

Rulemaking Comments

From: Janice Dean [Janice.Dean@oag.state.ny.us]
Sent: Monday, August 11, 2008 5:12 PM
To: Rulemaking Comments
Subject: PRM 50-90: joint comments on HEU petition
Attachments: 2008.08.11 joint comments on NRDC-HEU petition.pdf

DOCKETED
USNRC
August 19, 2008 (3:28pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Dear Secretary,

Attached please find joint comments submitted in support of PRM 50-90 from New York State Attorney General Andrew M. Cuomo, Illinois Attorney General Lisa Madigan, and United States Congressman Peter King (NY-3). Please add these to the rulemaking docket.

Thank you very much,
Janice A. Dean

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:

Petition for Rulemaking to Ban Future
Civil Use of Highly Enriched Uranium

NRC-2008-0279
NRC Docket No.
PRM-50-90

The Attorneys General of the States of New York and Illinois and United States Congressman Peter King submit these comments in support of the Natural Resource Defense Council's Petition for Rulemaking to Ban the Future Civil Use of Highly Enriched Uranium, Docket No. PRM-50-90.

The Petition

On March 24, 2008, the Natural Resources Defense Council ("NRDC") filed a petition for rulemaking seeking to ban the future civil use of highly enriched uranium ("HEU"). *See* NRDC's Petition for Rulemaking to Ban Future Civil Use of Highly Enriched Uranium, ML080940052 (the "petition"). The petition was docketed on April 1, 2008, under Docket No. PRM-50-90 and was opened for public comment on May 27, 2008. 73 Fed. Reg. 30321. The petition seeks to establish a date after which the Nuclear Regulatory Commission ("NRC") shall not license the civil use of HEU except on a very limited case-by-case basis, or as an alternative, seeks to establish December 31, 2009 as a date after which the NRC will refuse to

license HEU except at three research facilities. *See* Petition at 3. The petition also seeks to cease the exportation of HEU except under limited circumstances. *Id.*

The petition seeks to make changes to NRC regulations that would have no impact on the vast majority of domestic licensed facilities, but may improve domestic safety and would send a clear message to the international community encouraging a global ban on the civil use of HEU, which in turn may result in a reduction in global terrorism risk.

The NRC Should Grant the Petition Without Modification

In 2002, the U.S. National Research Council warned that “crude HEU weapons could be fabricated without state assistance,” noting that “the primary impediment that prevents countries or technically competent terrorist groups from developing nuclear weapons is the availability of [nuclear material], especially HEU.”¹ Therefore, securing and eliminating stocks of HEU is the most effective way to decrease the risk that terrorist groups obtain and use this material for nuclear terrorist attacks. Yet multiple facilities in the United States still use HEU, when less risky alternatives exist. Moreover, current technology may not detect

¹Committee on Science and Technology for Countering Terrorism, *Making the Nation Safer: The Role of Science and Technology in Countering Terrorism* (Washington, DC: National Academy Press, 2002), pp. 40, 45, as cited in Charles Ferguson and William Potter, eds., *The Four Faces of Nuclear Terrorism*, p. 132, cited in NTI, *Why Highly Enriched Uranium is a Threat*, *available at* <http://www.nti.org/db/heu/index.html>.

HEU or a nuclear device coming into the United States.² The General Accounting Office, just two months ago, published a report on nuclear security in which it found weaknesses in the NRC's radioactive materials licensing process and that due to inadequate radiation detectors at the borders, "potentially dangerous radioactive materials have entered the country without license verification." *See Nuclear Security: NRC and DHS Need to Take Additional Steps to Better Track and Detect Radioactive Materials*, General Accounting Office, GAO-08-598, June 2008, available at <http://www.gao.gov/new.items/d08598.pdf>. When even a small amount of HEU can be used to create a rudimentary nuclear device, it is imperative to take all available steps to minimize the availability of HEU here and elsewhere.

In 1993, terrorists detonated explosives contained in a rented van in the underground garage of the World Trade Center in lower Manhattan. In the wake of the terrorists' proven capacity to use a truck bomb inside the United States, the NRC revised its Design Basis Threat ("DBT") rule to add protections against land-based vehicular bomb attacks. Final Rule, *Protection Against Malevolent Use of Vehicles at Nuclear Power Plants*, 59 Fed. Reg. 38,889 (Aug. 1, 1994). According to the NRC, the World Trade Center bombing "represented a significant change to the domestic threat environment" that "eroded the basis for concluding that vehicle bombs could be excluded from any consideration of the domestic threat environment." *Id.* at 38,890. As the NRC explained it, "[f]or the first time in the

²See Thomas B. Cochran and Matthew G. McKinzie, "Detecting Nuclear Smuggling," *Scientific American*, Vol. 298, No. 4 (Apr. 2008).

United States, a conspiracy with ties to ... extremists clearly demonstrated the capability and motivation to organize, plan, and successfully conduct a major vehicle bomb attack." *Id.* Had the 1993 truck bomb involved HEU, the destruction to New York City, and far beyond, would have been staggering.

The proposed regulatory changes would have no effect on domestic power reactors, as there are currently no commercial power reactors in the United States using HEU-fuel, and no plans to license HEU-fueled reactors in the foreseeable future. Petition at 5. The proposed regulatory changes would therefore impact only a limited number of research reactors, and currently under 10 C.F.R. § 50.64, the NRC already prohibits the use of HEU fuel in non-power reactors where a low enriched uranium ("LEU") alternative is available. 10 C.F.R. § 50.64. Most research reactors have converted, or are in the process of converting, to LEU. Petition at 5. Therefore the impact of the proposed regulatory amendments on any kind of facility is very low, while the risk to domestic safety from an improvised HEU-fueled explosive is high. There is no reason why the NRC should continue to license HEU when safer alternatives are available.

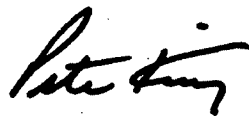
For these reasons, the Attorneys General of the States of New York and Illinois and United States Congressman Peter King support NRDC's petition to ban the civil use of HEU.

Dated: August 11, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew M. Cuomo". The signature is fluid and cursive, with a prominent "A" and "C".

Andrew M. Cuomo
Attorney General, New York

A handwritten signature in black ink, appearing to read "Peter King". The signature is cursive, with a large "P" and "K".

Peter King
United States Congressman (NY-3)

A handwritten signature in black ink, appearing to read "Lisa Madigan". The signature is cursive, with a large "L" and "M".

Lisa Madigan
Attorney General, Illinois