

RAS N-2981

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August 4, 2008 (4:04pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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August 4, 2008

**VIA ELECTRONIC MAIL AND U.S. MAIL**

Ms. Annette Vietti-Cook  
Secretary of the Commission  
Attn: Rulemakings and Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
[secy@nrc.gov](mailto:secy@nrc.gov)

Dear Secretary:

In accordance with 10 CFR 110.81, this letter provides EnergySolutions LLC's ("EnergySolutions") timely response to your letter of June 18, 2008 providing EnergySolutions with the opportunity to respond to the public comments on its applications for an import (IW023) and export (XW013) license for low-level radioactive waste. We appreciate the opportunity to respond to the public comments on these license applications.

EnergySolutions' response to the public comments is enclosed. The number of public comments is voluminous—approximately 1700 comments were posted in the NRC's Agencywide Documents Access and Management System ("ADAMS") as of July 20, 2008. Since that date, approximately 1,300 additional comments have been posted on ADAMS. Thus, EnergySolutions' response does not attempt to address each public comment individually.

Instead, the enclosed response identifies and addresses 34 specific issues that have been raised in the comments. In many cases these issues have been raised in multiple comments. The responses to specific issues are divided into the following seven categories: (A) Nature of the Material; (B) Disposition of the Material; (C) Transportation; (D) Public Health and Safety; (E) Public Policy; (F) Environmental Impacts; and (G) Other Issues.

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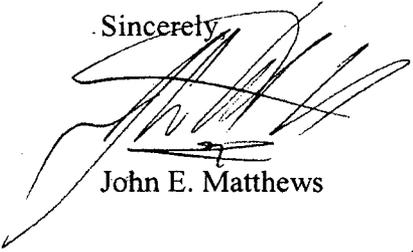
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Secretary of the Commission  
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Accordingly, *EnergySolutions* requests that the enclosed responses be considered in connection with the referenced applications.

Sincerely,



John E. Matthews

Enclosure

**EnergySolutions' Response to Public Comments on Import and Export License Applications IW023 and XW013**

**A. Nature of the Material**

1. *Issue: Some comments express the desire for more information on the sources of the material involved and more detailed information on the amount and type of materials that will be imported and processed under the proposed licenses. See, e.g., Comments 195, 221, 664, 2746, 2768, 2787, 2813, 2815, 2823.*

**EnergySolutions' Response:** Information on the amount, type, and sources of the materials involved in the proposed licenses is available in the record. The import license application specifies the amount and type of materials in question.<sup>1</sup> It also specifies the sources of the material, which are all sites authorized to possess radioactive materials under Italian law.<sup>2</sup> Information on the amount and type of materials is amplified in considerable detail in EnergySolutions' Supplemental Response to the Staff's request for additional information ("RAI").<sup>3</sup> Information on the sources of the materials is amplified in EnergySolutions' Initial RAI Response.<sup>4</sup>

As for material that may be exported under the proposed export license, the Initial RAI Response explains that EnergySolutions expects that "none of the material will need to be returned to Italy."<sup>5</sup> This is because EnergySolutions will thoroughly inspect and characterize the material in Italy to ensure that it will meet the requirements of the licenses for its Bear Creek Facility in Tennessee and its Clive Facility in Utah. The

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<sup>1</sup> Application for Specific License to Import Radioactive Material (from Italy), Lic. No. IW023 at 2 (Sept. 17, 2007), available at ADAMS Accession No. ML072950080 ("Import Application").

<sup>2</sup> See *id.* at 2-3.

<sup>3</sup> EnergySolutions Response to NRC Supplemental Request For Additional Information Regarding License Applications: IW023 & XW013, at 4-5 (Jan. 11, 2008) ("Supplemental RAI Response").

<sup>4</sup> EnergySolutions Response to NRC Request For Additional Information Dated November 29, 2007 at 1-2 (Dec. 5, 2007) ("Initial RAI Response").

<sup>5</sup> *Id.* at 3.

export license application was filed for contingency purposes only, to permit return of the material in the unlikely event it must be returned to Italy because it cannot be dispositioned domestically.<sup>6</sup>

2. *Issue: One comment includes a memorandum purportedly analyzing the publicly available information regarding the nature of the material to be imported and the concentration of radionuclides therein. The memorandum concludes that “the data provided in the Federal Register notice . . . are scant” and recommends that, among other things, EnergySolutions be “required to provide detailed data on the characteristics of each waste stream prior to and after processing.” Comment 2823.*

**EnergySolutions’ Response:** The memorandum attached to this comment incorrectly assumes that the imported material will contain the largest permissible amounts of radioactivity identified in the license applications, and from that assumption concludes that additional detailed data is required prior to the grant of the proposed license. No additional information is required, however, because, as explained in response to issue 1, above, EnergySolutions will thoroughly inspect and characterize the material in Italy to ensure that it will meet the requirements of the Bear Creek and Clive Facility licenses. Thus, all material will be verified to be acceptable for processing and/or disposal prior to shipment from Italy. In the unlikely event that the final waste products cannot be dispositioned at the Clive Facility, however, the export license would permit return of this remaining material to Italy.

3. *Issue: One comment alleges that the amount of waste to be imported under the proposed license appears to exceed the amount of low-level radioactive waste (“LLRW”) and intermediate waste known to currently be in storage in Italy. As a result, the import application is allegedly an open door to continuing imports of radioactive waste from Italy and elsewhere (through Italy). Comment 2787.*

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<sup>6</sup> Application for Specific License to Export Radioactive Material (from Italy), Lic. No. XW013 at 1 (Sept. 17, 2007), available at ADAMS Accession No. ML072950080 (“Export Application”); see also *id.* at 3 (specifying that “up to approximately 1,000 tons” could be returned under the proposed export license).

**EnergySolutions' Response:** The applications cover only a limited quantity of material from specified locations in Italy for a period of no longer than five years.<sup>7</sup> Thus, granting the proposed licenses would not result in an "open door to continuing imports" as suggested in the comment.

#### **B. Disposition of the Material**

4. *Issue: Some comments express the concern that the use of domestic resources for the disposal of foreign low-level radioactive waste would put considerable pressure on limited existing resources and create the need for additional disposal sites. E.g., Comments 195, 221, 376, 380, 615, 619, 664, 694, 701, 2823.*

**EnergySolutions' Response:** The effect described in these comments is purely speculative, because the proposed import involves an amount of waste that is very small in comparison to the existing disposal capacity of the Clive Facility and more generally in comparison to the LLRW disposal capacity in this country. During each year of the five-year duration of the importations, the proposed Italian import project will amount to less than one percent of the waste receipts at the Clive Facility.<sup>8</sup> Thus, the concern that the proposed import will significantly impact existing domestic LLRW disposal resources is misplaced. Even though the volume of waste to be disposed is small relative to the total amount of material disposed at Clive annually, the ability of EnergySolutions to dispose of this waste is significant in the context of the global market for nuclear services and the ability of EnergySolutions to participate in that market. This is discussed in greater detail in response to issue 24, below.

