

May 4, 2007

James Salsman
353 Aldean Avenue
Mountain View, California 94043

SUBJECT: December 3, 2006, Request for Action Under 10 CFR 2.206

Dear Mr. Salsman:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your petition request addressed to Mr. Luis A. Reyes in an email dated December 3, 2006 (available in the Agencywide Documents Access and Management System (ADAMS) under Accession No. ML070080059). Your request was referred to the NRC's Office of Federal and State Materials and Environmental Management Programs (FSME), pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.206 of the Commission's regulations.

In your petition request, you asked that the NRC modify uranium munition licenses to explicitly require the following:

- Licensees should make a good faith effort to quantify dates, times, locations, quantities, and types of pyrophoric uranium munition use, as well as an estimate of the targets involved.
- Licensees should determine how much uranyl oxide (uranium trioxide, UO_3) gas is produced during the combustion of pyrophoric uranium munitions in air under typical and observed conditions.
- Licensees should determine the extent of both reproductive and developmental toxicity from inhalation of a typical uranium combustion product in at least five diverse species of mammals using chromosomal aberration analysis of lymphocytes and gonocytes.
- Licensees should publish their estimates and determinations from the license modifications specified in the three actions above.
- Licensees should provide independent verification of their studies through anonymous bidding on contracts for replicating and auditing the data.
- Licensees should publish their initial studies as well as the validating studies in peer-reviewed medical and scientific journals.

You also asked that "for any further corrective action as deemed by the Commission, such as financial penalties requested in my petition of April 3, 2005, as amended."

In your December 3, 2006, petition request, you offered the following justification:

- "[T]he gross negligence on the part of the licensees, in, among other things, failing to ever measure the gaseous products of uranium combustion and thereby failing to establish the correct toxicological profile of uranium combustion product exposure."

- “[E]mpirical measurement of the amount of UO₃ gas produced by uranium combustion is necessary for determining the proper medical response to uranium combustion product exposure.”
- “[U]rine isotope ratio studies which depend on detecting uranium from slowly dissolving uranium oxide particles do not necessarily indicate uranium combustion product inhalation exposure or the extent of uranyl poisoning.”
- “[K]aryotyping measurements of chromosome aberrations will proportionately reflect uranyl exposure, in addition to [other] genetic damage.”
- “Because of the substantial reproductive harm caused by uranyl poisoning, it is clear on the face of the allegations that a result materially different from the issuance of the existing licenses would have been likely had uranium trioxide vapor emission from uranium munitions been considered upon the initial applications for the licenses allowing them.”

You supplemented your petition request with the following additional information:

Email or Conference	Date	Time	ADAMS Accession No.
Email	12/3/2006	12:51 a.m.	ML070260700
Email	2/1/2007	1:57 p.m.	ML070460125
Email	2/14/2007	6:48 a.m.	ML070460176
Email	3/1/2007	12:11 p.m.	ML070610138
Conference	3/13/2007	1:05 p.m.	ML071090096
Email	3/13/2007	12:04 p.m.	ML070730416
Email	3/13/2007	2:03 p.m.	ML070750418
Conference	4/18/2007	3:30 p.m.	ML071140285

You also discussed your petition with the Petition Review Board (PRB) in a telephone conference on March 13, 2007 (ADAMS Accession No. ML071090096). During the conference, you presented additional clarifying information relating to your petition request. The PRB considered the information you provided in its determination. The PRB informed you, by telephone, on April 12, 2007, of its initial recommendation not to accept your request for review under 10 CFR 2.2.06. The PRB offered you a second opportunity to address the PRB, which you accepted. You again addressed the PRB on April 18, 2007, by telephone conference (ADAMS Accession No. ML071140285).

