

January 14, 2016

EA-15-235

Ms. Becky Eddy
U.S. Department of Energy
National Nuclear Security Administration
NNSA Production Office/Y-12
Y-12 National Security Complex
301 Bear Creek Road
Oak Ridge, TN 37831

SUBJECT: EXPORT SHIPMENT OF CERTAIN FOREIGN OBLIGATED NUCLEAR
MATERIAL AND NOTICE OF VIOLATION

Dear Ms. Eddy:

This letter refers to a review of your September 25, 2015 email, wherein you notified the U.S. Nuclear Regulatory Commission (NRC) of the Y-12 National Security Complex's (Y-12's) export of special nuclear material (SNM) under license XSNM3762. The export included shipment of low enriched uranium fuel to Jamaica that carries both U.S. and Canadian obligations. Title 10 of the *Code of Federal Regulations* (10 CFR) § 110.50(b)(3) requires, in part, that unless a license specifically authorizes the export of certain foreign-obligated nuclear material or equipment, a licensee may not ship such material or equipment until the licensee has requested and the Commission has issued an amendment to the license authorizing such shipment; or the licensee has given at least 40 days advance notice of the intended shipment in writing to the Deputy Director, Office of International Programs (OIP); and the NRC has obtained confirmation, through the Executive Branch, that the foreign government in question has given its consent to the intended shipment pursuant to its agreement for cooperation with the U.S.

Based on its review, the NRC has determined that a Severity Level IV violation of NRC requirements occurred. Specifically, on September 8, 2015, Y-12 exported Canadian-obligated SNM to Jamaica under license XSNM3762. This license only authorizes the export of U.S. obligated material, and NNSA had not sought nor received written approval from the Deputy Director, OIP, notifying Y-12 that the Canadian government had given its consent to the export.

The violation was evaluated in accordance with the NRC Enforcement Policy. The current Enforcement Policy is available on the NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The violation is cited in the enclosed Notice of Violation (Notice) because all of the criteria in Section 2.3.2 of the NRC Enforcement Policy were not met in that NNSA had prior opportunities to identify the limitations placed on its export license and failed to take action that would have prevented the violation. According to the September 25, 2015, email, NNSA had been notified by the Canadian Nuclear Safety Commission (CNSC) that the SNM in question would be returned to Y-12 with Canadian obligations while export license XSNM3762 was still under review by the NRC. However, the NRC staff was not made aware of the foreign obligations and issued license XSNM3762 only authorizing the export of U.S. obligated material.

B. Eddy

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You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. If you have additional information that you believe the NRC should consider, you may provide it in your response. The NRC will use your response, in part, to determine whether or not further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosures and your response will be made available electronically for public inspection in the Public Document Room or from the NRC's document system Agencywide Documents Access and Management System accessible from the NRC Website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal, privacy, or proprietary information so that it can be made available to the public without redaction. If personal, privacy, or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

Please contact Andrea R. Jones at (301) 415-2309 or via email at Andrea.Jones2@nrc.gov if you have any questions regarding this matter.

Sincerely,

/RA/

Nick D. Hilton, Chief
Enforcement Branch
Office of Enforcement

Enclosure: Notice of Violation

B. Eddy

- 2 -

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Enclosure: Notice of Violation

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ADAMS Accession Number: ML15306A230

OFFICE	OIP	OIP	OIP	Acting BC:ECNP/OIP	OE	OE
NAME	GLanglie	JSavoy	JChimood	AJones	RFretz	NHilton
DATE	10/29/15	10/29/15	10/29/15	10/29/15	01/13/16	01/14/16

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NOTICE OF VIOLATION

Y-12 National Security Complex
National Nuclear Security Administration
U.S. Department of Energy

Docket No. 11006192
License No. XSNM3762
EA-15-235

During a U.S. Nuclear Regulatory Commission (NRC) review of communications from the Y-12 National Security Complex completed on October 29, 2015, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

- A. Section 110.50 (b)(3) of Title 10 of the *Code of Federal Regulations* (10 CFR), "Specific licenses," requires, in part, that unless a license specifically authorizes the export of certain foreign-obligated nuclear material or equipment, a licensee may not ship such material or equipment until:
1. The licensee has requested and the Commission has issued an amendment to the license authorizing such shipment; or
 2. The licensee has given at least 40 days advance notice of the intended shipment in writing to the Deputy Director, Office of International Programs (OIP); and
 3. The Deputy Director, OIP, has obtained confirmation that the foreign government in question has given its consent to the intended shipment, and communicated this in writing.

Contrary to the above, on September 8, 2015, the Y-12 National Security Complex (Y-12) exported foreign-obligated nuclear material without a license specifically authorizing the export or without obtaining written consent from the Deputy Director, OIP. Specifically, Y-12 exported Canadian-obligated special nuclear material (SNM) to Jamaica under license XSNM3762. This license only authorizes the export of U.S. obligated material.

This is a Severity Level IV violation (Enforcement Policy Section 6.15.d.3).

Pursuant to the provisions of 10 CFR 2.201, Y-12 is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555-0001, with a copy to the Deputy Director, OIP, within 30 days of the date of this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation: EA-15-235" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) any additional corrective steps that will be taken; and (4) the date when full compliance will be or was achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an Order or a Demand for Information requiring you to explain why your license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001, within 30 days of the date of this letter, with the basis for your denial. Any response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days of receipt.

Dated this 14th day of January, 2016