

June 6, 2008

The Honorable Carl Levin
Chairman, Permanent Subcommittee
on Investigations
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your request for a written, detailed description of what the NRC has done to address the recommendations of the U.S. Senate Permanent Subcommittee on Investigations, which were published in the July 12, 2007 report, *Dirty Bomb Vulnerabilities*. Since the report was published, the NRC has taken many significant steps to strengthen the radioactive materials licensing program. The enclosure details the NRC's progress in addressing the Subcommittee's recommendations, as well as the recommendations of the Independent External Review Panel, the Materials Program Working Group, and the Pre-licensing Guidance Working Group, which were established in response to the Subcommittee's report.

Please do not hesitate to contact me if you have any further questions.

Sincerely,

/RA/

Dale E. Klein

Enclosure: As stated

Identical letter sent to:

The Honorable Carl Levin
Chairman, Permanent Subcommittee
on Investigations
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510

The Honorable Norm Coleman
Ranking Member, Permanent Subcommittee
on Investigations
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510

STATUS OF RECOMMENDATIONS FROM THE U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS REPORT, *DIRTY BOMB VULNERABILITIES*

Below is a detailed description of the U.S. Nuclear Regulatory Commission's (NRC's) actions and plans for each of the recommendations of the U.S. Senate Permanent Subcommittee on Investigations report, *Dirty Bomb Vulnerabilities*. In response to this report, the NRC established the Pre-licensing Guidance Working Group to develop and issue revised guidance to address pre-licensing reviews and visits, and the Materials Program Working Group to identify other measures to be implemented for both general and specific materials licensees. Both of these working groups are comprised of NRC personnel and staff from Agreement States. In addition, the following discussion summarizes the NRC's plans for addressing the recommendations of the Independent External Review Panel to Identify Vulnerabilities in the NRC's Materials Licensing Program (the Panel), which was also established in response to the Subcommittee's report.

- (1) The NRC should reevaluate the apparent good faith presumption that pervades its licensing process.

Current status: In October 2007, the NRC chartered the Panel to identify potential vulnerabilities in the NRC's radioactive materials licensing program. The Panel was chaired by a former Agreement State program director and had members from the NRC's Advisory Committee on Nuclear Waste and Materials and the Defense Threat Reduction Agency. Over the course of 6 months, the Panel performed an independent assessment of the NRC's radioactive materials licensing program, including the "good faith presumption."

The Panel made eight recommendations, several of which are related to the "good faith presumption." Specifically, the Panel recommended that the NRC suspend the "good faith presumption" for new applicants and that the NRC develop a process and criteria for establishing "good faith" through the inspection process. The NRC agrees with the Panel's recommendations in this regard and is taking steps toward redefining the role of the "good faith presumption" in its licensing process. The Materials Program Working Group and the Pre-licensing Guidance Working Group are currently evaluating the Panel's recommendations to determine the depth and scope of procedural and policy changes to suspend the "good faith presumption" and to develop a process and criteria to establish trust. The NRC issued pre-licensing guidance for the NRC Regional Offices and the Agreement States to use to evaluate the legitimacy of applications for new licenses. The guidance calls for pre-licensing site visits for *all* new license applicants prior to issuance of a license. The Pre-licensing Guidance Working Group reviewed its draft guidance and redrafted several steps in the pre-licensing process that relied on "good faith." The revised pre-licensing guidance is scheduled for issuance in the Summer of 2008. The Materials Program Working Group was charged with providing a comprehensive report to the Commission on the NRC's radioactive materials program by September 30, 2008.

- (2) The NRC should regulate Category 3 sources more stringently. Specifically, the NRC should (i) physically inspect applicants' facilities *before* the issuance of a Category 3 materials license, and (ii) consider including Category 3 sources in the proposed National Source Tracking System.

Current status: The NRC currently has several initiatives to regulate Category 3 sources more stringently. First, the NRC issued pre-licensing guidance for the NRC Regional Offices and the Agreement States to use to evaluate the legitimacy of applications for new licenses. The guidance calls for pre-licensing site visits for *all* new license applicants prior to issuance of a license. The pre-licensing guidance defines a new license applicant as an entity that has never held a valid radioactive materials license or whose credibility cannot be verified by a regulatory agency. The guidance was issued to the Regions and States on January 15, 2008, for a 3-month pilot period. The pilot period has concluded, and the Pre-licensing Guidance Working Group is currently evaluating the comments received. The revised guidance is scheduled for issuance in the Summer of 2008. Second, the Commission requested that NRC staff evaluate the impact of extending the National Source Tracking System (NSTS) to track sources down to one-tenth of Category 3 quantities to monitor and prevent accumulation of radioactive material. NRC staff has developed a draft rulemaking package expanding NSTS to include sources one-tenth of Category 3. The draft rule was published in the *Federal Register* for public comment on April 11, 2008. The public comment period closes on June 25, 2008. The current schedule calls for NRC implementation of the expansion of NSTS by October 2009.

- (3) The NRC should act quickly to establish a web-based licensing system to ensure that source materials can be obtained only in authorized amounts by legitimate users.

Current status: The NRC is working to establish a license verification system (LVS). In the current conceptual framework, data from the Web-based Licensing System (WBL) and NSTS will be used by the LVS to verify license information. This will help ensure that licensees are only in possession of authorized quantities of materials. Currently, possessed quantities of radioactive material can only be verified through inspections. Once the LVS is in place, the NRC and the Agreement States will have a proactive methodology to ensure that licensees only possess radioactive materials in authorized quantities. The function is scheduled to be available to the NRC in Fiscal Year 2011 with Agreement State data added at a later date.

To provide for license information verification until the electronic system becomes fully operational, the NRC has begun exploring methods for manual verification of license information prior to transfers. The Materials Program Working Group developed recommendations for a manual verification system, relying on interactions between distributors of radioactive material and the responsible regulatory authority. The Agreement States would be expected to implement a similar system to ensure consistent, nationwide protection. The recommendations will be shared with the Commission in the Summer of 2008, and the Commission will provide staff direction on any changes to policy.

Independent External Review Panel's Recommendations

The NRC greatly appreciated the work of the Panel. The Panel developed thorough and well-founded recommendations to improve the NRC's licensing process. The NRC agrees with the Panel's recommendations and intends to implement them. The Materials Program Working Group performed an analysis of the Panel's recommendations and has offered suggestions regarding implementation. The NRC staff is currently evaluating the Materials Program Working Group's analysis of the Panel's report and should have an action plan in place shortly.