joe Barton
Chairman, Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515
cc: Representative John D. Dingell

The Honorable David L. Hobson
Chairman, Subcommittee on Energy and Water
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515
cc: Representative Peter J. Visclosky

The Honorable Pete V. Domenici
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510
cc: Senator Harry Reid

The Honorable Susan M. Collins
Chair, Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510
cc: Senator Joseph I. Lieberman

The Honorable Tom Davis
Chairman, Committee on Government Reform
United States House of Representatives
Washington, D.C. 20515
cc: Representative Henry A. Waxman

The Honorable David M. Walker
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

The Honorable Joshua B. Bolten
Director, Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

SUMMARY OF NRC ACTIONS

RESPONSE TO GAO REPORTS

- | | | |
|----|--|------|
| 1. | Nuclear Regulation: Strategy Needed to Regulate Safety Using Information on Risk (GAO/RCED-99-95) | A-2 |
| 2. | Nuclear Security: Federal and State Action Needed to Improve Security of Sealed Radioactive Sources (GAO-03-804) | A-5 |
| 3. | Information Technology Management: Governmentwide Strategic Planning, Performance Measurement, and Investment Management Can Be Further Improved (GAO-04-49) | A-8 |
| 4. | Nuclear Regulation: NRC Needs to More Aggressively and Comprehensively Resolve Issues Related to the Davis-Besse Nuclear Power Plant's Shutdown (GAO-04-415) | A-14 |
| 5. | Nuclear Regulatory Commission: NRC Needs to Do More to Ensure That Power Plants Are Effectively Controlling Spent Nuclear Fuel (GAO-05-339) | A-18 |
| 6. | Internet Protocol Version 6: Federal Agencies Need to Plan for Transition and Manage Security Risks (GAO-05-471) | A-20 |
| 7. | Nuclear Security: DOE Needs Better Information to Guide Its Expanded Recovery of Sealed Radiological Sources (GAO-05-967) | A-22 |
| 8. | Financial Audit: Restatement to the Nuclear Regulatory Commission's Fiscal Year 2003 Financial Statements (GAO-06-30R) | A-24 |

GAO Report - Nuclear Security: Federal and State Action
Needed to Improve Security of Sealed Radioactive Sources
August 2003
(GAO-03-804)

The U.S. Government Accountability Office (GAO), in its report “Nuclear Security: Federal and State Action Needed to Improve Security of Sealed Radioactive Sources,” made specific recommendations to strengthen NRC’s security inspection program. The recommendations that remained open at the end of calendar year 2004, the NRC’s responses, and report of progress during 2005 are provided below.

Recommendation 2

Determine, in consultation with the Agreement States, the costs and benefits of requiring owners of devices that are now generally licensed to apply for specific licenses and whether the costs are commensurate with the risks these devices present.

NRC Response and Status:

Using a risk-informed, graded approach, the NRC and Agreement States have regulated sources and devices in accordance with the Atomic Energy Act of 1954, as amended, by issuing specific licenses, providing provisions in its regulations for general licenses, and providing provisions in its regulations for exemption from licensing (e.g., smoke detectors). Recently, the NRC and Agreement States have identified and cataloged the sources of greatest concern; i.e., high-risk sources defined by the International Atomic Energy Agency’s (IAEA’s) Code of Conduct as Category 1 and Category 2. While generally licensed devices may include radionuclides defined in the Code of Conduct, the quantities are typically orders of magnitude less than the Category 1 and Category 2 threshold quantities.

In a December 2000 rulemaking regarding registration of generally licensed devices (10 CFR Parts 30, 31, and 32), the NRC decided not to convert certain general licensees to a new category of specific licensees. Instead, the revisions that were made in the rule were designed to improve control and accountability of generally licensed devices, especially for certain devices that are required to be registered. The devices are designed to be inherently safe to use so that a license application process to evaluate the prospective licensee would not be necessary. Making all general licensees become specifically licensed would be a major change in the requirements for this group of licensees and would require the significant expenditure of resources by both the NRC and the licensees. The safety and security risks posed by most generally licensed devices would not warrant such an expenditure of resources.

