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July 27, 2011

Mr. Jack W. Foster  
Chief, Licensing Branch  
FSME/DMSSA/LISD/LB  
U.S. Nuclear Regulatory Commission  
MS T-8-F18  
Washington DC 20555

Re: Sharp Electronics Corporation  
Request for Expedited Consideration and Request for Exemption

Dear Mr. Foster:

Sharp Electronics Corporation (Sharp) respectfully requests that the Nuclear Regulatory Commission (NRC) expedite its review of the application for an exempt distribution license filed with the NRC on March 29, 2011 and resubmitted on June 30, 2011, for the distribution of lamps and projectors containing exempt quantities of krypton 85 (Kr85). In addition, or in the alternative, Sharp respectfully requests that the NRC grant it an exemption, pursuant to 10 C.F.R. 30.11, to permit Sharp to distribute these lamps and projectors pending the issuance of an exempt distribution license to Sharp.

#### **BACKGROUND**

Sharp sells to its customers in the United States electron tubes containing not more than 30 microcuries of Kr85. The actual amount of Kr85 in each of these lamps is approximately 0.54 microcuries. Sharp imports the lamps from the manufacturer in Japan, stores them in its warehouses in Illinois and California and sells them to customers (both individuals and commercial retailers) in the United States. Because of the quantities of Kr85 in the lamps, 10 C.F.R. 30.14(a) provides that their receipt, possession, use, transfer, ownership and acquisition is exempt from NRC licensing for entities that are not the initial distributor.

In the spring of 2010, after conversations with a Japanese manufacturer, and consultations with outside counsel, Sharp became aware that these lamps contained Kr85 and of the possible need for licensing to possess and distribute these products. Prior to this time, Sharp was not aware that the lamps contained Kr85. Because the Sharp facility storing the largest number of these lamps is located in Illinois, Sharp promptly initiated the process of applying for a license for the possession, temporary storage and distribution of these lamps (and projectors containing the lamps). Sharp's application with the Illinois Emergency Management Agency (IEMA) for a license to possess, temporarily store, and distribute these products was filed on October 28, 2010. A similar application to the California Department of Public Health, Radiologic Health Branch, was filed on March 21, 2011.

In May 2011, after responding to several rounds of questions from IEMA and IEMA's inspection of Sharp's Illinois warehouse facility, Sharp was advised by the IEMA that although it deemed that Sharp was qualified for the license, IEMA would not issue Sharp an IEMA distribution license as a matter of policy until NRC had issued a distribution license to Sharp (the Illinois license would then be issued simultaneously with NRC license). On March 29, 2011, Sharp submitted to NRC an application for a distribution license pursuant to 10 C.F.R. 30.15(b) for the Kr85 lamps and projectors. In response to a June 1, 2011 letter from Mr. Bruce Carrico, Sharp's application for a distribution license was resubmitted to the NRC on June 30, 2011.

In telephone calls with Mr. Alexander Pellerito of Sharp on May 25, 2011 and June 21, 2011 respectively, Mr. Carrico strongly advised that Sharp cease distributing the lamps and projectors until it received a distribution license. As a result, Sharp promptly halted distribution.

### **CURRENT CUSTOMER CIRCUMSTANCES**

As a result of Sharp's halting distribution of the lamps and tubes, numerous retail and commercial customers are unable to operate the equipment for which the lamps provide illumination. This equipment is predominantly used in schools, and commercial establishments such as golf simulations and for corporate presentations. The only currently known source of lamps for these projectors is Sharp. Sharp typically supplies about 1000 lamps per month, both as replacements and with new equipment. For some customers, Sharp's current inability to supply lamps and projectors means that they will not be able to continue normal business and educational practices. Although the supply of lamps and projectors containing Kr85 is a small portion of Sharp's business, the inability of some of Sharp's customers to receive lamps and projectors may have a significant impact on the quality of education provided by schools and the ability of certain businesses, such as the golf

simulation providers, to continue in business. Given the nominal three month period for NRC Staff review of a distribution license application, it will be late September before Sharp will be able to meet its customers' needs, and it is critical for schools to perform installation over the summer and other businesses to maintain the working order of their projection systems.

### **POSSIBLE ALTERNATIVES TO SUPPLY SHARP'S CUSTOMERS' NEEDS**

Recognizing that a solution to the needs of Sharp's customers will not be met through the normal licensing process, Sharp and the NRC Staff discussed the possibility that Sharp try to identify a licensee with a suitable distribution license who would agree to distribute Sharp's Kr85 lamps and projectors. Sharp has talked to many, if not most, of the licensees who hold licenses that might potentially cover Sharp's lamps. Only one has been willing to seriously discuss with Sharp the possibility of distributing. General Electric Company (GE) holds License # 16-17316-01E, which authorizes (among other things) Kr85 in "arc tubes." GE has advised Sharp that it is "99% certain" that the license would cover Sharp's lamps.

