

April 12, 2004

**VIA OVERNIGHT MAIL**

Ms. Margaret Federline  
Deputy Director  
Office of Nuclear Material Safety and Safeguards  
Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852-2738

**Re: Radiac Research Corporation, Brooklyn, New York**

Dear Ms. Federline:

I write once more on behalf of Neighbors Against Garbage ("NAG"), because I would like to correct the misimpression given by Radiac's March 16, 2004 letter that the situation at Radiac is not unique. Far from supporting that proposition, Radiac inadvertently refutes it by straining and ultimately failing to find a comparable facility in the United States. Radiac's submission makes clear that NAG is correct that there is no other place in the United States where a radioactive waste storage facility and a hazardous waste facility are contiguous to each other and in a densely populated area.

Radiac asserts that "Radiac's LLRW and RCRA facilities are not unique. Specifically, Radiac knows of at least three other LLRW facilities with a contiguous RCRA facility -- two of which have higher license limits than Radiac."<sup>1</sup> The three facilities referenced are the Nuclear Sources and Services, Inc. (NSSI) facility in East Houston, Texas, the Perma-Fix facility in Gainesville, Florida, and the Diversified Scientific Services, Inc. (DSSI) facility in Kingston, Tennessee. In fact, Radiac is dissimilar to these facilities in a host of respects.

Most fundamentally, the population density around these facilities is far lower than around Radiac. According to EPA, 114,556 people live within a mile of the Radiac

---

<sup>1</sup> March 16, 2004 letter from Thomas West to Margaret Federline, at 9.

---

# ARNOLD & PORTER LLP

---

Ms. Margaret Federline, NRC  
April 12, 2004  
Page 2

facility and over 1 million live within 3 miles.<sup>2</sup> In contrast, 12,261 people live within a mile of the NSSI facility and 139,809 live within 3 miles.<sup>3</sup> Only 358 people live within a mile of the DSSI facility, and only 4,360 live within 3 miles.<sup>4</sup> Demographic data is not available for the Perma-Fix facility, but an aerial photograph of the facility, shown in Figure 1, shows that unlike Radiac, it is not located within an urban area. Thus, the population density around Radiac is around ten times that around NSSI, over one hundred times that around DSSI, and probably some similar multiple of that around Perma-fix. When judging the extent to which there is a threat to common defense and security, the density of the population close to the facility is a key factor. Radiac has omitted this factor from its comparative data.

Second, the threat level in New York City is far greater than in Houston, Gainesville, or Kingston, Tennessee. None of these cities has been successfully attacked by terrorists, whereas New York City has experienced major incidents in 1993 and 2001, carried out by sophisticated terrorist organizations. Radiac has also omitted the threat level in its comparison of Radiac to DSSI, NSSI, and Perma-Fix.

Third, the three facilities that Radiac attempts to suggest are comparable with the Radiac facility all deal with mixed waste, material that is both hazardous *and* radioactive.<sup>5</sup> They are three of only five such facilities in the United States that EPA lists on its website.<sup>6</sup> Because the materials handled at these facilities possess both radioactive and hazardous characteristics, they require both RCRA permits and radioactive materials licenses and cannot completely separate their radioactive materials from their hazardous materials. In contrast, Radiac does not handle mixed waste. Its facility consists of two storage rooms, separated by two fire doors. Radiac stores hazardous waste in one room and radioactive waste in the other. Unlike at the three facilities that Radiac highlighted,

---

<sup>2</sup> [http://www.epa.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=110000616502&media\\_tool=ECHO](http://www.epa.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=110000616502&media_tool=ECHO).

<sup>3</sup> [http://www.epa.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=110008060597&media\\_tool=ECHO](http://www.epa.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=110008060597&media_tool=ECHO).

<sup>4</sup> [http://www.epa.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=110000372622&media\\_tool=ECHO](http://www.epa.gov/cgi-bin/get1cReport.cgi?tool=echo&IDNumber=110000372622&media_tool=ECHO).

<sup>5</sup> See EPA, Currently Operating Mixed Waste TSDFs at [http://www.epa.gov/radiation/mixed-waste/mw\\_pg11a.htm](http://www.epa.gov/radiation/mixed-waste/mw_pg11a.htm); see also [http://www.nssihouston.com/about\\_frame.html](http://www.nssihouston.com/about_frame.html); <http://www.perma-fix.com/florida/>; <http://www.perma-fix.com/dssi/>.

<sup>6</sup> See EPA, Currently Operating Mixed Waste TSDFs at [http://www.epa.gov/radiation/mixed-waste/mw\\_pg11a.htm](http://www.epa.gov/radiation/mixed-waste/mw_pg11a.htm)

Ms. Margaret Federline, NRC

April 12, 2004

Page 3

there is no reason that these materials should be stored in proximity to each other. In fact, from the standpoint of vulnerability to a terrorist attack, there is every reason to physically separate these two storage rooms. Recognizing that physical separation is desirable, the RCRA regulations generally require a 50 foot buffer zone around hazardous waste facilities, 40 C.F.R. § 264.176 and 6 N.Y.C.R.R. § 373-2.9(g), unless a variance is granted. Around fifteen years ago Radiac sought such a variance, and the New York State Department of Environmental Conservation ("DEC") granted it.<sup>7</sup> That decision noted the presence of the radioactive storage facility, but did not discuss the chance of a failure of the fire doors leading to release of radioactive materials or the possibility of terrorism.<sup>8</sup>