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<sup>7</sup> See Import Application at 1-3.

<sup>8</sup> Testimony of R. Steve Creamer, Chairman and Chief Executive Officer, EnergySolutions, before the Energy and Air Quality Subcommittee, House Energy and Commerce Committee at 6 (May 20, 2008), available at [http://energycommerce.house.gov/cmte\\_mtgs/110-eaq-hrg.052008.Creamer-Testimony.pdf](http://energycommerce.house.gov/cmte_mtgs/110-eaq-hrg.052008.Creamer-Testimony.pdf) ("Creamer Testimony").

5. *Issue: Some comments express the desire for more information on the amount of radioactive material that could or would enter into commercial metal recycling. The comments request more specific information on the processing and destinations for metal that will be recycled or reused. Comment 2815; see also Comments 300, 478, 2746.*

**EnergySolutions' Response:** This information is available in the Import Application and RAI Responses and in the state licenses and applicable regulations.<sup>9</sup> In sum, no material will be released to enter into the commercial recycling stream of commerce. To the extent that the comments express the desire more specific information, they fail to explain why such additional information is required for the Commission to make its determinations under 10 CFR 110.45.

6. *Issue: One comment from representatives of the commercial recycling industry alleges that a large percentage of the material to be imported is scrap metal that will be reprocessed into new products that ultimately could threaten the safety of, and consumer confidence in, the metals recycling industry. The comment claims that, over the past 25 years, a significant problem has emerged within the scrap metal industry: metal contaminated with radioactive material. The proposed import will allegedly introduce large volumes of radioactive scrap metal into the stream of commerce and affect the radioactive materials industry and its customers. The comment then alleges that, after accounting for material destined for Japan, approximately 2,000 tons of scrap metal would be imported under this project with no clear end use. The comment speculates that this material is likely to enter the scrap metal stream of commerce, and will be untraceable after any subsequent recycling activity. The comment requests that, at a minimum, if the NRC does not deny the license, it should impose a "cradle to grave" restriction on the release of the materials to be imported under the license. Comment 2813.*

**EnergySolutions' Response:** The concerns expressed in this comment are misplaced because, as explained in response to issue 5, above, none of the waste imported under the proposed import license will enter the unrestricted scrap metal stream of commerce.

7. *Issue: The comment from representatives of the commercial recycling industry also alleges that, given the limited LLRW disposal resources in this country, the proposed import will increase the pressure on domestic LLRW waste generators to release their*

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<sup>9</sup> See generally Import Application; Initial RAI Response at 4-5; Supplemental RAI Response at 3-5.

waste into the scrap metal market, thereby damaging the metal recycling industry.  
Comment 2813.

**EnergySolutions' Response:** As explained in response to issue 4, above, the proposed import involves an amount of waste that is very small in comparison to the existing disposal capacity of the Clive Facility and more generally in this country. Thus, the proposed import will not increase the pressure on the domestic LLRW industry to release waste into the scrap metal market.

8. *Issue: Some comments express concern over the final disposition of the material that cannot be recycled. This is because the Northwest Interstate Compact on Low-Level Radioactive Waste Management ("Northwest Compact") has allegedly prohibited disposal of the waste at the EnergySolutions' Facility in Clive, Utah. See, e.g., Comments 649, 2746, 2763, 2787, 2815.*

**EnergySolutions' Response:** Information on the final destinations of the material is clearly available in the import application and RAI Responses. All of the material will be transported first to the Bear Creek Facility in Tennessee.<sup>10</sup> None of the material processed at Bear Creek will remain there—the Supplemental RAI Response clearly states that “[t]here will be no long term storage of Class B, C, or GTCC waste at the Bear Creek Facility.”<sup>11</sup> The materials will be dispositioned as specified in the Initial RAI Response.<sup>12</sup>

As for the claim that the Northwest Compact has refused to accept the material, the Northwest Compact does not have the authority to do so. The Northwest Compact simply lacks jurisdiction over the Clive Facility, because Clive is not a “regional disposal facility” within the meaning of the Low-Level Radioactive Waste Policy Act

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<sup>10</sup> Initial RAI Response at 3.

<sup>11</sup> Supplemental RAI Response at 1.

<sup>12</sup> Initial RAI Response at 4-5.

(“LLRWPA”).<sup>13</sup> Instead, the Clive Facility is an independent, privately operated business enterprise, so the Northwest Compact also cannot prevent EnergySolutions from accepting the waste at the Clive Facility. Both the Northwest Compact and the State of Utah have taken the position, in formal legal proceedings, that the Clive Facility is not a regional disposal facility.<sup>14</sup>

The State of Utah also does not have the authority to prevent disposal of the imported material at the Clive Facility. In response to the NRC’s questions regarding the instant Import Application, the Director of Utah’s Division of Radiation Control, DEQ, admitted that Utah’s rules “do not prohibit the disposal of low-level radioactive waste from foreign generators.”<sup>15</sup>

9. *Issue: Some comments express concern over the State of Tennessee’s radioactive waste regulations, which allegedly allow waste to be free released to landfills or elsewhere. See Comments 327, 380, 394, 521, 602, 2787, 2815.*

**EnergySolutions’ Response:** This comment essentially challenges the adequacy of Tennessee’s environmental regulations. However, as explained in response to issue 8, above, none of the waste will be disposed of in Tennessee, and as such, this issue is

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<sup>13</sup> The LLRWPA only authorizes each compact to “restrict the use of the *regional disposal facilities* under the compact to the disposal of low-level radioactive waste generated within the compact region.” 42 U.S.C. § 2021d(c) (emphasis added). The LLRWPA states that “[t]he term ‘regional disposal facility’ means a non-Federal low-level radioactive waste disposal facility in operation on January 1, 1985, or subsequently established and operated under a compact.” 42 U.S.C. § 2021b(11). The Clive Facility, however, was not in operation on January 1, 1985; nor was it “subsequently established and operated under a compact.” The Northwest Compact’s lack of jurisdiction over the Clive Facility is more fully explained in EnergySolutions’ Answer to Utah’s Request for Hearing, filed July 10, 2008.

