

U.S. NUCLEAR REGULATORY COMMISSION

RADIAC RESEARCH CORPORATION

BROOKLYN, NEW YORK

NOTICE OF ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that by petition dated November 4, 2003, Michael Gerrard of Arnold and Porter, representing Neighbors Against Garbage (the Petitioners), filed a Petition pursuant to Title 10 of the *Code of Federal Regulations*, Section 2.206. The Petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) immediately revoke, suspend or modify the New York State Department of Labor (NYDOL) license held by Radiac Research Corporation under the NRC's authority pursuant to the Atomic Energy Act of 1954 (AEA), as amended to protect the common defense and security.

The basis for this request was that Radiac's radioactive waste storage operation adjoining the Radiac hazardous waste transfer and storage operation in Brooklyn, New York represented a significant risk to the common defense and security.

In a letter dated December 17, 2003, the NRC informed the Petitioners that the request for immediate action was denied because the limits on types and activity of radioactive material that Radiac was authorized to possess were below the levels of concern. The letter added that

the issues identified in the petition would be reviewed under 10 CFR 2.206 and that this review would be conducted by the Office of Nuclear Material Safety and Safeguards (NMSS).

The Petitioner and the Licensee both participated in a meeting with the NMSS Petition Review Board (PRB) on February 20, 2004. At this meeting, the Petitioner provided additional information concerning the bases for the Petition, and the Licensee provided additional information concerning their response to the Petition. A concerned citizen and a representative of the Honorable Nydia M. Velasquez, U. S. House of Representatives, provided statements. Two other concerned citizens present at the public meeting later provided written statements via e-mail on February 27, 2004. The written presentations of the parties, as well as the transcript of this meeting, have been treated as a supplement to the Petition and are available in the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm.html>. The ADAMS Accession Numbers for the packages containing all the publicly available documents regarding this petition are ML041040731 and ML041240485. If you do not have access to ADAMS or there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr@nrc.gov.

In a letter dated December 10, 2003, addressed to the Honorable Nils J. Diaz, Chairman, NRC, the Honorable Nydia M. Velasquez, U. S. House of Representatives, requested the NRC to investigate the risk of an accident or terrorist event at the Radiac Facility. By letter dated February 10, 2004, Chairman Nils J. Diaz informed Congresswoman Velasquez that the NRC is

reviewing similar common defense and security issues identified in the Neighbors Against Garbage 2.206 petition and that she would be informed of the results of that review.

In a letter dated February 19, 2004, addressed to the Honorable Nils J. Diaz, Chairman, NRC, Mr. Vincent V. Abate, Chairman, Community Board No. 1, representing Brooklyn, New York, presented information pertinent to the Petition. By letter dated March 30, 2004, the PRB informed Mr. Abate that the information would be considered as a supplement to the Petition.

In letters dated February 27, 2004, the Petitioner and Licensee provided supplemental information concerning the petition. In the Licensee's letter was a request to reject the petition based on procedural issues. In a letter dated April 27, 2004, the NRC staff informed the Petitioner and the Licensee that the Licensee's request to reject the petition was denied, that the PRB accepted the petition for review because it satisfied the criteria under 10 CFR 2.206 and Management Directive 8.11, and that the NRC staff would review the technical merits of the petition.

In a letter dated March 18, 2004, the Licensee provided supplemental information concerning the petition. In a letter dated, April 12, 2004, the Petitioner provided supplemental information concerning the petition.

The NRC sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment on June 14, 2004. The Petitioners responded with comments on July 13, 2004. The licensee did not provide comments. The comments and the NRC staff's response to them are Enclosures to this Director's Decision.

The NMSS Office Director has denied the request of the Petitioner to revoke, suspend, or modify the NYDOL license held by Radiac Research Corporation under the NRC's authority to protect the common defense and security. The reasons for the decisions are explained in the Director's Decision pursuant to 10 CFR 2.206 [DD-04-04], the complete text of which is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS public access component on the NRC's Web site, <http://www.nrc.gov>, under the "Public Involvement" icon.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations.

As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision within that time.

Dated at Rockville, Maryland, this 15th day of September 2004.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Jack R. Strosnider, Director
Office of Nuclear Material Safety
and Safeguards

The NMSS Office Director has denied the request of the Petitioner to revoke, suspend, or modify the NYDOL license held by Radiac Research Corporation under the NRC's authority to protect the common defense and security. The reasons for the decisions are explained in the Director's Decision pursuant to 10 CFR 2.206 [DD-04-04], the complete text of which is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS public access component on the NRC's Web site, <http://www.nrc.gov>, under the "Public Involvement" icon.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations.

As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision within that time.

Dated at Rockville, Maryland, this 15th day of September 2004.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Jack R. Strosnider, Director
Office of Nuclear Material Safety
and Safeguards

DISTRIBUTION:

IMNS r/f NMSS r/f

DCB r/f **ADAMS Accession No. 042230345**

Coordinated with OGC and they have no legal objection

OFFICE	MSIB	MSIB	NSIR	OGC	STP	IMNS	NMSS
NAME	CCox*	TEssig*	MLayton*	MBupp*	CMaupin*	CMiller*	JStrosnider
DATE	8/04 /04	8/17/04	8/19 /04	8/24 /04	8/27/04	8/ 27 /04	9/15/04

Official Record Copy