Lastly, Radiac initially objected to the 2.206 petition on two procedural grounds: that NAG should have requested a rulemaking, not site-specific enforcement, and that the petition had already been rejected.<sup>9</sup> The PRB rejected both of Radiac's procedural objections on or around March 4, 2004, and is now reviewing NAG's petition based on its technical merits. In its latest submission, Radiac is belatedly attempting to revive the rejected procedural objection to site-specific enforcement.<sup>10</sup> The voluminous information Radiac has submitted regarding the three mixed-waste facilities relates only to this objection, not to the merits of the issue at hand. Thus, it is untimely and irrelevant. Even if the submission were timely, which it is not, and the three facilities to which Radiac points were comparable, which they are not, it would not be good policy to enact a general rule to deal with four diverse and unusual situations. Radiac's submission makes it even plainer that the PRB was right to reject Radiac's contention that a rulemaking is required to determine the extent to which Radiac's facilities are a threat to common defense and security. The decision to reject Radiac's procedural objections has already been taken and should not be re-opened.

For the foregoing reasons, NAG respectfully requests that the PRB consider the petition and the supplemental information submitted by NAG on its technical merit and disregard Radiac's belated attempt to revive a procedural objection that has already been rejected.

---

<sup>7</sup> Matter of Application of Radiac Research Corp., Decision (DEC, 1988).

<sup>8</sup> See *Id.* at 19.

<sup>9</sup> See e.g. Letter from West to Federline of February 27, 2004.

<sup>10</sup> Letter from West to Federline of March 16, 2004 at FN 3.

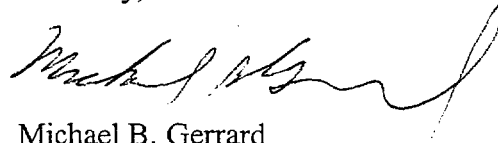
---

# ARNOLD & PORTER LLP

---

Ms. Margaret Federline, NRC  
April 12, 2004  
Page 4

Sincerely,

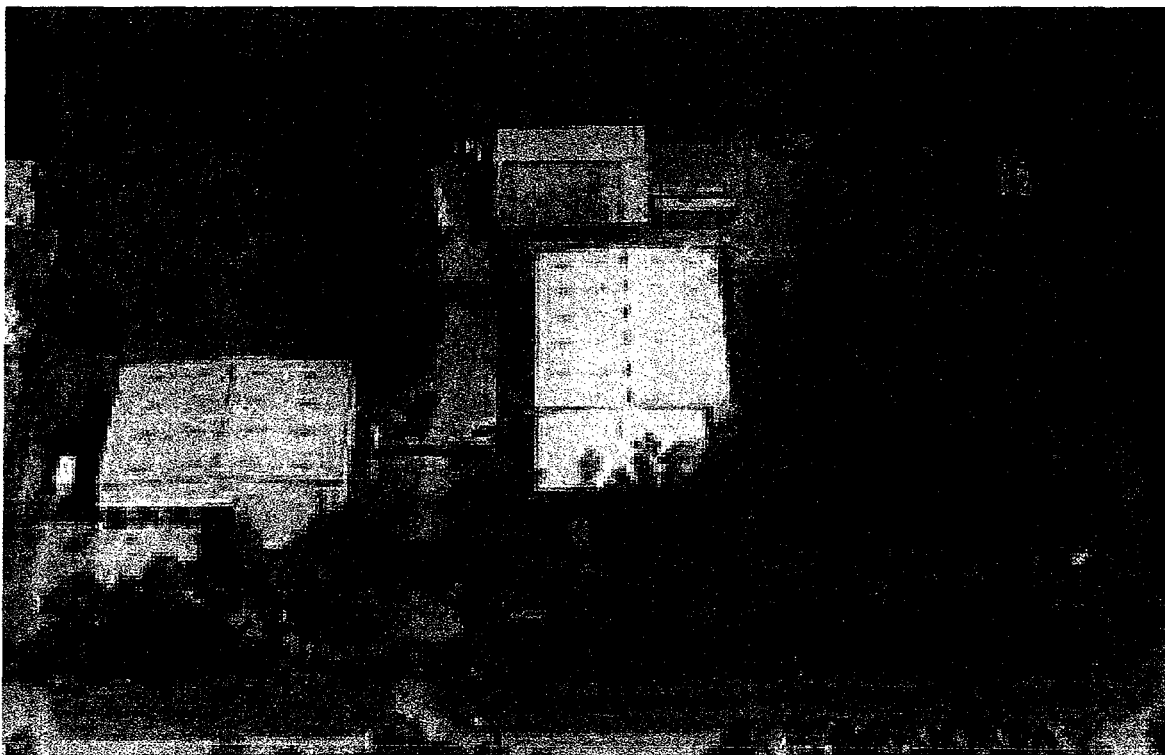


Michael B. Gerrard

Enclosures

c.c. Hon. Linda Angello, Commissioner,  
New York State Department of Labor  
Hon. Erin Crotty, Commissioner,  
New York State Department of Environmental Conservation  
Walter Mugdan, EPA Region 2  
Charles Cox, NRC  
Martin J. Virgilio, NRC  
Thomas West, Counsel for Radiac Research Inc.

Ms. Margaret Federline, NRC  
April 12, 2004  
Page 5



**Figure 1** Aerial Picture of the Perma-fix Facility (Source: <http://www.perma-fix.com/florida/>)