

August 25, 2010

The Honorable John M. Spratt, Jr.  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Spratt:

I am responding to your June 30, 2010, letter in which you request that the U.S. Nuclear Regulatory Commission (NRC) conduct a nuclear nonproliferation assessment as part of the review of license applications for new nuclear technologies.

The term "nuclear proliferation assessment" is used in the Atomic Energy Act (AEA), as amended, solely in the context of U.S. agreements for cooperation with a foreign nation under Section 123 of the AEA. Under this provision, the NRC did participate in the nonproliferation assessment that allowed the Silex technology to be transferred from Australia to the U.S. Separately, the AEA grants the NRC broad regulatory latitude to protect the public health and safety and common defense and security in its domestic licensing activities. The NRC carries out these responsibilities by ensuring that potential applicants meet our requirements as noted below. While the AEA does not prescribe a nuclear proliferation assessment requirement as a prerequisite to licensing, the NRC's security requirements related to information and material control addresses nonproliferation concerns.

The NRC has adopted a comprehensive regulatory infrastructure, and implements an integrated set of activities directed against the unauthorized disclosure of information and technology considered important to common defense and security, and the diversion of nuclear materials inimical to public health and safety and the common defense and security. The NRC's key regulations in this area (10 CFR Parts 73, 74, and 95) provide comprehensive requirements governing the control of, and access to, information, physical security of materials and facilities, and material control and accounting. Other NRC regulatory requirements are directed at preventing unauthorized disclosure of classified information, safeguards information (SGI), and sensitive unclassified non-safeguards information. As appropriate, the NRC may supplement these requirements by order consistent with our statutory obligation to protect the common defense and security and public health and safety.

Beyond the NRC's regulations, uranium enrichment facility licensees have voluntarily committed to implement additional measures to protect information associated with classified enrichment technologies. The Nuclear Energy Institute developed a guidance document for the enrichment facility licensees and certificate holders which the NRC staff has endorsed. Licensees are now implementing these additional measures and incorporating their commitments in their site security plans. These additional measures and commitments become part of their licensing basis. In addition, the staff is working with other agencies to provide additional Federal involvement in protecting uranium enrichment technologies and establishing information protection measures.

Given the NRC's comprehensive regulatory framework, ongoing oversight, and active inter-agency cooperation, it is the NRC's current view that a formal nuclear nonproliferation assessment would not provide any additional benefit to protection of the common defense and security. The NRC, however, has received a petition for rulemaking from the American Physical Society, requesting that a rulemaking be instituted to require the NRC to perform a nuclear nonproliferation assessment for some licensing actions. The NRC responded to the American Physical Society and informed them of deficiencies in the petition and the opportunity to supplement the petition to address them. The NRC also informed the American Physical Society that they could request a public meeting to consult with NRC staff on the petition and its deficiencies. We will keep you updated on the status of NRC's consideration and resolution of the petition.

I want to assure you that the NRC takes your concerns very seriously and that we will continue to regulate nuclear materials and sensitive technology to ensure protection of public health and safety and the environment, promotion of the common defense and security, and fulfillment of U.S. obligations for nonproliferation and international agreements. If you have any further questions, please contact me or Rebecca Schmidt, Director, Office of Congressional Affairs, at (301) 415-1776.

Sincerely,

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Gregory B. Jaczko

Identical letters sent to:

The Honorable John M. Spratt  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Andre Carson  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Bill Foster  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Jeff Fortenberry  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Adam Schiff  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Doug Lamborn  
United States House of Representatives  
Washington, D.C. 20515