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March 28, 2006

The Honorable Nils J. Diaz
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD, 20852

Dear Chairman Diaz:

I am writing regarding reports that the Government Accountability office (GAO) successfully smuggled enough radioactive materials suitable for use in a dirty bomb into the country. According to these reports, even though radiation detectors alarmed when the materials were driven over the border, the GAO team simply produced false documentation and were allowed through.

As you know, I (along with Senator Hilary Rodham Clinton) am an author of the "Dirty Bomb Prevention Act," portions of which were offered as amendments to the Energy Bill (H.R. 6) and enacted into law last summer, but the Commission has failed to meet the statutory deadline for implementing them. Although the amounts of material smuggled in by GAO were reportedly so small that they would not be covered under these provisions, this episode raises questions about whether larger amounts would have been able to be smuggled using similar means.

As you know, the enacted provisions of the "Dirty Bomb Prevention Act" – contained in Section 651 of the Act, added a new Section 170H to the Atomic Energy Act of 1954. Under this provision of the law, "Not later than 180 days after the date of enactment of this Section, the Commission shall issue regulations prohibiting a person from":

"(2) importing a radiation source, unless the Commission has determined, with respect to the importation, that--

(A) the proposed recipient is authorized by law to receive the radiation source; and

(B) the shipment will be made in accordance with any applicable Federal or State law or regulation;

In addition, within a year after the date of enactment, the Commission must issue regulations that establish a mandatory tracking system for these radiation sources in the U.S. that:

- “(A) enable the identification of each radiation source by serial number or other unique identifier;
- “(B) require reporting within 7 days of any change of possession of a radiation source;
- “(C) require reporting within 24 hours of any loss of control of, or accountability for, a radiation source; and
- “(D) provide for reporting under subparagraphs (B) and (C) through a secure Internet connection.

Clearly, had the Commission issued its regulations as required, U.S. Customs and Border Protection (CBP) Officials, if faced with the proposed importation of Category 1 or 2 sources, would have been required to contact the Nuclear Regulatory Commission (NRC) to determine whether the documents possessed by the importer were legitimate and if the importer was authorized to possess the material. In the absence of the regulations, no document verification or other authorization process would be required, so anyone possessing falsified documentation could ostensibly smuggle highly radioactive materials into the country much the way GAO did. Please provide me with responses to the following questions:

- 1) When will the Commission issue its regulations requiring officials to verify whether an individual seeking to import radioactive materials is authorized to do so and possesses the appropriate documentation with the NRC? Why have these regulations been delayed? When do you expect the final regulations to take effect?
- 2) When will the Commission issue its regulations establishing the tracking system for radiation sources? After all, in earlier correspondence, http://www.house.gov/markey/Issues/iss_dirtybombs_ltr041021.pdf, you indicated that although an NRC/DOE working group recommended the establishment of a National Source Tracking System in May 2003 (see http://www.zyn.com/flc/meeting/presentations/Chavez_Radioactive.pdf), the system won't be complete until early 2007 – but the provisions enacted in the Energy Bill require that such a system be in place within a year.
- 3) Has the Commission considered real-time tracking for any or all of the radiation sources covered by the Markey-Clinton language that was enacted in the Energy bill? If so, please elaborate, and if not, why not?

In addition to the provisions in the Energy Bill that incorporated elements of my “Dirty Bomb Prevention Act”, I also authored an additional provision related to importation and transport of nuclear materials. This provision, Section 656 of the Energy Bill, adds a new section 170I to the Atomic Energy Act, which directs the Commission to issue regulations within one year of the date of enactment. Such regulations “shall establish a system to ensure that materials described in subsection b., when transferred or received in the United States by any party pursuant to an import or export license issued pursuant to this Act, are accompanied by a manifest describing the type and amount of materials being

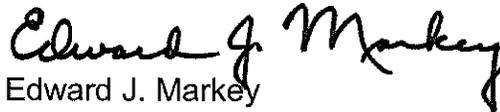
transferred or received. Each individual receiving or accompanying the transfer of such materials shall be subject to a security background check conducted by appropriate Federal entities.”

The provision also states that “Except as otherwise provided by the Commission by regulation, the materials referred to in subsection a. are byproduct materials, source materials, special nuclear materials, high-level radioactive waste, spent nuclear fuel, transuranic waste, and low-level radioactive waste (as defined in section 2(16) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(16))).”

4) When will these regulations be proposed and when will they be issued in final form?

Thank you for your attention to this important matter. Please provide your response no later than Friday April 21, 2006. If you have any questions or concerns please have your staff contact Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,


Edward J. Markey