<sup>14</sup> *U.S. Ecology, Inc. v. Northwest Interstate Compact on Low-level Radioactive Waste Mgmt., et al.*, Case No. C92-5091B (W.D. Wash. dismissed Jan. 31, 1994) (“*U.S. Ecology*”), Compact and Washington State Defendants’ Memorandum in Support of Motion to Dismiss, at 18 n.7 (filed July 1, 1992) (“the [Clive] facility is not a ‘regional disposal facility’ as defined under 42 U.S.C. § 2021b(11)”); *U.S. Ecology*, Memorandum in Support of Utah Defendants’ Motion to Dismiss, at 9 (filed July 15, 1992) (“[Clive] is not a ‘regional disposal facility,’ as defined in 42 U.S.C. § 2021b(11)”).

<sup>15</sup> E-mail from D. Finerfrock, DEQ, to S. Dembek, NRC “License Application IW023” (Mar. 26, 2008), available at ADAMS Accession No. ML080870476 (“Finerfrock E-mail”).

irrelevant to the findings NRC must make. There will also be no “release” of any of the material imported under this license. Moreover, under the agreement states program, the Commission has found Tennessee’s radioactive materials regulation program to be “compatible with the Commission’s program . . . and . . . adequate to protect the public health and safety.”<sup>16</sup> The NRC periodically reviews Tennessee’s radiation control program, and in its most recent Integrated Materials Performance Evaluation, the NRC reached the same conclusion.<sup>17</sup> The comments provide no justification for the NRC to revisit this generic determination in the context of this import and export licensing proceeding.

10. *Issue: Some comments express the desire for additional technical information on how the waste will meet acceptance criteria at US facilities and estimates of the amount of material and waste that could be returned to Italy. See, e.g., Comment 380, 593, 2815.*

**EnergySolutions’ Response:** This information is available in the Import and Export Applications and RAI Responses. The Import Application explains “how the waste will meet acceptance criteria.”<sup>18</sup> Finally, as explained in response to issue 1, above, it is highly unlikely that any material will need to be returned to Italy. The export license application was filed for contingency purposes, to permit return of up to 1,000 tons of material in the unlikely event it must be returned to Italy, because it cannot be dispositioned domestically.<sup>19</sup>

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<sup>16</sup> Agreement Between Atomic Energy Commission and State of Tennessee; Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State, 30 Fed. Reg. 10,918, 10,919 (Aug. 21, 1965).

<sup>17</sup> Letter from M. Virgilio, NRC, to K. Stachowski, Tenn. DEC (June 9, 2004) *available at* ADAMS Accession No. ML043630141.

<sup>18</sup> Import Application at 4.

<sup>19</sup> Export Application at 1-3.

11. *Issue: One comment claims that EnergySolutions may attempt to “dump” the waste at its Barnwell facility in South Carolina. Comment 2763.*

**EnergySolutions’ Response:** This comment is based solely on speculation that EnergySolutions will violate South Carolina law, which prohibits the disposal of non-compact material at the Barnwell Facility. EnergySolutions has no plans to dispose of any of the material associated with the proposed imports at Barnwell.

12. *Issue: Some comments express generic concerns about the safety of disposal facilities for LLRW and other nuclear facilities and operations. One comment alleges that existing LLRW disposal sites have “extensive” leakage problems and no new facilities have opened since the “1980 and 1985 Low Level radioactive Waste Policy and Amendments Acts.” E.g., Comment 60, 73, 150, 180, 250, 294, 388, 603, 726, 754, 541, 666, 800, 2787.*

**EnergySolutions’ Response:** All disposal activities will be conducted in accordance with applicable licenses and regulations. To the extent the comments provide general criticisms of the national LLRW disposal program and other nuclear activities, such criticisms are irrelevant to the instant application. As explained in response to issue 20, below, the material that would be imported under the proposed license is essentially indistinguishable from domestic LLRW and poses no incremental danger to the public health and safety. Further, as explained in response to issue 4, above, the import involves an amount of waste that is small in comparison to the existing disposal capacity.

13. *Issue: One comment claims that because Italy has no disposal facilities for LLRW, it is likely that Italy would not accept back any nonconforming material. The comment speculates that if the material is screened upon import in Louisiana, and nonconforming material is found, Louisiana might become the final dumping ground for this waste. Comment 2832.*

**EnergySolutions’ Response:** Speculation that Italy may refuse to accept any returned waste is contrary to the Italian Government’s statement that the proposed transaction is

“allow[ed]” under Italian law.<sup>20</sup> This includes both the import of the material and export back to Italy if necessary.<sup>21</sup> The comment also ignores the fact that the cross-border shipment of LLRW for processing, followed by return of the waste to the country of origin is common practice in the commercial nuclear industry,<sup>22</sup> and the comment provides no evidence to support the speculation that the Italian government will interfere in this transaction and refuse to accept the waste. Finally, as explained in response to issue 1, above, it is highly unlikely that any material will need to be returned to Italy because EnergySolutions will thoroughly inspect and characterize the material in Italy to ensure that it will meet the requirements of the Bear Creek and Clive Facility licenses.

14. *Issue: Some comments express concerns regarding the security of LLRW disposal sites. For example, one comment alleged that the proposed imports would ultimately lead to the need for additional LLRW disposal sites. Those additional sites will allegedly need to be guarded from intrusion and acts of terrorism. See Comments 195, 221, 511, 615, 664, 701, 2823.*

**EnergySolutions’ Response:** As explained in response to issue 4, above, the proposed import involves an amount of waste that is very small in comparison to the existing disposal capacity of the Clive Facility and more generally in this country. Thus, the concern that this proposed import will impact domestic LLRW disposal capacity and

<sup>20</sup> Letter from R. Stratford, U.S. Dep’t of State, to S. Dembek, NRC (Apr. 25, 2008), available at ADAMS Accession No. ML081190551 (“Stratford Letter”), enclosure (Letter from S. Beltrame, Italian Embassy, to R. DeLaBarre, U.S. Dep’t of State, “U.S. Nuclear Regulatory Commission Application for Import and Export Licenses IW023 and XW013 from EnergySolutions for authorization to Import Low-Level Radioactive Waste from Italy for Processing and Possible Return to Italy of Disposal Residues” (Apr. 8, 2008) (emphasis added)).

<sup>21</sup> See Stratford Letter.

