September 14, 2010

Dr. James Acton
The Center for Arms Control
and Non-Proliferation
322 4th Street, NE
Washington, DC 20002

SUBJECT: REQUEST TO CONSIDER NUCLEAR NON-PROLIFERATION IMPACTS IN LASER ENRICHMENT LICENSING DECISIONS

Dear Dr. Acton:

I am responding to the letter that we obtained off your web site, in which you, Mr. David Albright, Mr. Thomas Cochran, Dr. Charles Ferguson, Mr. John Isaacs, Mr. Daryl Kimball, Mr. Miles Pomper, and Mr. Leonard Spector asked the U.S. Nuclear Regulatory Commission (NRC) to explicitly consider nuclear non-proliferation in its licensing of laser enrichment plants and to prepare a programmatic environmental impact statement (PEIS) on the licensing of laser isotope separation facilities that specifically considers non-proliferation risks.

The NRC has adopted a comprehensive regulatory infrastructure, and implements an integrated set of activities directed against the unauthorized disclosure of information and technology considered important to common defense and security, and the diversion of nuclear materials inimical to public health and safety and the common defense and security. The NRC's key regulations in this area (Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical Protection of Plants and Materials;" 10 CFR Part 74, "Material Control and Accounting of Special Nuclear Material;" and 10 CFR Part 95, "Facility Security Clearance and Safeguarding of National Security Information and Restricted Data") provide comprehensive requirements governing the control of, and access to, information, physical security of materials and facilities, and material control and accounting. Other NRC regulatory requirements are directed at preventing unauthorized disclosure of classified information, safeguards information, and sensitive unclassified non-safeguards information. As appropriate, the NRC may supplement these requirements by order consistent with our statutory obligation to protect the common defense and security and public health and safety.

Given the NRC's comprehensive regulatory framework, ongoing oversight, and active inter-agency cooperation, it is the NRC's current view that making non-proliferation risks an explicit factor in its licensing decision for uranium enrichment facilities and preparing a PEIS for laser enrichment facilities that considers non-proliferation risks would not provide any additional benefit to protection of the common defense and security.

Beyond the NRC's regulations, uranium enrichment facility licensees have voluntarily committed to implement additional measures to protect information associated with classified enrichment technologies. The Nuclear Energy Institute developed a guidance document for the enrichment facility licensees and certificate holders, which the NRC staff has endorsed. Licensees are now implementing these additional measures and incorporating their commitments in their site security plans. These additional measures and commitments become part of their licensing

basis. In addition, the staff is working with other agencies to provide additional Federal involvement in protecting uranium enrichment technologies and establishing information protection measures.

Under the provisions of Section 123 of the Atomic Energy Act of 1954 (AEA), as amended, the NRC did participate in the non-proliferation assessment that allowed the Silex technology to be transferred from Australia to the U.S. under the "Agreement for Cooperation between the United States of America and Australia Concerning Technology for the Separation of Isotopes of Uranium by Laser Excitation." The term "nuclear non-proliferation assessment" is used in the AEA solely in the context of U.S. agreements for cooperation with a foreign nation under Section 123 of the AEA. Separately, the AEA grants the NRC broad regulatory latitude to protect the public health and safety and common defense and security in its domestic licensing activities. The NRC carries out these responsibilities by ensuring that potential applicants meet our requirements as noted above. While the AEA does not prescribe that NRC explicitly consider nuclear proliferation as a prerequisite to domestic licensing or that a PEIS be prepared, the NRC's security requirements related to information and material control address non-proliferation concerns.

Moreover, such an assessment is outside the scope of the agency's responsibilities under the National Environmental Policy Act (NEPA). The Commission stated with respect to the Louisiana Energy Services (LES) facility that NEPA "requires a reasonably close causal relationship between the [alleged] environmental effect and the alleged cause," but that nuclear non-proliferation issues "span a host of factors far removed from" and "far afield from our decision whether to license the facility..." 62 NRC 721 at 724 (2005). Following LES, the Commission, in USEC Inc. (American Centrifuge Plant), reiterated that potential nuclear non-proliferation initiatives, which are "dependent upon the actions and decisions of the President, Congress, international organizations, and officials of other nations," are "issues of international policy unrelated to the NRC's licensing criteria ..." 63 NRC 451 at 463 (2006).

In accordance with 10 CFR 2.390, "Public Inspections, Exemptions, Requests for Withholding," 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 NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible through the NRC Web site at http://www.nrc.gov/reading-rm/adams.html (the Public Electronic Reading Room).

J. Acton

If you have any further questions, please contact Mr. Timothy C. Johnson at 301-492-3121, or via e-mail to timothy.johnson@nrc.gov.

Sincerely,

/RA/

Catherine Haney, Director
Office of Nuclear Material Safety
and Safeguards

Docket No.: 70-7016

cc: William Szymanski/DOE
Patricia Campbell/GEH
Jerald Head/GEH
Tammy Orr/GEH
Mike Giles/CFC
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Wanda Lagoe/NCOSH
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Lee Cox/NCDENR
David Weaver/New Hanover County
Tom Clements/FOTE

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