

POLICY ISSUE NOTATION VOTE

July 14, 2003

SECY-03-0119

FOR: The Commissioners

FROM: Janice Dunn Lee, Director
Office of International Programs

SUBJECT: PROPOSED LICENSE AMENDMENT TO EXPORT NUCLEAR GRADE GRAPHITE TO VARIOUS COUNTRIES FOR NON-NUCLEAR END USE (XMAT0400/02)

PURPOSE:

To request Commission review of the proposed issuance of a license amendment to Poco Graphite involving the export of nuclear grade graphite. The application is being referred to the Commission in accordance with 10 CFR 110.40(b)(3).

DISCUSSION:

Poco Graphite produces a product which meets the definition of nuclear grade graphite in 10 CFR 110.2, having a boron equivalent content of less than 5 parts per million and density greater than 1.5 grams per cubic centimeter. Bulk shipments of such graphite are controlled by the United States and other members of the Nuclear Suppliers Group to help prevent its use as a moderator or reflector material in an unsafeguarded reactor.

On January 8, 2003, as revised on January 23, 2003, Poco Graphite applied for an amendment to replace existing license, XMAT0400/01, which expired on January 29, 2003 (Attachment 1). The amendment, XMAT0400/02, requests authority to: 1) increase the total amount of nuclear grade graphite for export from 750 short tons (680,385 kilograms) to 1,500 short tons (1,360,791 kilograms); 2) increase the maximum allowable individual shipment from 18,000 kilograms to 54,000 kilograms; 3) add Charmilles Diffusion, a manufacturer/distributor in Russia through the facility in France, as a party to the export; and 4) extend the expiration date to February 10, 2005. The graphite will be used by small businesses in various general non-nuclear commercial and industrial applications.

CONTACT: S. Schuyler-Hayes, OIP
415-2333

In response to NRC's request for its views under 10 CFR 110.41(b), the Executive Branch (EB), in a letter dated June 3, 2003 (Attachment 2), recommends that the license be issued to Poco Graphite, but limited to the quantities specified above and to the following destinations: member states of the European Union, Canada, Czech Republic, Japan, New Zealand, Romania, Singapore, Switzerland and Taiwan. This recommendation excludes Russia which has not provided the necessary assurances to the U.S. Government on retransfers to permit exports above the amount authorized by NRC's general license. However, the applicant, aware of the lack of Russian assurances and the limits of the general license, has decided to withdraw its request to add Russia to avoid delaying the issuance of the license authorizing exports to the other destinations (Attachment 3).

It is the EB's judgement that the proposed exports under the new license will not be inimical to the common defense and security of the United States and are consistent with the provisions of the Atomic Energy Act (AEA), as amended, if limited to the quantities and destinations specified above. The EB letter notes that, as parties to the Nuclear Non-proliferation Treaty (NPT), all of the countries/destinations have committed to maintaining International Atomic Energy Agency safeguards on all of their peaceful nuclear activities and have pledged not to produce or otherwise acquire any nuclear explosive device, therefore satisfying criteria (1) and (2) of Section 109(b) of the AEA, as amended, for exports of nuclear components, substances and items. With regard to Criterion (3) of the AEA Section 109(b), agreement not to retransfer any of the U.S.-supplied nuclear grade graphite without prior U.S. consent has been satisfied by receipt of broad generic assurances from all the destinations listed in the above EB proviso, except Russia and Singapore.

The EB advises that the validity of the license for Poco Graphite should be limited to the expiration date of the current Singapore two-year Import and Delivery Verification Certificate (IDVC), issued on February 10, 2003. This agreement confirms that there will be no retransfer of the U.S.-supplied graphite to any other country without prior U.S. Government consent except to ASEAN countries (Brunei, Indonesia, Malaysia, Philippines, and Thailand), all of which are parties to the Nuclear Non-Proliferation Treaty. In addition, re-exports by Singapore are to be limited to manufactured non-nuclear articles or general license quantities of bulk graphite (Attachment 4).

CONCLUSION:

The staff concurs with the Executive Branch's judgment that the issuance of the proposed license amendment, as conditioned above, would not be inimical to the common defense and security of the United States and it also meets the three specific export licensing criteria of Section 109(b) of the Atomic Energy Act of 1954, as amended. There are no applicable physical protection requirements for the export of nuclear grade graphite for non-nuclear end use.