<sup>22</sup> E.g., Import License No. IW017 (Oct. 10, 2006), available at ADAMS Accession No. ML062860179 (authorizing importation of Class A LLRW from Canada for recycling and/or disposal and specifying that nonconforming material will be returned to Canada under an appropriate export license); Import License No. IW022 (Sept. 25, 2007), available at ADAMS Accession No. ML072750266 (authorizing importation of Class A LLRW from Canada for recycling and specifying that nonconforming material will be returned to Canada under an appropriate export license); Import License No. IW009 (Oct. 16, 2003), available at ADAMS Accession No. ML032960176 (authorizing importation of Class A LLRW from Germany for recycling and/or disposal, and specifying that certain byproducts will be returned to Germany under an appropriate export license).

ultimately lead to a need for additional sites is misplaced, as is any security concern related to such additional potential sites.

### C. Transportation

15. *Issue: Some comments state that the proposed imported material cannot be handled at the commercial Port of Charleston. This is allegedly because the "South Carolina State Ports Authority" has informed the commenters that the insurance policies at the Charleston public marine terminals have nuclear exclusions such that the port does not handle nuclear waste. The comments include accusations against EnergySolutions of misrepresenting the possible use of the Port of Charleston. See Comments 2763, 2815.*

**EnergySolutions' Response:** As explained in the Import Application, all shipments within the United States will be conducted in accordance with applicable regulations.<sup>23</sup> The Import Application states that the waste will be shipped to the Port of Charleston or Port of New Orleans and from there by truck, barge, or rail to the EnergySolutions facilities in Tennessee.<sup>24</sup> EnergySolutions currently makes routine shipments on a periodic basis that meet all applicable regulatory requirements, including transportation permitting and insurance requirements. The shipments made in connection with the proposed import are no different and present no unique issues warranting further consideration.

16. *Issue: Some comments express concerns regarding the ability of the Port of New Orleans to handle the proposed imported material. Allegedly, the "port manager" for the Port of New Orleans has informed the commenter that the port's insurance policy excludes any coverage for radiological spills or accidents. Thus, the waste allegedly cannot be shipped through New Orleans. Comment 2786; see also Comment 2815.*

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<sup>23</sup> Import Application at 4.

<sup>24</sup> *Id.*

**EnergySolutions' Response:** As explained in response to issue 15, above, all shipments within the United States will be conducted in accordance with applicable regulations.<sup>25</sup>

EnergySolutions currently makes routine shipments on a periodic basis that meet all applicable regulatory requirements, including transportation permitting and insurance requirements. The shipments made in connection with the proposed import are no different and present no unique issues warranting further consideration.

17. *Issue: One comment alleges that Louisiana law now forbids the transportation of all foreign-generated radioactive waste into Louisiana for disposal in Louisiana or elsewhere.* Comment 2674.

**EnergySolutions' Response:** The comment provided a copy of 2008 House Bill No. 1196 ("Bill 1196") of the Louisiana State House of Representatives, allegedly recently enacted into law. This Bill prohibits "radioactive waste generated outside the United States" from being transported into Louisiana, "for disposal or storage in this state or elsewhere."<sup>26</sup> Bill 1196, as described in the comment, however, violates the Commerce Clause of the United States Constitution.<sup>27</sup>

In fact, on April 18, 2008, the Louisiana Department of Environmental Quality ("LDEQ") acknowledged that any similar act would be unconstitutional.<sup>28</sup> In doing so, LDEQ relied upon *Chemical Waste Management, Inc. v. Templet* ("*Chemical Waste*"),<sup>29</sup> where the Fifth Circuit affirmed a district court holding that the State of Louisiana could

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<sup>25</sup> *Id.*

<sup>26</sup> Comment 2674, encl. (House Bill No. 1196, an act to "amend and reenact R.S. 30:2113(D), relative to the Louisiana Nuclear Energy and Radiation Control Law; to provide for prohibition on transportation of certain radioactive waste.")

<sup>27</sup> U.S. Const. Art. I, § 8.

<sup>28</sup> "Louisiana Dept. of Env'tl. Quality, Importation of Low-level Radioactive Waste Through the Port of New Orleans" at 4 (April 18, 2008) (submitted to the NRC as an attachment to Public Comment 2763) ("Louisiana's authority to control the importation of radioactive material is limited by Article I, Section 8, Clause 3, of the U.S. Constitution.").

<sup>29</sup> 967 F.2d 1058 (5th Cir. 1992).

not prohibit a state-authorized treatment, storage and disposal facility from receiving hazardous waste generated in Mexico, noting that “a higher level of scrutiny is required when foreign commerce is restrained, because, unlike interstate commerce, the United States must speak with a single voice for effective relations and trade with foreign nations.”<sup>30</sup>

This is because “restrictions placed on the importation of foreign generated hazardous waste, based solely on the origin of an object of commerce, violates the foreign Commerce Clause of the United States Constitution.”<sup>31</sup> The district court explained: “hazardous waste is an object of commerce and subject to the Commerce Clause” of the United States constitution.<sup>32</sup> The Commerce Clause gives Congress the “authority and power to regulate both interstate and foreign commerce” and consequently “the states are limited in their ability to discriminate or place barriers against interstate and foreign commerce.”<sup>33</sup> The court continued:

A state may prohibit transportation of an object across state lines when ‘the article’s worth in interstate commerce is far outweighed by the dangers inhering in their very movement.’ . . . To the extent [federal and state regulations] can and do provide for the safe transportation of hazardous waste, the dangers associated with hazardous waste movement do not outweigh the value of moving hazardous waste across state lines.<sup>34</sup>

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<sup>30</sup> *Chem. Waste Mgmt., Inc. v. Temple*, 770 F.Supp. 1142, 1152 (M.D.La. 1991).

<sup>31</sup> *Id.* at 1153.

<sup>32</sup> *Id.* at 1148 (citing *Nat’l Solid Wastes Mgmt. Assoc. v. Alabama Dept. of Env’tl. Mgmt.*, 910 F.2d 713, 719 (11th Cir. 1990)).

<sup>33</sup> *Id.* at 1147-48.

<sup>34</sup> *Id.* at 1148-49 (internal brackets omitted).

Finally, “the fact that the same type of hazardous waste is already being transported into and disposed of in Louisiana” supported the court’s conclusion that federal regulations were in place to provide for safe transport of hazardous waste.<sup>35</sup>

Under *Chemical Waste*, Act 96 violates the Commerce Clause of the United States Constitution. The LLRW to be imported from Italy is an object of commerce subject to the Commerce Clause, and transportation of radioactive waste generated within the state is not prohibited by Act 96. Therefore, the dangers associated with low-level radioactive waste do not outweigh the value of moving it across state lines. Moreover, Act 96 prohibits the import of LLRW based solely on the fact that its origin is outside of the United States and is therefore impermissibly discriminatory. LDEQ has stated that: “[t]he disposal of radioactive waste is not an exception to” the rule against legislation preventing the importation of foreign waste articulated in *Chemical Waste*.<sup>36</sup>

In sum, Act 96 violates the United States Constitution, so even if the LLRW under the proposed project is ultimately shipped through Louisiana, Act 96 poses no barrier to the Commission’s issuance of an import and export license.