However, during a conference call on July 20, 2011, the NRC Staff advised Sharp that since the GE and Sharp products were manufactured by different factories and may differ in the details of testing and quality assurance, this could prohibit GE from distributing Sharp's products under GE's license. Sharp may continue to explore GE's willingness to use its distribution license to distribute Sharp's products and the applicability of that license to Sharp's products as well as any other third party license holders. Sharp is also investigating any vendors who may provide a means of supplying substitute lamps and projectors to our customers.

Sharp is also exploring the possibility that a foreign entity might be able to sell the Kr85 lamps and projectors directly to the ultimate customers, based on the exemption to the need for a possession and use license for Sharp's Kr85 lamps, pursuant to 10 C.F.R. 30.15(a)(8)(iv), and the NRC's announcement that no import license, either general or specific, is needed for the importation of byproduct material which is exempt from licensing. 75 Fed. Reg. 44072, 44081 (2010) (Statement of Considerations accompanying rule amending 10 C.F.R. Part 110). While Sharp is exploring this option, we also note that this alternative would not appear to allow commercial customers who resell Sharp's Kr85 lamps to ultimate customers to import these lamps. Direct shipment to ultimate customers would also be of limited utility and be logistically difficult.

**REQUEST OF EXPEDITIOUS CONSIDERATION OF SHARP LICENSE APPLICATION**

In light of the foregoing, Sharp respectfully requests the NRC to expedite its review of the application. Sharp's initial application was filed on March 29, 2011. The resubmitted application was submitted on June 30, 2011

Sharp understands that many, if not most, applicants would like expeditious review of their applications. Sharp also understands that NRC Staff resources are limited. Sharp's primary desire for expedited consideration is its customers' needs. As explained above, although Sharp is trying to arrange supplies with third parties, as of the date of this letter, these customers are not able to substitute other lamps for Sharp products. As also explained above, many of Sharp's customers depend on the ability to obtain Sharp's lamps and projectors. As is demonstrated by the exemption provided by 10 C.F.R. 30.15(a)(8)(iv), these lamps do not create a health and safety issue. Also as discussed above, IEMA has apparently already approved Sharp's license application, dependent upon the NRC's approval of Sharp's license application. For all these reasons, Sharp respectfully requests that the NRC Staff expedite its review of Sharp's application.

**REQUEST FOR EXEMPTION**

In addition to the request for expedited consideration, Sharp also respectfully requests that NRC grant it an exemption, pursuant to 10 C.F.R. 30.11, to the requirement for a distribution license for Sharp to be able to distribute Kr85 lamps and projectors. Section 30.11, as well as exemption provisions in other Parts of 10 C.F.R., provides the authority to NRC to grant exemptions "from the requirement of the regulations in this part and parts 31 through 36 and 39 of this chapter." To grant an exemption, NRC must determine that the action is "authorized by law and will not endanger life and property and [is] otherwise in the public interest." 10 C.F.R. 30.11(a).

With respect to the requirement that the exemption be "authorized by law," Section 81 of the Atomic Energy Act specifically authorizes the NRC to exempt certain classes of byproduct material from the requirements of a license. In addition, an exemption (as with the authorization of distribution of the lamps and projectors themselves), does not require the preparation of an environmental assessment or environmental impact statement pursuant to the National Environmental Policy Act or NRC regulations implementing that act (10 C.F.R. part 51) because the distribution of these devices is subject to "categorical exclusions" from the requirements of Part 30 and that Act. 10 C.F.R. 51.22(c)(14)(i).

With respect to the requirement that the exemption “not endanger life and property,” Sharp would repeat what has been noted above that the possession and use of the lamps has already been determined by regulation to be exempt from licensing for their possession and use. Since that has been found to be the case by regulation, the possession of these units by Sharp’s customers will not endanger life or property.

With respect to the requirement that the exemption is “otherwise in the public interest,” Sharp would note again the needs of its customers, as described above, for the lamps and projectors which Sharp stopped distributing upon the suggestion of the NRC. Under present circumstances, these needs cannot be supplied by others, since the projectors for which replacement lamps are required probably cannot accept lamps covered by other Kr85 distribution licenses and are apparently unavailable from other sources. Furthermore, as also discussed above, some customers, such as school districts, who have placed orders for lamps and projectors have informed Sharp that they are not able to place orders for other lamps and projectors until the next budget cycle. Thus, Sharp’s inability to supply these lamps and projectors will adversely impact Sharp’s customers.

### **CONCLUSION**

For the reasons set forth above, Sharp respectfully requests that the NRC expeditiously review its application for a distribution license and grant it an exemption to distribute its Kr85 lamps and projectors pending the grant of that license.

Sincerely yours,



Jay E. Silberg  
Counsel for Sharp Electronics Corporation

cc:

Alex Pellerito, Esq., Sharp Electronics Corporation  
Susan Chidakel, Esq., NRC  
Bruce Carrico, NRC