RECOMMENDATION:

It is recommended that the Commission authorize the issuance of the amended license with the modifications or conditions requested by the EB, as follows:

1. The total amount of nuclear grade graphite for export will be increased to 1,500 short tons (1,360,791 kilograms).
2. The maximum allowable individual shipment will be 54,000 kilograms.
3. Exports will be limited to ultimate consignees in the countries of the European Union, Canada, Czech Republic, Japan, New Zealand, Romania, Singapore, and Switzerland, and the destination of Taiwan for use by small businesses in non-nuclear end use commercial and industrial applications.
4. The license will expire on February 10, 2005.

/RA/

Janice Dunn Lee, Director
Office of International Programs

- Attachments:
1. Poco Graphite Application to Amend XMAT0400/01, dtd 1/23/03
 2. DOS ltr., RJStratford to JDLee, Executive Branch Views, dtd 6/03/03
 3. Poco Graphite ltr. Amending the Application to Withdraw Russia, dtd 7/2/03
 4. Government of Singapore IDVC, dtd 2/10/03

Poco Graphite

300 Old Greenwood Road
Decatur, Texas 76234 USA
(940) 627-2121
800-433-5547

www.poco.com

January 8, 2003 (revised 1/23/03)

Ms. Suzanne Schuyler-Hayes
Office of International Programs
U.S. Nuclear Regulatory Commission
OWFN, Mail Stop 4E21 (Room 4E14)
11555 Rockville Pike
Rockville, MD 20852

2003 Jan 27 PM 2:50
RECEIVED OIP

Ms. Schuyler-Hayes,

Effective January 29, 2003, NRC Export License XMAT0400 issued to Poco Graphite, Inc. will expire.

Poco Graphite respectfully requests an extension of the existing license for a period of two (2) years. I am enclosing a company check in the amount of \$9,900.00 to cover the cost of the extension.

I would ask that the following changes/additions be made to the license extension:

1. Add an additional 1,500 short tons to the license (1,360,791 kg; 3,000,000 lbs.)
Sales through Poco Graphite's warehouses in France and Singapore have increased to the point where I anticipate shipping approximately 600,000 pounds in the year 2003 (with 10%-15% increases each year thereafter). As of January 1, 2003, only 585,984 pounds were available to ship on XMAT0400.
2. Increase the maximum allowable size of individual shipments to 54,000 kgs.
The size of replenishment orders for Poco Graphite's warehouse in France have reached the point where multiple container shipments would be advantageous. An increase to 54,000 kgs. would permit shipping three containers at one time.
3. Add one specific company located in Moscow, Russia to the license. The company specifics are:
Charmilles Diffusion
Sheremetievskaya ul 47
127521 Moscow, Russia

Telephone: 7 095 219 9604
Fax: 7 095 232 3625

Charmilles Diffusion is the official distributor for Charmilles Mikron Machinery.

Prior license extensions have been subject to Poco Graphite's representative in Singapore obtaining an import/export ICDV Certificate issued by the Trade Development Board of Singapore. I am including a faxed copy of the new Certificate that I received today, January 23rd. (The Certificate was issued for a period of two years.) I will forward a copy of the original to you immediately upon my receipt of the certificate from Singapore.

Thank you for your assistance in obtaining this license extension. If you have any questions concerning this request, please contact me at (940) 393-4226 or mwscobee@poco.com.

Regards,



Michael W. Scobee
Export Manager, Poco Graphite, Inc.

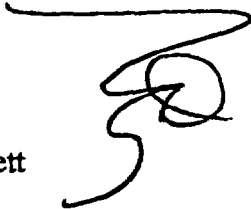


NRC No. XMAT0400 – Poco Graphite, Inc. has applied for an amendment of its existing license which authorizes export to various countries of bulk nuclear grade graphite for non-nuclear uses to: 1) increase the total amount authorized for export to all countries combined from 750 short tons (680,385 kilograms) to 1,500 short tons (1,360,791 kilograms); 2) increase the maximum for individual shipments from 18,000 kilograms to 54,000 kilograms; 3) add Charmilles Diffusion, a Russian manufacturer and distributor, as another party to the export; and 4) extend the expiration date from January 29, 2003 to January 29, 2005.

