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Sent: Friday, February 27, 2015 5:40 PM
To: 'Cherry, Robert N CIV USARMY IMCOM HQ (US)
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Cc: 'Komp, Gregory R CIV USARMY HQDA ASO (US)'; Norato, Michael; McKenney, Christopher; Schwartzman, Adam; Parks, Leah; Kurian, Varughese; Shoemaker, Mirabelle; Caverly, Jill; Evans, Robert; Kellar, Ray; Chang, Lydia; Houseman, Esther; Spencer, Mary
Subject: Response to Army's Request for Clarification on Exemption versus Amendment request for Davy Crockett Licensing -SUC-1593 under the Programmatic Approach

Dr. Cherry,

I am following up and addressing one of the NRC action items from the February 19, 2015 meeting between the NRC and the Army on the Programmatic Approach to licensing the Davy Crockett sites. Specifically, the NRC is providing a clarification of the need for an exemption versus a license amendment request for the Fort Greeley and Fort Dix sites where the Army stated that the amount of depleted uranium (DU) on these sites may be zero or very small.

If the Army can show that there is no DU at a site that is currently listed in License Condition 12, then the Army can simply make this showing and request a license amendment to remove the site from license condition (LC) 12. This is because, as we discussed at the February 19, 2015 meeting, if there is no material to license at a particular site, then neither the Atomic Energy Act (AEA), as amended, nor any NRC regulations apply to the activities at this site and there is no regulation from which the Army needs an exemption. These should be relatively straight-forward license amendment requests that the NRC can process as part of the broader Programmatic Approach license amendment request.

If the Army can show that there is only a relatively small amount of DU at a site listed in LC 12, and the Army believes that the Army should be exempt from the licensing requirements in NRC regulations, then the Army would need both an exemption from the licensing requirements and a license amendment to remove the site from LC 12 of Source Materials License SUC-1593. The Army would need an exemption because section 62 of the AEA, as amended, and 10 CFR 40.3 require a license for "source material. Thus, any person in possession of "source material" as that term is defined under the AEA, as amended, and NRC regulations must hold a license regardless of the quantity. DU is defined at 10 CFR 40.4 as a type of "source material." Therefore, if the Army is in possession of DU, then the Army must hold a license regardless of the amount.

The only exception to source material license requirements are the exemptions at 10 CFR 40.11, 40.12, 40.13, and 40.14. Out of those listed, only 10 CFR 40.14 may apply to the Davy Crockett Licensing. The Army may request, or the NRC could grant, on its own initiative, a specific exemption if the exemption would be "authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest." The Army may submit this specific exemption and license amendment request separately or as part of the Programmatic Approach license amendment request.

If you have any questions, please contact me.

As we discussed, I will put this topic on the agenda for the March 24, 2015 (Second) Pre-license amendment application meeting between the Army and the NRC. I will notice the meeting sometime next week.

Thank you

Amy

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