

May 27, 2008

The Honorable Jeffrey F. Kupfer
Acting Deputy Secretary of Energy
U.S. Department of Energy
Washington, D.C. 20585

Dear Mr. Kupfer:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated April 2, 2008, regarding your evaluation of various policy, security, legal and environmental issues associated with the possible release of a small, limited quantity of Americium-241 for use by the industry in licensed applications. Your letter indicated that approximately 880 Americium-241 sources are suitable for recycling and could be provided to the U.S. Department of Energy's (DOE's) Office of Nuclear Energy's Isotope Production and Distribution Program for sale to authorized commercial users. Additionally, you noted that petroleum industry representatives have indicated their willingness to voluntarily augment existing security procedures, which could be specified in contracts between sealed source manufacturers and end-users and documented through a license amendment from the NRC or the affected Agreement State staff.

The NRC staff is ready to assist DOE in making an informed decision concerning the possible reselling of sources recovered by DOE. The Commission also recommends that the affected Agreement States and the Organization of Agreement States be informed of and involved in this effort, since they have regulatory authority over public health and safety of these sources within their states. NRC staff is willing to work with your staff and coordinate with affected Agreement States to assist in the evaluation of licensee efforts to enhance the security of radioactive materials beyond the current regulatory requirements.

Your letter mentions the possibility that enhanced security requirements could be documented in a license condition for a specific license. In general, applicants for a license or a license amendment can voluntarily propose license conditions which exceed the regulatory requirements. In such circumstances, the NRC or appropriate Agreement State will need to conduct a review to determine the impact of the proposed license conditions on the overall safe operation of the facility. If those conditions are incorporated into the license, they are binding and enforceable through NRC and Agreement State inspection programs. However, in the area of security, the Commission has established the baseline for acceptable source security requirements and does not support using our regulatory authority to require security enhancements proposed by other Federal agencies. Such action could create regulatory uncertainty. The Commission has no objections to other Federal agencies working with licensees on a voluntary basis to enhance security on a site-specific basis, providing that the enhancements do not adversely affect the safe operation of the facility. Therefore, there is a need for NRC and/or Agreement State involvement in such activities. However, these enhanced security proposals should not be required under NRC or Agreement State license conditions if the regulator has determined that the existing site security is adequate. DOE might, under contractual agreements, obligate a company to implement and maintain enhanced

security arrangements, but only if the NRC or appropriate Agreement State determines that such arrangements do not adversely affect the safe operation of the facility.

The NRC staff stands ready to discuss any potential voluntary enhancements to existing requirements and the regulatory process with DOE and licensees who are interested in acquiring these sources. Since we would be meeting with licensees, such interactions would need to comply with the NRC's public meeting policy. Your letter also mentioned the possibility of licensees exporting this material for use in other countries. Although NRC would have to approve the specific export and eventual import of such material upon its return, neither NRC's nor Agreement State's authority extend to activities outside of the U.S.

Robert J. Lewis, Director of the Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs, is the point of contact for this initiative. You may reach him by telephone at (301) 415-3340 or via e-mail at Robert.Lewis@nrc.gov.

Sincerely,

/RA/

Dale E. Klein