Drafted: NP/NE:R. DeLaBarre
06-03-03 647 3978

Cleared:

NP/NE – A. Burkart
L/NP – K. McManus
DOD/OSD/PP-J.Mentz
DOE/NN-43 – N. Breland
DOC/BIS/NMT – S. Clagett



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2003 JUN -3 PM 3:27

NRC FORM 250
(8-84)

NRC LICENSE NO.

THIS LICENSE EXPIRES ~~29 January 2003~~

United States of America
Nuclear Regulatory Commission

XMAT0400
Amendment No. 01
Page 1 of 2

Pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974 and the regulations of the Nuclear Regulatory Commission issued pursuant thereto, and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued

to the licensee authorizing the export of the materials and/or production or utilization facilities listed below, subject to the terms and conditions herein.

LICENSEE

ULTIMATE CONSIGNEE IN FOREIGN COUNTRY

Poco Graphite, Inc.
300 Old Greenwood Road
Decatur, Texas 76234

Attn: M. Scobee

For use in the following 23 countries only: Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Portugal, Romania, Singapore, Spain, Sweden, Switzerland and Taiwan (For use by small businesses for various general non-nuclear commercial and industrial applications).

INTERMEDIATE CONSIGNEE IN FOREIGN COUNTRY

OTHER PARTIES TO EXPORT

Poco Graphite S.A.R.L.
Parc D'Affaires Silic; 1, Rue Des Vergers
Limonest, France 69760

NONE

APPLICANT'S REF. NO.

Ltr. Dtd. 12/21/01

COUNTRY OF ULTIMATE DESTINATION

See Above

QUANTITY

DESCRIPTION OF MATERIALS OR FACILITIES


The licensee is authorized to export 680,385.0 (750.0 short tonnes) Nuclear Grade Graphite. The following conditions apply:
(1) Individual pieces of graphite may not weight more than 700 kilogram; (2) Individual shipments may not exceed 18,000.0 kilograms; (3) Re-exports to ASEAN countries i.e., Brunei, Indonesia, Malaysia, Philippines and Thailand, permitted under Singapore IDVC, be limited to: (a) articles manufactured for non-nuclear end uses, or (b) general license quantities if bulk block or rod form.

XMAT0400, Amendment No. 01 continued on Page 2

Neither this license nor any right under this license shall be assigned or otherwise transferred in violation of the provisions of the Atomic Energy Act of 1954, as amended and the Energy Reorganization Act of 1974.

This license is subject to the right of recapture or control by Section 108 of the Atomic Energy Act of 1954, as amended and to all of the other provisions of said Acts, now or hereafter in effect and to all valid rules and regulations of the Nuclear Regulatory Commission.

THIS LICENSE IS INVALID UNLESS SIGNED BELOW
BY AUTHORIZED NRC REPRESENTATIVE


Janice Dunn Lee, Director
Office of International Programs

DATE OF ISSUANCE February 5, 2002

Continued from Page 1

XMAT0400
Amendment No. 01
Page 2 of 2

DESCRIPTION OF MATERIALS OR FACILITIES:

The license is amended to 1) extend the expiration date from 01 February 2002 to 29 January 2003; and 2) change licensee address from 1601 South State Street, Decatur, Texas 76234 to 300 Old Greenwood Road, Decatur, Texas 76234.
All other conditions remain unchanged.

//////////////////////////////////////END//////////////////////////////////////



United States Department of State

BUREAU OF NONPROLIFERATION AFFAIRS *Washington, D.C. 20520*
OFFICE OF NUCLEAR ENERGY AFFAIRS

June 3, 2003

TO: Suzanne Schuyler-Hayes
Team B
Office of International Programs
United States Nuclear Regulatory Commission
PH: 301 415 2333; FAX: 301 415 2395

FROM: NP/NE – Robin DeLaBarre
PHONE: 202 647 8978
FAX: 202 647 0775

SUBJECT: XMAT0400Amendment 02--Poco Graphite Request for Amendment to Increase the Quantities of Nuclear Grade Graphite Authorized for Export to Various Countries, to Extend the Validity of the License and to Add a Russian Consignee

Transmitted for NRC action is a copy of the signed Executive Branch letter recommending approval of the subject application. The original will follow via NRC Courier.

