

February 24, 2004

The Honorable Nydia M. Velázquez
United States House of Representatives
Washington, D.C. 20515

Dear Congresswoman Velázquez:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of December 10, 2003, concerning the Radiac Research Corporation facility in Brooklyn, New York. As discussed in your letter, the facility stores and transports hazardous materials and radioactive waste.

The NRC's jurisdiction at the Radiac facility extends only to transportation of radioactive waste outside the State of New York and to the facility's activities and materials that pertain to common defense and security. The State of New York regulates the non-radiological hazardous materials and, as an NRC Agreement State pursuant to Section 274b of the Atomic Energy Act (AEA), it also regulates the public health and safety aspects of radioactive materials covered by the AEA. The New York State Department of Labor (NYDOL) is the State agency that regulates the safety of the radioactive materials that Radiac possesses under its license with that agency, and, as such, NYDOL is responsible for oversight of operations at the facility that could affect radiological safety.

For the issues you raised that lie within our agency's jurisdiction, the NRC staff is taking action to maintain reasonable assurance of adequate protection of public health and safety and common defense and security. Since the terrorist attacks on September 11, 2001, NRC and the Agreement States have issued several advisories, including an advisory to all materials licensees on the security of licensed materials. That advisory recommended that licensees take actions to provide additional security against potential threats to licensed material in their possession. NRC has also issued orders to certain types of NRC and Agreement State licensees that require additional security measures for radioactive materials of concern, and the agency is considering issuing orders to other types of licensees in the future. At this time, NRC has not identified a need for additional security measures based on the limits on quantities and types of radioactive materials that Radiac Research Corporation is authorized to possess.

In addition, NRC is reviewing a petition with respect to common defense and security, under the provisions of 10 CFR 2.206 of our regulations, from Michael B. Gerrard of Arnold and Porter on behalf of Neighbors Against Garbage. The petition states that the radioactive waste storage operation, which adjoins a hazardous waste transfer and storage operation at the Radiac Research Corporation, represents a significant risk. It requests that NRC close the Radiac facility, using its authority under the AEA, to protect the common defense and security. The concerns raised in this petition are similar to those you express in your letter. In our initial response to Mr. Gerrard's petition, we denied his request for immediate action on the basis that the limits on the types and activity of radioactive materials that Radiac is authorized to possess are below the levels that would require immediate action to maintain common defense and security. We continue to review the other issues he raised in his petition.

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We will consider your concerns with respect to common defense and security as part of our review of the petition. Our review, which will be performed in cooperation with the State of New York, will include a meeting with the petitioner and licensee; however, it will not include a formal hearing. We will advise you of the results of the review and of any action we take as a result.

Please feel free to contact me if you have any questions.

Sincerely,

/RA/

Nils J. Diaz

cc: Mr. Joseph Spektor, Radiac Research Corp.
Hon. Linda Angello, Commissioner
NY State Department of Labor
Mr. Kevin Jones, New York State Department of Labor