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JUL 15 1980

Mr. Harold D. Bengelsdorf  
 Director for Nuclear Affairs  
 International Nuclear and  
 Technical Programs  
 U. S. Department of Energy  
 Washington, D. C. 20585

Dear Mr. Bengelsdorf:

This refers to your memorandum of February 11, 1980 and your subsequent correspondence (received in this office on June 25) concerning DOE's plans to enter into a subsequent arrangement for the provision of the following equipment and special nuclear material to be used at Bangi, Malaysia:

One TRIGA MARK II research reactor, with fuel elements containing approximately 24.76 kg uranium enriched to 19.9 percent U-235, and neutron detectors containing approximately 7.6 grams uranium enriched to 93 percent in U-235.

With respect to this proposed subsequent arrangement we have the following comments, which relate entirely to the draft U.S. note forwarded with your June correspondence.

1. Exchange of Physical Security Information

We note that under the proposed bilateral note, information related to physical protection measures would be exchanged through the IAEA. Given the limited role of the IAEA in national physical security programs, we believe that policy and operational factors argue that this information should be provided on a bilateral basis. We, therefore, recommend that DOE consider modifying the proposed note accordingly. If there are reasons why revising the draft note would be inadvisable, we would appreciate receiving assurances that physical security information will be provided the U.S. in a timely and unobstructed manner. We would also appreciate confirmation that the note would not preclude U.S. visits to Malaysia for the purpose of exchanging information on physical security measures.

2. Exchange of Safeguards Information

As the Commission has indicated previously in letters to the President on Agreements for Cooperation with other nations, it would have been desirable to include specific language which provides for the U.S. to receive information concerning safeguards implementation and the Malaysian state system of accounting and control. We believe that this arrangement should contain such a provision.

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3. Fallback Safeguards

The U.S. note provides that "the parties shall immediately enter into arrangements" to establish safeguards equivalent to IAEA safeguards if it becomes apparent that the Agency is not or will not be applying safeguards under the Project and Supply Agreement. You should also be aware that in commenting on Agreements for Cooperation with other nations, Commissioners Gilinsky and Bradford have stated: "(W)e believe that a provision such as that contained in the May 30, 1974 Agreement with Japan would be preferable. That agreement explicitly gives the United States automatic fallback rights when it finds that IAEA safeguards are not acceptable."

Sincerely,

Original signed by  
James R. Shea

James R. Shea, Director  
Office of International Programs

NMSS

7/11/80

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