18. *Issue: A comment from the State of Missouri Department of Natural Resources states that transportation of the waste through I-70 and the State of Missouri is not the safest or most appropriate route for transportation of materials from Tennessee to Utah. Comment 2870.*

**EnergySolutions’ Response:** As explained in response to issue 15, above, all shipments within the United States will be conducted in accordance with applicable regulations.

EnergySolutions currently makes routine shipments on a periodic basis that meet all

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<sup>35</sup> *Id* at 1149; *see also id.* at 1151-52.

<sup>36</sup> Comment 2763, encl. at 4; *see also Washington State Bldg. & Constr. Trades Council v. Spellman*, 684 F.2d 627 (9th Cir. 1982) (applying a similar analysis to LLRW, and finding that the statute in question violated both the Commerce and Supremacy Clauses); *Rollins Env’tl. Servs. (FS), Inc. v. Parish of St. James*, 775 F.2d 627, 635 (5th Cir. 1985).

applicable regulatory requirements, including transportation permitting and insurance requirements. The shipments made in connection with the proposed import are no different and present no unique issues warranting further consideration.

19. *Issue: Some comments express concerns regarding the safety and security of the materials during transportation. For example, one comment alleged that the waste would be susceptible to anti-tank weapons during transport and has the potential to become a "dirty bomb." NRC has allegedly not required EnergySolutions to provide information on terrorism and insurance for such events. See Comments 300, 478, 511, 664, 788, 2672, 2768, 2815, 2823.*

**EnergySolutions' Response:** As explained in response to issue 15, above, the shipments made in connection with the proposed import are no different from routine shipments of domestic LLRW and present no unique issues (including security issues) warranting further consideration.

#### **D. Public Health and Safety**

20. *Issue: Some comments express the desire for more information on impacts on the public health and safety, and express concern that there will be significant negative impacts from the disposal of such large quantities of material, particularly given the large amount of material involved in the proposed import. See, e.g., Comments 229, 300, 336, 380, 388, 360, 380, 518, 615, 701, 786, 2815.*

**EnergySolutions' Response:** The material to be imported under the proposed license does not present any public health and safety issues that differ from the issues associated with similar domestic-generated material. For example, a March 10, 2008 letter from the Chairman of the Utah Radiation Control Board, DEQ, to Chairman Klein concedes that "the materials do not represent any incremental risk to the public health and safety." The NRC's Fact Sheet on "EnergySolutions' Proposal to Import Low-Level Radioactive Waste From Italy" also explains that, "[i]n most cases, there is no significant difference" between domestic and foreign LLRW.<sup>37</sup> Furthermore, any waste transported to the Clive

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<sup>37</sup> Available at ADAMS Accession No. ML081000101.

Facility will be required to meet the applicable waste acceptance criteria under Utah's regulations and the Clive license. Thus, there is no reason to expect significant negative public health and safety impacts from the processing or disposal of the imported material.

21. *Issue: Some comments claim that citizens near the EnergySolutions facilities in Tennessee are at elevated risk of exposure to radiation from the incineration of waste. This is allegedly because incineration is a very effective way of exposing the public and other organisms to radioactive waste. A similar comment claimed that the areas surrounding EnergySolutions' Tennessee facilities are already highly contaminated and the surrounding populations are "plagued with health problems." The proposed imports would allegedly only worsen those problems. Comments 2746, 2785, 2787.*

**EnergySolutions' Response:** All activities at the Tennessee facilities will be conducted under applicable regulations and licenses. The comments provide no evidence to suggest that the surrounding populations are negatively impacted by operations at EnergySolutions' Tennessee facilities; nor is EnergySolutions aware of such evidence.

22. *Issue: Some comments allege that the transportation of waste through U.S. ports and along transportation routes presents a risk to the public health and safety. One comment cited an alleged recent "transportation accident" in Louisiana involving radioactive isotopes. Comments 195, 197, 221, 229, 2672.*

**EnergySolutions' Response:** All transportation of the imported material will be conducted under applicable regulations and licenses, so there is no unique transportation risk associated with the proposed project. In fact, the proposed shipments are no different from the numerous routine ongoing shipments involving domestic waste that is substantially the same as the imported waste.<sup>38</sup> The comment that cites the recent Louisiana accident serves primarily to illustrate yet another example of the excellent safety record of LLRW transportation in this country when it points out that, "[f]ortunately, the materials did not leak."

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<sup>38</sup> See, e.g., "How [s]afe are radioactive material transportation packages?" available at [http://www.sandia.gov/tp/SAFE\\_RAM/RECORD.HTM](http://www.sandia.gov/tp/SAFE_RAM/RECORD.HTM) ("Radioactive material has been shipped in the U.S. for more than 50 years with no occurrences of death or serious injury from exposure of the contents of these shipments.").

## E. Public Policy

23. *Issue: Numerous comments express concern that granting the proposed import license would be a departure from existing policy and set a dangerous precedent that could lead to the U.S. becoming the world's repository for nuclear waste. Other similar comments speculate that this is only the first of many LLRW imports as part of agreements to decommission foreign nuclear reactors. One comment noted that the low value of the dollar compared with the Euro will make disposal of nuclear waste in the U.S. attractive to Europeans. Some comments criticized other nations and states other than Utah for failing to provide for disposal of their LLRW. E.g., Comments 195, 199, 205, 221, 226, 232, 268, 300, 332, 380, 403, 446, 522, 543, 606, 616, 649, 664, 756, 792, 797, 810, 832, 2672, 2673.*

**EnergySolutions' Response:** To the extent that comments speculate about the effect of the proposed licenses on future transactions, such speculation is misplaced. Future imports would be governed by future licenses. This is a routine application for the commercial importation of low-level waste and, as explained in response to issue 13, above, there are numerous recent examples of similar imports that the Commission has authorized. Thus, issuance of the requested license will not set any new precedent. To the contrary, all potential future imports will be subject to NRC licensing requirements and will be subject to public comment and potential hearings.