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2003 JUN -3 PM 3:27



United States Department of State

Washington, D.C. 20520

June 3, 2003

Ms. Janice Dunn Lee
Director, International Programs
United States Nuclear Regulatory Commission
Rockville, Maryland

Dear Ms. Lee:

I refer to the letter from your office dated January 28, 2003, requesting the views of the Executive Branch as to whether amendment of an export license in accordance with the application hereinafter described meets the applicable criteria of the Atomic Energy Act of 1954, as amended:

NRC No. XMAT0400 - Poco Graphite, Inc. has applied for an amendment of its existing license which authorizes export to various countries of bulk nuclear grade graphite for non-nuclear uses to: 1) increase the total amount authorized for export to all countries combined from 750 short tons (680,385 kilograms) to 1,500 short tons (1,360,791 kilograms); 2) increase the maximum for individual shipments from 18,000 kilograms to 54,000 kilograms; 3) add Charmilles Diffusion, a Russian manufacturer and distributor, as another party to the export; and 4) extend the expiration date from January 29, 2003 to January 29, 2005.

It is the judgment of the Executive Branch that the proposed exports under the requested license amendment will not be inimical to the common defense and security of the United States and are consistent with the provisions of the Atomic Energy Act, as amended, provided the license is limited to the quantities specified above to the following countries/destinations: members of the European Union, Canada, Czech Republic, Japan, New Zealand, Romania, Singapore, Switzerland and Taiwan. The exporters request to add a Russian consignee at this time cannot be approved above general license levels until the Russian Government provides the U.S. Government the necessary assurances confirming the right of prior U.S. consent to retransfers of U.S.-origin bulk nuclear grade graphite.

As parties to the NPT, all of the foregoing countries/destinations have committed to maintain IAEA safeguards on all of their peaceful nuclear activities and have pledged not to produce or otherwise acquire any nuclear explosive device. It is therefore the view of the Executive Branch that Criteria (1) and (2) for exports of nuclear components, substances and items under section 109b of the Atomic Energy Act, as amended, are met.

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The remaining criterion, agreement not to retransfer any U.S.-supplied component, heavy water or nuclear grade graphite without prior U.S. consent, has been satisfied by receipt of generic assurances from all the countries/destinations, listed in the above proviso except Singapore. These generic assurances confirm the right of U.S. prior consent to retransfers of U.S.-origin nuclear components, heavy water and nuclear grade graphite. Singapore has furnished a new two year Import and Delivery Verification Certificate (IDVC), dated February 10, 2003, which confirms that there will be no retransfer of the U.S.-supplied graphite to any other country without prior U.S. Government consent except to the ASEAN countries—Brunei, Indonesia, Malaysia, Philippines and Thailand.

In view of the foregoing, the validity of the license should be limited to the date of expiration of the current IDVC issued by the Government of Singapore and the license should be conditioned to limit reexports by Singapore to manufactured non-nuclear articles or general license quantities of bulk graphite.

On the basis of the foregoing, the Executive Branch recommends that the license be amended as requested, subject to the provisos set forth above.

Sincerely,



Robin DeLaBarre
Acting Director
Nuclear Energy Affairs

2003 JUN -3 PM 3:27

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Poco Graphite, Inc.

300 Old Greenwood Road
Decatur, Texas 76234 USA
(940) 627-2121
800-433-5547

www.poco.com

July 2, 2003

Ms. Suzanne Schuyler-Hayes
Office of International Program
U.S. Nuclear Regulatory Commission
OWFN, Mail Stop 4E21 (Room 4E14)
11555 Rockville Pike
Rockville, MD 20852

Ms. Schuyler-Hayes,

Regarding my request for a two-year extension of NRC Export License XMAT0400 (as stated in my letter of January 8, 2003 and revised by letter on January 23, 2003):

Please remove item #3 from my list of requested changes/additions. Item #3 being the addition of a specific company (Charmilles Diffusion) in Moscow, Russia.

I would request that items #1 & #2 remain for consideration as changes to the license.

Regards,



Michael W. Scobee
Export Manager, Poco Graphite, Inc.



