

November 2, 2016

The Honorable Charles E. Schumer
United States Senate
Washington, DC 20510

Dear Senator Schumer:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of October 2, 2016, urging the agency to revise the process for issuing Category 3 radioactive materials licenses, in light of the recent Government Accountability Office (GAO) undercover investigation in which GAO obtained a license by posing as a fictitious company. Immediately after learning of GAO's actions, NRC staff notified the Agreement State that had wrongly issued the license and ensured that it took prompt action to revoke the license and notify manufacturers and distributors of the revocation. We also informed the other 36 Agreement States of the issue.

It is important to note that during the same investigation, the NRC and a different Agreement State appropriately applied existing pre-licensing guidance and procedures to successfully stop two other attempts by GAO to obtain licenses. Rather than identifying a systemic problem with the existing regulations or processes, GAO's success in obtaining a radioactive materials license from one Agreement State showed that failure by the regulator to follow pre-licensing guidance and procedures could result in a license being issued improperly. I can assure you that at no point during the course of GAO's activities was the safety of the public jeopardized, nor were any radioactive sources actually obtained by GAO.

In response to GAO's report, the NRC took immediate actions to ensure that our regulatory processes related to licensing of radioactive materials continue to adequately protect public health and safety and are being properly implemented. Specifically, we conducted three webinar training sessions for NRC and Agreement State inspectors and license reviewers to reinforce the proper implementation of processes and guidance for conducting pre-licensing visits. NRC also ensured that the Agreement State involved performed a thorough self-assessment and root cause analysis of its actions. This assessment determined that a license reviewer failed to follow procedures and that there was a lack of effective management oversight.

Two working groups comprised of NRC and Agreement State personnel were also formed to address the findings of the GAO audit and to perform a comprehensive assessment of Category 3 source accountability, including evaluating whether Category 3 sources should be included in the National Source Tracking System (NSTS). Separately, the Commission recently directed the NRC staff to evaluate whether it is necessary to revise our regulations or processes governing source protection and accountability to continue to ensure adequate protection of public health and safety. This evaluation will consider the results from the congressionally mandated review of Title 10 of the *Code of Federal Regulations* Part 37, the findings in the GAO report, and the recommendations made by the two working groups noted above. In addition,

the evaluation will be informed by an assessment of any changes in the threat environment between 2009 (when the NRC last considered adding Category 3 sources to NSTS) and today that argue in favor of or against expansion of the NSTS to include Category 3 sources, and a regulatory impact analysis of the accrued benefits and costs of the change, including impacts to NRC, Agreement States and regulated entities. The results of this comprehensive evaluation are due to the Commission by August 2017.

The NRC works closely with Agreement States and those states interested in establishing programs to assume regulatory authority, under the Atomic Energy Act, to license and regulate radioactive materials within their borders. For example, the NRC conducts training courses and workshops for the Agreement States, supports their evaluation of technical licensing and inspection issues, and regularly conducts evaluations of their performance through the NRC's Integrated Materials Performance Evaluation Program. The NRC recognizes the current 37 Agreement States as important partners of the agency in ensuring the safe and secure use of radioactive materials.

The NRC takes radioactive materials security very seriously. In addition to the activities outlined above, the NRC participates with 13 other Federal agencies on a U.S. Government task force that has evaluated the security of radiation sources within the United States over the past 10 years. This group has not identified any significant gaps in source security, nor has it recommended legislative changes related to source security. The task force meets routinely, and the NRC will continue to leverage this interagency resource to ensure that the appropriate level of protection is applied to radioactive materials.

I hope this information addresses your concerns. If you have any questions, please contact me or Eugene Dacus, Director of the Office of Congressional Affairs, at (301) 415-1776.

Sincerely,

/RA/

Stephen G. Burns