More generally, EnergySolutions believes that the proposed import will have significant economic benefits for the citizens of the states involved in the transport, processing and disposal of the imported material. Contrary to the assumptions in these comments, the public has significant economic and public health and safety interests in ensuring that the United States continues to have commercially viable LLRW disposal companies such as EnergySolutions that can safely and responsibly manage the recycling, processing and disposal of nuclear material. There is a global marketplace for nuclear services, including waste processing and disposal services, and the viability of U.S. commercial disposal companies is significantly enhanced by participation in this global

market. Denial or delay in the issuance of this set of routine licenses could establish a climate of regulatory uncertainty that would be detrimental to the viability of the commercial LLRW disposal industry in this country.

24. *Issue: Some comments speculate that EnergySolutions has plans for “additional large imports” of LLRW from the United Kingdom. Comments 2815, 2871.*

**EnergySolutions’ Response:** As explained in response to item 23, above, future imports would be governed by future licenses, and speculation about potential future activities should not impact the NRC’s analysis of the instant applications.

25. *Issue: Some comments suggest that the legislative histories of the Nuclear Waste Policy Act of 1980 and Low-Level Radioactive Waste Policy Amendments Act of 1985 show that there was never any intention that the United States would welcome foreign nuclear waste for disposal here. Comments 550, 649.*

**EnergySolutions’ Response:** Nothing in existing federal law and regulation prohibits the commercial importation of LLRW, such as the proposed import. The legislative history cited in the comments does not suggest that Congress intended to exclude importation of LLRW for commercial purposes.

In accordance with existing law and the regulations in 10 CFR Part 110, the NRC solicited the views of the Executive Branch,<sup>39</sup> the states of Utah<sup>40</sup> and Tennessee,<sup>41</sup> the Southeast Compact Commission for Low-Level Radioactive Waste Management (“Southeast Compact”),<sup>42</sup> of which the State of Tennessee is a member, and the

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<sup>39</sup> Letter from S. Dembek, NRC, to R. DeLaBarre, U.S. Dep’t of State, (Oct. 25, 2007), *available at* ADAMS Accession No. ML072980277.

<sup>40</sup> Letter from S. Dembek, NRC, to D. Finerfrock, Utah Dep’t of Env’tl. Quality (“DEQ”), “Application for NRC Import License (IW023)” (Feb. 19, 2008), *available at* ADAMS Accession No. ML080500111.

<sup>41</sup> Letter from S. Dembek, NRC, to J. Graves, Tenn. Dep’t of Env’t and Conservation (“DEC”), “Application for NRC Import License (IW023)” (Feb. 19, 2008), *available at* ADAMS Accession No. ML080500338.

<sup>42</sup> Letter from S. Dembek, NRC, to K. Haynes, Southeast Compact, “Application for NRC Import License (IW023)” (Feb. 19, 2008), *available at* ADAMS Accession No. ML080500349.

## Northwest Interstate Compact on Low-Level Radioactive Waste Management

(“Northwest Compact”),<sup>43</sup> of which the State of Utah is a member.

All but one of the agencies or compacts consulted concurred with the legality of the proposed action. The U.S. Department of State informed the NRC that “the proposed import and export would appear consistent with [the Joint Convention on Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management] guidelines.”<sup>44</sup>

The Tennessee DEC found “no technical reason to prohibit” the proposed action.<sup>45</sup> The Utah Radiation Control Board, DEQ, requested that the NRC deny the license for policy reasons,<sup>46</sup> but the Director of the Utah Division of Radiation Control (a member of the Utah Radiation Control Board) informed the NRC that Utah’s rules “do not prohibit the disposal of low-level radioactive waste from foreign generators.”<sup>47</sup> The Southeast Compact did not oppose the import or export license.<sup>48</sup>

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<sup>43</sup> Letter from S. Dembek, NRC, to M. Garner, Northwest Compact, “Application for NRC Import License (IW023)” (Feb. 19, 2008), *available at* ADAMS Accession No. ML080500204.

<sup>44</sup> Stratford Letter.

<sup>45</sup> Letter from J. Graves, Tenn. DEC, to S. Dembek, NRC, “Applications for NRC Import License IW023 and NRC Export License XW013” (Mar. 4, 2008), *available at* ADAMS Accession No. ML080770097.

<sup>46</sup> Letter from Governor J. Huntsman, Utah, to Chairman D. Klein, NRC, “Importation of Foreign Low-Level Radioactive Waste” enclosure (Mar. 13, 2008), *available at* ADAMS Accession No. ML080810290 (“Gov. Huntsman Letter”).

<sup>47</sup> Finerfrock E-mail.

<sup>48</sup> Letter from K. Haynes, Southeast Compact, to S. Dembek, NRC, “Applications for NRC Import License (IW023) and Export License (XW013)” (Mar. 24, 2008), *available at* ADAMS Accession No. ML080840341. The Southeast Compact did ask the NRC to “examine the extent to which the disposal of foreign waste at Clive would impact the long-term disposal capacity for commercial low-level radioactive waste.” *Id.* Responsibility for addressing the country’s long-term LLRW disposal needs, however, rests with the states and the Department of Energy (“DOE”), not the NRC. Letter from Chairman D. Klein, NRC, to Representative B. Gordon, U.S. House of Representatives, at 2 (Apr. 9, 2008), *available at* ADAMS Accession No. ML080440443.

Only the Northwest Compact proposed a legal objection, alleging that its rules prohibit disposal of foreign LLRW at the Clive Facility.<sup>49</sup> This legal objection is addressed in response to issue 8, above.

26. *Issue: Some comments allege that the Commission's statements of consideration in promulgating Part 110 show that NRC likewise did not intend to authorize or anticipate commercial importation of LLRW because such imports would not further any "important policy goals." See Comments 229, 649, 2823.*

**EnergySolutions' Response:** These comments misinterpret the policy the Commission articulated in the Final Rule promulgating Part 110. In doing so, these comments appear to express the desire that the Commission will adopt a different policy prohibiting all importation of low-level radioactive waste for commercial purposes. In the Final Rule promulgating the current regulations on import and export of radioactive waste, the Commission rejected comments that "urged the NRC to ban all imports and exports of radioactive waste" or to limit such movements to "extraordinary circumstances."<sup>50</sup> This was because "[i]nternational commerce in radioactive waste into and out of the United States, may be desirable from a policy perspective."<sup>51</sup>

The Commission continued by citing certain "example[s]" of instances where "commerce involving radioactive waste may further important policy goals," but these examples are not comprehensive.<sup>52</sup> The Commission's regulations do not restrict all imports to such examples, nor do they require imports or exports to further "important

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<sup>49</sup> Letter from M. Garner, Northwest Compact, to S. Dembek, NRC, "Application for NRC Import License (IW023)" (May 15, 2008), available at ADAMS Accession No. ML081480331.

