

July 26, 2011

The Honorable Bob Goodlatte
Member, United States House
of Representatives
10 Franklin Road, S.E.
Suite 540
Roanoke, VA 24011-2727

Dear Congressman Goodlatte:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of June 23, 2011, forwarding correspondence from your constituent, Mr. Cecil Phillips. Mr. Phillips is concerned with a news report he read regarding the incineration of low-level radioactive waste at an incinerator in Oak Ridge, Tennessee. EnergySolutions' Duratek Services facility in Oak Ridge, Tennessee is licensed by the State of Tennessee, as an Agreement State, to operate a commercial low-level waste incinerator at this location. States (known as Agreement States) may assume the responsibility for oversight of nuclear materials licensees in their states through an agreement with the NRC.

As a properly licensed incinerator facility, EnergySolutions applied to the NRC for a license to import from Germany up to 1,000 tons of radioactively contaminated dry active incinerable material, primarily waste from hospitals, research, and technical facilities. The firm also applied for a companion license to export the resultant ash back to Germany.

The NRC takes the import or export of radioactive waste extremely seriously, and is confident that our regulations ensure that licensees who import or export radioactive waste are authorized to do so and will handle the waste in a manner that will protect public health and safety. NRC's regulations and practices provide for significant coordination among the public, states, and Low-Level Waste (LLW) Compacts where the waste would be processed and/or disposed of, and promotes transparency with the public concerning the proposed import or export.

More specifically, shortly after the NRC received the EnergySolutions application for the import and export of radioactive waste, the agency made the application available to the public through the Agencywide Documents Access and Management System (ADAMS). The NRC published a notice in the *Federal Register* (FR) to provide the public an opportunity to comment on the application. The FR notice also provides an opportunity for a hearing. In this case, the Commission denied the hearing requests and petitions to intervene for several reasons. The petitioners, who sought an environmental review of the import application, did not meet the standard to waive the regulatory provision that provides a categorical exclusion from the National Environmental Policy Act requirements to prepare an environmental assessment or environmental impact statement for the issuance of import licenses involving LLW; no petitioner demonstrated standing; and the Commission determined that a discretionary hearing would not assist it in making the requisite determinations on the import and export licenses.

The NRC reviews all import and export license applications against the criteria defined in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 110, "Export and Import of Nuclear Equipment and Material." In addition, the staff requests the U.S. Department of State to provide the Executive Branch's views on import/export licensing requests involving radioactive materials. The staff solicits the opinions of the affected states and LLW Compacts. The NRC also consults with the U.S. Environmental Protection Agency regarding applications that include mixed waste (i.e., radioactive and hazardous wastes). The NRC makes these opinions publicly available in ADAMS.

The NRC determines whether or not to issue an import license for radioactive waste only after considering the opinions and comments of the public, Executive Branch, State, LLW Compacts (if applicable), and its own technical evaluation. The NRC bases its decisions on the following criteria found in 10 CFR Part 110: "The proposed import will not be inimical to the common defense and security; the proposed import will not constitute an unreasonable risk to the public health and safety; and, an appropriate facility has agreed to accept the waste for management or disposal."

After following this process, the NRC determined that the EnergySolutions license applications met all the required criteria and issued the import and export licenses on June 28, 2011. I hope this information is useful to you. If you have any questions, please contact me or Ms Rebecca Schmidt, Director of the Office of Congressional Affairs, at (301) 415-1776.

Sincerely,

/RA/

R. W. Borchardt
Executive Director
for Operations

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