After considering your December 3, 2006, petition request, the information provided in your emails, and information provided in the two telephone conferences, the PRB has determined that your December 3, 2006, request does not meet the criteria for review under 10 CFR 2.206, because the matters you raise have already been the subject of NRC review and evaluation for which a resolution has been achieved. Your December 3, 2006, request asks the NRC to take the same actions and provides the same bases for those actions as did your petition request

dated July 12, 2006 (ADAMS Accession No. ML062140659), which was resolved in our letter to you dated September 26, 2006 (ADAMS Accession No. ML062640210), and as did your petition request dated April 5, 2005 (ADAMS Accession No. ML051010296), which was resolved in the December 30, 2005, Director's Decision DD-05-08 (ADAMS Accession No. ML053460450), and published as *In the Matter of Department of the Army, et al.*, 62 NRC 866 (2005). Although you provided additional studies and website information in connection with your current December 3, 2006, petition request, to the extent your December 3, 2006, request seeks reconsideration of DD-05-08 or of our letter of September 26, 2006, your current request will not be accepted for review under 10 CFR 2.206 because it does not present significant new information, meaning that your current request provided no information that could change the conclusions of DD-05-08 or our letter of September 26, 2006. See Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," Handbook, Section III.C.(2).

To the extent your concerns pertain to the safety of inhaled gaseous uranium trioxide (UO₃) combustion products of depleted uranium munitions in foreign or combat use, your requests are not accepted for review under 10 CFR 2.206. As explained in DD-05-08, in our letter to you of September 26, 2006, and during the April 18, 2007, telephone conference, the NRC's authorizing legislation does not grant the NRC authority to regulate combat or foreign use of such radioactive materials. You have not pointed to, nor are we aware of, any provision of the Atomic Energy Act which gives the NRC the extraordinary authority to regulate combat or foreign use.

The NRC has long interpreted its jurisdiction and regulatory responsibilities to extend only to the territory of the United States. See, e.g., *Westinghouse Electric Corp.*, CLI-80-14, 11 NRC 631, *aff'd*. *NRDC v. NRC*, 647 F. 2d 1345 (D.C. Cir. 1981). The NRC's interpretation is founded upon "the long standing principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248 (1991). Nor does the Atomic Energy Act explicitly provide for NRC jurisdiction over combat uses. Instead, it appears to contemplate the opposite. See, e.g., Sections 63 and 91 of the Atomic Energy Act, 42 USC 2093 and 2121.

Absent amendment by the United States Congress of the NRC's authorizing legislation, NRC does not have the authority to regulate foreign or combat uses of depleted munitions. However, you may wish to contact the Department of Defense (DOD) Explosive Safety Board, which establishes policy for providing protection for damaging effects of DOD military munitions, and the Office of the Secretary of Defense, Health Affairs, which addresses depleted uranium medical testing of the military during and after deployment and combat operations.

To the extent your requests constitute a generic concern about the nature and magnitude of safety hazards associated with inhaled byproducts of depleted uranium and the adequacy of NRC regulations pertaining to limits for ingestion and inhalation occupational values, effluent concentrations, and releases to the environment for all heavy metal radionuclides with non-radiological chemical toxicity hazards, particularly for uranium oxides, your concerns and the information you provided are being treated as part of the petition for rulemaking initiated by your request, PRM-20-26, 70 Fed. Reg. 34699-347001 (June 15, 2005). Currently, the NRC staff is reviewing your petition for rulemaking in PRM-20-26.

J. Salsman

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For all the reasons herein above, the NRC PRB has determined that your December 3, 2006, petition request does not meet the criteria for review under 10 CFR 2.206.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Thank you for bringing these issues to NRC's attention.

Sincerely,

/RA/

George Pangburn, Deputy Director
Office of Federal and State Materials
and Environmental Materials Program

cc: Departments of the Army,
Navy, and Air Force
ATK Tactical Systems Co., LLC

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George Pangburn, Deputy Director
Office of Federal and State Materials
and Environmental Materials Program

cc: Departments of the Army,
Navy, and Air Force
ATK Tactical Systems Co., LLC

Distribution: G20770006

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OFC	SAIS	SSSB	FSME	RES	OI
NAME	JDeCicco	P Goldberg	D Cool	V Holahan	S Hackworth
DATE	04/27/07	04/27/07	04/30/07	05/01/07	05/01/07
OFC	OE	MSSA	OGC	PMDA	FSME
NAME	M Schwartz	J Schlueter	B Jones/ GL for/ NLO	C Poland/ QTE for	G Pangburn
DATE	05/03/07	05/03/07	05/03/07	05/03/07	5/4/07

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