<sup>50</sup> Final Rule, Import and Export of Radioactive Waste, 60 Fed. Reg. 37,556, 37,557 (July 21, 1995).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

policy goals.”<sup>53</sup> As noted in response to issue 13, above, the Commission also has a long history of permitting the importation of LLRW for commercial purposes.

*27. Issue: Some comments claim that there is no reason to permit the proposed import of material because it would not benefit (or would be harmful to) the citizens of Utah, Tennessee, or the United States. Some of these comments claim that this transaction would only benefit EnergySolutions, at the expense of the public. See, e.g., Comments 43, 122, 123, 143, 155, 268, 328, 403, 461, 467, 514, 581, 797, 832.*

**EnergySolutions’ Response:** As explained in response to issue 23, above, EnergySolutions believes that the proposed import will have significant economic benefits for the citizens of the states involved in the transport, processing and disposal of the imported material. The public has significant economic and public health and safety interests in ensuring that the United States continues to have commercially viable LLRW disposal companies such as EnergySolutions that can safely and responsibly manage the recycling, processing and disposal of nuclear material.

*28. Issue: One comment alleges that the proposed import would impede Louisiana’s recovery from the effects of Hurricane Katrina. Comment 2673.*

**EnergySolutions’ Response:** If shipments are made through Louisiana, the proposed import would provide benefits to the local economy that would outweigh the very small associated safety or environmental risk. Thus, EnergySolutions believes that the proposed import project could assist rather than impede the region’s recovery from Hurricane Katrina.

*29. Issue: Some comments express the view that public hearings are necessary on the license applications, in various locations throughout the country. E.g. Comments 71, 229, 454, 1870, 2815.*

**EnergySolutions’ Response:** The decision to hold a hearing on either an export license application is generally within the Commission’s discretion,<sup>54</sup> and the Commission has

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<sup>53</sup> See 10 CFR 110.45.

never ruled that a hearing is necessary for the issuance of an import application.<sup>55</sup> For the reasons set forth in its Answers to the hearing requests by the State of Utah<sup>56</sup> and various other groups,<sup>57</sup> *EnergySolutions* believes that no public hearings are necessary for the Commission to make its required determinations for either license under Part 110.

#### F. Environmental Impact

30. *Issue: Some comments claim that the proposed imports would be a major federal action requiring an environmental impact statement ("EIS"). E.g., Comments 2746, 2787.*

**EnergySolutions' Response:** The proposed import will not require an EIS or any further environmental analysis. Under 10 CFR 51.22(b) and (c)(15) there is a categorical exclusion from the requirements for NEPA analyses for an import license.<sup>58</sup> Section 51.22 does permit exceptions in special circumstances, including for example, "where the proposed action involves unresolved conflicts concerning alternative uses of available resources."<sup>59</sup>

There is no real conflict over resources, however. The Clive Facility is not in any danger of running out of available disposal capacity.<sup>60</sup> Moreover, as explained in

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<sup>54</sup> See *U.S. Dep't of Energy* (Plutonium Export License), CLI-04-17, 59 NRC 357, 366 (2004).

<sup>55</sup> See *Braunkohle Transport, USA, et al.* (Import of South African Uranium Ore Concentrate), CLI-87-6, 25 NRC 891, 893 (1987).

<sup>56</sup> "EnergySolutions' Answer Opposing the State of Utah's Request for Hearing and Petition for Leave to Intervene" (July 10, 2008).

<sup>57</sup> "EnergySolutions' Answer Opposing Various Organizations' Request for Hearing" (July 10, 2008).

<sup>58</sup> See 10 CFR 51.22(c) (identifying the "[i]ssuance . . . of licenses for import of nuclear facilities or materials pursuant to part 110 of this chapter" as "categorically exclu[ded]" from environmental analysis requirements).

<sup>59</sup> 10 CFR 51.22(b).

<sup>60</sup> See Creamer Testimony at 2 ("Clive has enough capacity to take all of the Class A waste from the 104 domestic nuclear plants, from both on-going operations and the ultimate decommissioning of every plant, and still have approximately 50 million cubic feet of capacity remaining."); see also *id.* at 3 ("The Clive facility has disposal capacity for at least the next 30 years, assuming future receipts are equal to 2007."); GAO Testimony before the Subcommittee on Energy and Air Quality, Committee on Energy and Commerce, House of Representatives: Low-Level Radioactive Waste Disposal (May 20,

response to issue 4 above, the effect of this additional waste will be small, given that it would represent less than one percent of the amount of waste disposed of at the Clive Facility each year.<sup>61</sup>

EnergySolutions has also offered to impose a voluntary limit on the disposal of international material to five percent of the remaining capacity at the Clive Facility, and has committed to the U.S. Congress that it “will not under any circumstances use Clive in a manner that will adversely affect its capacity to fully serve our United States customers, either now or in the future.”<sup>62</sup> Thus, any conflict over resources based on the speculative effect of future import projects is also misplaced.

Moreover, *all* imports of LLRW waste under Part 110 are covered by the exclusion in 10 CFR 51.22, including the cumulative effect of such imports.<sup>63</sup> The exclusion is based on a Commission “finding that the *category* of actions does not *individually or cumulatively* have a significant effect on the human environment.”<sup>64</sup> Thus, because this type of import has no significant environmental effects, the analysis of such effects cannot be impermissibly segmented.

In sum, there is no real conflict of available resources. Thus, the apparent desire of commenters that the NRC consider an exception to the categorical exclusion is contrary to law and unjustified. There is no need to prepare an EIS or any other environmental analysis for the instant license applications.

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2008) at 3, *available at* <http://www.gao.gov/new.items/d08813t.pdf> (estimating that the Clive Facility will reach capacity in approximately 30 years at current rates of receipts).

<sup>61</sup> Creamer Testimony at 6.

<sup>62</sup> *Id.* at 5.

<sup>63</sup> *See* 10 CFR 51.22(a)

<sup>64</sup> *Id.* (emphasis added).

31. *Issue: One comment raised environmental justice issues by alleging that there would be potentially disproportionate impact on communities of color and low income communities in several of the directly affected areas. Comment 300.*

**EnergySolutions' Response:** As explained in response to issue 30, above, the proposed import is covered by the categorical exclusion from environmental analysis under 10 CFR 51.22(b) and (c)(15).<sup>65</sup> This includes environmental justice (“EJ”) analyses.