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2003 JUL -3 PM 2:45

ATTN: MIKE SORBE

ORIGINAL COPY

1 Applicant (Firm's Name, Address and Tel. No.)
2 CRNG. 2006029000R
POCO GRAPHITE, INC.
30 ROBINSONS ROAD #02-02
ROBINSONS TOWERS, SINGAPORE 068546
TEL: 687240 FAX: 6872963

2 Exporter (Firm's Name and Address)
POCO GRAPHITE, INC.
300 OLD GREENWOOD ROAD
SECAHUL, TEXAS 76234
U. S. A.

3 End-User (Firm's Name and Address)
POCO GRAPHITE, INC.
30 ROBINSONS ROAD #02-02
ROBINSONS TOWERS
SINGAPORE 068546

4 Remarks (Please tick (✓) where applicable.)
 a. For use in Singapore.
 b. For re-export to **ASIAN COUNTRIES** (country)

REPUBLIC OF SINGAPORE
THE REGULATION OF IMPORTS AND EXPORTS ACT (CHAPTER 272A)
THE REGULATION OF IMPORTS AND EXPORTS REGULATIONS

APPLICATION FOR AN IMPORT CERTIFICATE
 (See Notes on Page 2)

In support of my/our application for an Import Certificate, We hereby undertake -

(a) to import into the Republic of Singapore the goods described and in the quantity specified below, and

(b) not to export those goods or cause or permit them to be exported from Singapore after they have been imported into the Republic, or if they are not imported into the Republic, not to dispose of nor cause or permit them to be disposed of in any other country or territory without the written approval of the International Enterprise Singapore Board.

6 We need a Delivery Verification Certificate
 We do not need a Delivery Verification Certificate.

7 We declare that the particulars in this application are true and correct.

Signature: *[Signature]*
 Name: **GETTY WEE**
 Designation: **OFFICE MANAGER**
 Date: **7/2/03**
 Please tick (✓) where applicable.

8 Ser. No.	9 Description of Goods	10 Commodity Code (HS)	11 Quantity	12 Value S\$
1.	ARTIFICIAL GRAPHITE BILLETS & CYLINDERS	38011000	75,000 KGS	US\$ 11,034,975
2.	ARTIFICIAL GRAPHITE RODS, PLATES & SHEETS	38011000	10,000 KGS	US\$ 1,860,000
3.	ARTIFICIAL GRAPHITE ARCHIMED HEAVY SUCH AS WAFERS, INSERTS, CATHODES, ETC.	68151090	10,000 KGS	US\$ 3,000,000

13 **IMPORT CERTIFICATE NO. ICDV/016/2003**

This Import Certificate (IC) is issued on the uncertainty given in the application for the Import Certificate and to the conditions specified overleaf.

This Certificate is valid for **2 yrs** from the date of issue below.

Dated this **10 FEB 2003** day of **10 FEB 2003**

International Enterprise Singapore Board

* On your Import Permit Application you must state the number in the "Other Reference Number" field and the number in the "Exception Type Indicator" field.

You are required to comply with conditions of the Import Certificate (see page 2). This Procedure for the issue of an Import Certificate & Delivery Verification is available at <http://www.tre.gov.sg>

14 Signs

14 **DELIVERY VERIFICATION CERTIFICATE**

I hereby certify that the goods described in the application for Import Certificate No. _____ arrived in Singapore on the following date, in the following quantities and by the vessel(s)/air No.(s) stated below, respectively.

Name of Vessel/Flight No.	Arrival Date	Quantity
		75,000 KGS
		10,000 KGS
		10,000 KGS

International Enterprise Singapore Board

Date: _____



POCO GRAPHITE, INC.

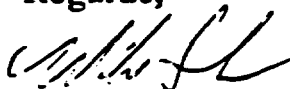
TO: Suzanne Schuyler-Hayes
FROM: Mike Scobee, Export Manager
COMPANY: NRC
DATE: 01/23/03
FAX NUMBER:
TOTAL NO. OF PAGES INCLUDING COVER:
3
PHONE NUMBER:
SENDER'S REFERENCE NUMBER:
RE: Revised letter for extension of
XMAT0400
YOUR REFERENCE NUMBER:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY FOR PROCESSING

Suzanne,

Attached is a revised copy of my letter requesting extension of XMAT0400. I have changed the requested licensing period to two years. I am also inclosing a copy of the ICVD certificate that I received from Singapore this morning.

Regards,



Mike Scobee

RECEIVED OIP
2003 JUN 27 PM 2:50

POCO GRAPHITE, INC.
300 OLD GREENWOOD ROAD
DECATUR, TX 76234
940-393-4226 (PHONE) 940-393-8284 (FAX)
EMAIL MSCOBEE@POCO.COM