

RAS N-3027

Northwest Interstate Compact

On Low-Level Radioactive Waste Management

P.O. Box 47600, Olympia, Washington 98504-7600. (360) 407-7102. Mike Garner, Executive Director

June 19, 2009

DOCKETED
USNRC

June 19, 2009 (4:30pm)

The Commissioners
U. S. Nuclear Regulatory Commission
Washington D.C. 20555

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

RE: In the Matter of EnergySolutions, LLC, Docket Nos. 110-05711 (Import), 110-05710 (Export)

Dear Commissioners:

On May 20, 2009, the Commission issued an "Order of the Secretary Seeking Potential Parties Views in Response to Recent Federal District Court Decision and Future Commission Adjudicatory Matters." The Northwest Interstate Compact on Low-Level Radioactive Waste Management (Northwest Compact) has not requested to become a Party in this matter but would nonetheless request that the Commission consider the information provided in this statement. The Northwest Compact Committee believes that the information will be helpful to the Commission in assessing the status of EnergySolutions' lawsuit.

In May 2008, EnergySolutions filed a lawsuit in the Utah Federal District Court against the Northwest Compact contending that the Northwest Compact does not have authority to restrict the disposal of low-level radioactive waste (LLRW) from foreign sources at EnergySolutions' Clive, Utah facility. The State of Utah and Rocky Mountain Compact intervened in support of the Northwest Compact's position. The Clive, Utah facility is within the boundaries of the Northwest Compact and NRC regulations require consideration of whether a compact has consented to disposal of waste within the region before the NRC may issue an import permit. In October 2008, the NRC issued an order holding the current proceeding in abeyance until the lawsuit is resolved.

On May 15, 2009, Judge Ted Stewart issued an order ruling that the Northwest Compact had no authority to restrict the flow of out-of-region waste to the Clive, Utah facility. It is important to note that the order addressed only one of the three claims brought by EnergySolutions. This ruling does not resolve all issues in the lawsuit. On June 1, 2009, the Northwest Compact Committee made a decision to appeal the ruling on the single claim addressed in the May 15, 2009 order. The parties in the lawsuit are currently working to finalize procedural matters before Judge Stewart so that the order may be appealed to the Tenth Circuit Court of Appeals. EnergySolutions has filed a motion under Federal Rule of Civil Procedure 54(b) to obtain a judgment on the claim at issue in the May 15, 2009 order. EnergySolutions requested in their motion that the remaining claims before the court be stayed.

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In light of the fact that the May 15, 2009 order does not resolve the entire lawsuit and Northwest Compact Committee's decision to appeal that order, the Northwest Compact requests that the NRC continue to hold EnergySolutions' waste import license application in abeyance. The Northwest Compact requests that the proceeding in abeyance until such time as all appeals have been resolved and a final judgment is issued in the lawsuit. The Northwest Compact is concerned about the harm that could result if the NRC were to issue an import license and later the Northwest Compact prevailed on appeal and its authority to exclude out-of-region waste from the Clive, Utah facility was ultimately affirmed by a higher court. Such a scenario could create a situation where imported waste undergoing processing could potentially be orphaned with no disposal pathway. Further, there would be no reasonable way to retrieve the waste if disposal had already occurred. The Northwest Compact believes it is premature for the NRC to re-open its proceeding while the lawsuit is still on appeal.

Thank you for providing the Northwest Compact with the opportunity to comment on how the NRC should proceed with this difficult issue. Should you have any questions about the procedure status of the lawsuit, please feel free to contact Alice Blado, Compact Counsel, at (360) 753-6216 or aliceb@atg.wa.gov or Kristen Mitchell, Compact Counsel, at (360) 664-4964 or kristenm1@atg.wa.gov.

Sincerely,



Mike Garner, Executive Director
Northwest Interstate Compact

cc: Mr. Emile Julian, U.S.N.R.C.
Northwest Compact Committee

Docket, Hearing

From: Garner, Mike (ECY) [JAMG461@ECY.WA.GOV]
Sent: Friday, June 19, 2009 2:58 PM
To: Docket, Hearing
Cc: Mitchell, Kristen (ATG); Blado, Alice (ATG)
Subject: Northwest Interstate Compact Comments
Attachments: NRC jun09.pdf

Attached are the Northwest Interstate Compact's comments regarding the matter of EnergySolutions, LLC, Docket Nos. 110-05711 (Import), 110-05710 (Export).

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From: "Garner, Mike (ECY)" <JAMG461@ECY.WA.GOV>
To: <hearingdocket@nrc.gov>
CC: "Mitchell, Kristen (ATG)" <KristenM1@ATG.WA.GOV>,
"Blado, Alice (ATG)" <AliceB@ATG.WA.GOV>
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