Moreover, the comment provides no evidence or justification for the NRC to conclude that there are any legitimate EJ concerns, *i.e.*, that there is the potential for significant and disproportionate adverse impact. As the Commission’s final Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions<sup>66</sup> (“Final Policy Statement”) explains, “[t]he focus of any ‘EJ’ review should be on identifying and weighing *disproportionately significant and adverse* environmental impacts on minority and low-income populations that may be *different from the impacts on the general population.*”<sup>67</sup> The comment does not provide any information even suggesting that the proposed action could lead to significant *and* adverse impacts on the general population, so no additional investigation of disproportionate impacts on EJ populations is justified.<sup>68</sup>

32. *Issue: Some comments express concern over the potential impact on Louisiana wetlands. In particular, the comments of the Louisiana Department of Natural Resources claim that, if EnergySolutions decides to ship the imported material through New Orleans, it will need a Coastal Zone Management Act consistency determination under the Louisiana Coastal Resources Program (LCRP). The NRC may not issue the import license until the applicant provides the Louisiana Office of Coastal Resources and Management with a copy of their NRC permit application and*

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<sup>65</sup> See 10 CFR 51.22(c) (identifying the “[i]ssuance . . . of licenses for import of nuclear facilities or materials pursuant to part 110 of this chapter” as “categorical[ly] exclu[ded]” from environmental analysis requirements).

<sup>66</sup> 69 Fed. Reg. 52,040 (Aug. 24, 2004).

<sup>67</sup> *Id.* at 52,047 (emphasis added) (internal quotations omitted).

<sup>68</sup> *See id.*

*a statement that the project will be conducted in a manner consistent with the Louisiana Coastal Resources Program. Comment 2821; see also 2763, 2784.*

**EnergySolutions' Response:** Under the Coastal Zone Management Act ("CZMA") and its implementing regulations and guidance, no consistency determination is required for the proposed import and export licenses. To the extent Louisiana's comment can be considered a request for an exception for this project, the request is procedurally and substantively deficient.

The proposed licenses do not require a CZMA consistency determination. Under the Commission's guidance, the only NRC licensing actions generally requiring a consistency determination under CZMA are new plant construction permit and operating license applications and license renewal applications.<sup>69</sup> Thus, the NRC does not generally need any state consistency determination prior to issuance of export and import licenses. The Department of Commerce's regulations specify that each state with an approved coastal zone management plan shall develop a list of specified activities subject to federal permits that the state wishes to review for consistency under the CZMA.<sup>70</sup> Louisiana, however, has not claimed that the proposed project is a listed activity under its coastal zone management program. EnergySolutions' review of the relevant Louisiana requirements did not reveal any evidence to suggest that the proposed project is a listed activity under Louisiana's coastal zone management program.

Nor has Louisiana properly requested an exception. For unlisted activities, the burden is on the state to review the *Federal Register* and other public documents and

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<sup>69</sup> NRR Office Instruction LIC-203, Rev. 1 "Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues" at 6 (June 21, 2001) ("LIC-203").

<sup>70</sup> 15 CFR 930.53(a).

identify any unlisted activity that the state wishes to review.<sup>71</sup> The state must notify the federal agency and the applicant within thirty days of publication of notice of its desire to review such activities, or else the state “waives its right to review the unlisted activity.”<sup>72</sup> Louisiana’s comment is dated June 10, 2008, 120 days after the Commission published notice of the proposed licenses in the *Federal Register*.<sup>73</sup> The comment was also not transmitted to EnergySolutions, contrary to the requirement that the requesting state must “notify . . . the applicant.”<sup>74</sup> Nor has Louisiana explained how or why it believes that the proposed activity would not comply with the enforceable policies of the Louisiana coastal zone management program or would not be conducted in a manner consistent with that program.<sup>75</sup> Thus, to the extent Louisiana’s comment requests the opportunity to review an unlisted activity under its coastal zone management program, it must be denied as untimely, procedurally defective, and substantively deficient.

### G. Other Issues

33. *Issue: One comment appears to express concern over the health and safety impacts of the recycled material in Japan. Specifically, the comment requests more information on the “likelihood of the material coming back to the US, to determine whether it will impact the public workers even though it is in “restricted” settings, and to evaluate the controls that will keep the metal under restricted conditions and use.”* Comment 2815.

**EnergySolutions’ Response:** This application concerns only the import of the material and export of any portion of the material that must be returned to Italy. The subsequent shipments of recycled material to Japan will be undertaken pursuant to the general

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<sup>71</sup> 15 CFR 930.54(a).

<sup>72</sup> *Id.*; see also LIC-203 at 7.

<sup>73</sup> See Request for a License to Export Radioactive Waste, 73 Fed. Reg. 7764 (Feb. 11, 2008); Request for a License to Import Radioactive Waste, 73 Fed. Reg. 7765 (Feb. 11, 2008).

<sup>74</sup> 15 CFR 930.54.

<sup>75</sup> 16 U.S.C. § 1456(c)(3)(A).

licenses granted in 10 CFR 110.21, 110.22, and 110.23 and any issues or impacts related to such exports are therefore outside the scope of this license application. To the extent any consideration of impacts to the workers or the public in Japan could be an appropriate consideration, the time for raising such concerns was when the Commission adopted its rules regarding general export licenses.

34. *Issue: Some comments express the view that, in its review of the applications, the NRC should not consider any of the information in EnergySolutions' responses to NRC Staff RAIs, because this information is not officially in the application and will not be in any license conditions. Comments 2672, 2768.*

**EnergySolutions' Response:** RAIs are a standard aspect of NRC review of any application.<sup>76</sup> The NRC Staff routinely asks for clarification and further discussion on information contained in an application,<sup>77</sup> and it is within the Staff's discretion to consider the information in RAI responses in its review of the application. The Staff's reliance upon information submitted in RAI responses would also be reasonable because such information is required to be complete and accurate under 10 CFR 110.7a and 110.7b.

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<sup>76</sup> See, e.g., *Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 349 (1998); *Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-99-11, 49 NRC 328, 336 (1999).

<sup>77</sup> See *Oconee*, CLI-99-11, 49 NRC at 336.

**Secy**

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**From:** Raphael P. Kuyler [rkuyler@morganlewis.com]  
**Sent:** Monday, August 04, 2008 4:04 PM  
**To:** Secy  
**Cc:** John E. Matthews  
**Subject:** EnergySolutions' Response to Public Comments on IW023 and XW013  
**Attachments:** EnergySolutions' Response to Public Comments on IW023 and XW013.pdf

In accordance with 10 CFR 110.81, enclosed please find EnergySolutions' response to the Secretary's letter of June 18, 2008.

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**Ray P. Kuyler**

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CC: "John E. Matthews" <jmatthews@morganlewis.com>

Subject: EnergySolutions' Response to Public Comments on IW023 and XW013

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