However, NRC is planning to initiate a rulemaking in FY 2006. This rulemaking will examine the delineation between general licensing and specific licensing for byproduct materials. As part of the rulemaking, NRC will determine the appropriateness of the criteria under which the NRC approves devices to be distributed under a general license, including better assurance that larger source quantities will not be approved for generally licensed devices. The rulemaking process would include consultation with stakeholders, including Agreement States.

After 9/11 and the issuance of the Code of Conduct, the NRC performed a review of its Sealed Source and Device (SSD) Registry and determined that all IAEA Category 1 sources are already specifically licensed by the NRC and Agreement States. Additionally, with the

exception of one type of generally licensed device, all Category 2 source devices are also specifically licensed. NRC is working with the Agreement States to identify any of these devices currently in use under a general license. On a case-by-case basis, the security of these devices will be evaluated and controlled. As the rulemaking discussed above proceeds, NRC will work with the owners of these devices and the owner of the SSD certificate to bring them into alignment with the planned rule.

The NRC regulations also require a specific license for all distributors of generally licensed devices. Additionally, NRC regulations under 10 CFR 31.5 require that any person who acquires, receives, possesses, uses, or transfers a generally licensed device must maintain the records of compliance with these requirements; notify the manufacturer and the NRC or Agreement State of any device failure, damage, loss, or theft; not abandon or export the device; and transfer the device only in accordance with specific restriction. The NRC continues to work with the Agreement States to identify sources of concern, including generally licensed devices.

This GAO recommendation remains open.

Recommendation 3

Modify NRC's process of issuing specific licenses to ensure that sealed sources cannot be purchased before NRC's verification -- through inspection or other means -- that the materials will be used as intended.

NRC Response and Status:

NRC agrees with the objective of this recommendation. An NRC-Agreement State working group has developed a process to ensure that high-risk radioactive sources cannot be obtained before verification -- through inspection or other means -- that the materials will be used as intended. The working group delivered a recommended approach to NRC senior management in December 2005. In 2006, the approach will be utilized by NRC and Agreement States during initial implementation. This approach includes a three-step process: (1) identification of radioactive materials and quantities requested, (2) screening criteria that the license reviewer must complete, and (3) notification of NRC headquarters if additional action is required. The working group is expected to resolve any issues and appropriately revise the process as needed.

NRC considers this recommendation to be closed.

Recommendation 5

Include criteria and performance measures of the NRC's and the Agreement States' implementation of additional security measures in NRC's periodic evaluations of its and Agreement States' effectiveness.

NRC Response and Status:

The NRC has made considerable progress in enhancing oversight of materials security activities required of radioactive materials licensees authorized to possess radioactive materials in quantities of concern. The quantities and amounts of concern are based on the International Atomic Energy Agency's Categorization of Sources and, thus, are supported by the international community and approved by the Commission.

NRC has worked expeditiously to ensure enhanced oversight for the implementation of the increased controls over radioactive sources imposed following the events of 9/11 through the Integrated Materials Performance Evaluation Program (IMPEP) process. NRC staff has developed program review criteria and performance measures to evaluate the effectiveness of NRC's and the Agreement States' oversight of the implementation of the increased controls. NRC staff developed a temporary procedure to incorporate increased controls into the review of NRC Regional and Agreement State materials programs. In addition, a temporary instruction for IMPEP team members was developed to provide further guidance to reviewers for performing IMPEP reviews. The approach used in these two documents incorporated evaluation of the NRC Regional and Agreement State materials programs' oversight of the implementation of increased controls into existing IMPEP performance indicators that were developed on a health and safety basis. The draft temporary procedure and temporary instruction were used by the NRC and Agreement States as interim guidance, and lessons learned during the interim use were incorporated into the final versions of the temporary procedure and temporary instruction, which were finalized in March 2006. These documents will be used during the initial implementation and inspection phases of the increased controls. Following the initial implementation and inspection phases of the increased controls, the guidance in the procedure and instruction will be incorporated into existing NRC Office of State and Tribal Programs (STP) and IMPEP procedures.

NRC considers this GAO recommendation to be closed.