

Docket 040-08989



Department of
Environmental Quality

Amanda Smith
Executive Director

DIVISION OF RADIATION CONTROL

Rusty Lundberg
Director

State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

RECEIVED

AUG 15 2011

DNMS

August 11, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUIRED

Dan Shrum, Senior Vice President, Regulatory Affairs
EnergySolutions, LLC.
423 West 300 South, Suite 200
Salt Lake City, Utah 84101

RE: Radioactive Materials License (RML) Number UT 2300249: Non-Conforming Waste Notification License Condition 13H

Dear Mr. Shrum:

It has come to the attention of the Utah Division of Radiation Control (DRC) that LATA/Parallax Portsmouth LLC. shipped radioactive waste to the EnergySolutions, LLC. disposal facility located at Clive, Utah that did not conform to Radioactive Materials License (RML) Number UT 2300249 and the proper notification as per License Condition 13H did not take place. A Notice of Violation is enclosed. The particular violation is described in the enclosed Notice.

The DRC is concerned. Consequently, your required response to this letter should describe those actions planned or taken to improve the effectiveness of the management control of your permit operations, with particular emphasis on measures currently being taken to prevent further violations.

Corrective actions taken to avoid further items of noncompliance are expected to be effective and lasting. Utah Administrative Code Subsection R313-14-15(2)(b)(ii) states: *"Ineffective licensee programs for problem identification or correction are unacceptable. In cases involving willfulness, flagrant violations, repeated poor performance in an area of concern or serious breakdown in management control, the Executive Secretary may apply the full enforcement authority."*

UTAH RADIATION CONTROL BOARD

Rusty Lundberg, Executive Secretary

Enclosure

Cc: D. Blair Spitzberg, PhD, Chief Repository and Spent Fuel Safety Branch, Nuclear Regulatory Commission, Region IV

**UTAH RADIATION CONTROL BOARD
NOTICE OF VIOLATION**

EnergySolutions, LLC.
423 West 300 South, Suite 200
Salt Lake City, Utah 84101

Radioactive Materials
License No. UT 2300249

STATUTORY AUTHORITY

This **NOTICE OF VIOLATION (NOV)** is issued by the UTAH RADIATION CONTROL BOARD (the **BOARD**) under the Utah Radiation Control Act, as amended, Utah Code Ann. §§ 19-3-101 to 19-3-113 (the **ACT**), including Utah Code Ann. §§ 19-3-103.5, 19-3-108, and 19-3-109. This **NOV** is also issued in accordance with the Utah Administrative Procedures Act, Utah Code Ann. §§ 63G-4-101 through 63G-4-601. The **BOARD** has authorized the Executive Secretary of the **BOARD (EXECUTIVE SECRETARY)** to issue such **NOV** in accordance with § 19-3-108 of the Utah Code.

An investigation of a reported noncompliant radioactive waste shipment was conducted by a representative of the Utah Division of Radiation Control (DRC). As a result of the investigation, a violation of Utah Radiation Control Rules and the facility's Radioactive Materials License (RML) was identified. The authority for this proposed action is Utah Code Annotated (1953, as amended) Section 19-3-109. The particular violation is described below:

1. EnergySolutions RML License Condition 13 states *"In accordance with the Order issued by the U.S. Nuclear Regulatory Commission (NRC) dated January 14, 2003, Docket No. 040-8989, License No. SMC-1559, EnergySolutions may possess Special Nuclear Material (SNM) within the restricted area of the EnergySolutions facility as described in Condition 10 provided that:*
 - A. *Concentrations of SNM in individual waste containers must not exceed the values listed in Table 13-A at time of receipt:"*
- and
- "H. *EnergySolutions shall notify the NRC, Region IV office within 24 hours if any of the above conditions are violated, including if a batch during a treatment process exceeds the SNM concentration in License Condition 13.A. A written notification of the event must be provided within 7 days."*

Contrary to this requirement, EnergySolutions did not notify the NRC within 24 hours and a written notification was not provided within 7 days of receipt of the analytical results for shipment 9069-17-0001. The analytical results for shipment 9069-17-0001 showed that the U-235 concentrations exceed the SNM limits in License Condition 13, Table 13-A.

On February 7, 2011, EnergySolutions received radioactive waste shipment 9069-17-0001 consisting of three 85-gallon drums to be treated and disposed of at the EnergySolutions' Clive Facility. EnergySolutions obtained a sample from the incoming shipment and analyzed it for radiologics. The DRC reviewed the radiological analytical results and observed the concentration of U-235 was in excess of the Table 13-A values. EnergySolutions' on-site laboratory reported U-235 concentrations at 2,570 pCi/g, this result was verified by an offsite laboratory result for U-235 of 2,540 pCi/g. The shipping

**UTAH RADIATION CONTROL BOARD
NOTICE OF VIOLATION**

Page 2

EnergySolutions, LLC.

Radioactive Materials License No. UT
2300249

manifest described the material as natural Uranium and the shipment was rejected by EnergySolutions for exceeding depleted Uranium concentration limits.

Information on shipment 9069-17-0001 was requested by the DRC on February 22, 2011 from the shipper LATA/Parallax Portsmouth. On March 17, 2011 LATA/Parallax Portsmouth provided the requested information which included a series of emails dated between December 9, 2010 to January 27, 2011. These emails were correspondence between Materials & Energy Company, LATA/Parallax Portsmouth LLC., and EnergySolutions. The emails contained information regarding three drums that were from shipment 9069-01-0006 and were rejected by EnergySolutions for exceeding SNM concentrations on December 3, 2010. These three drums of waste were re-manifested and sent back to EnergySolutions on February 7, 2011 under the 9069-17 profile and shipment number 9069-17-0001. The manifest listed the waste in the drums as U-nat and not U-235. Additionally, in a meeting on June 22, 2011, EnergySolutions provided the DRC with emails between EnergySolutions Technical Service group and the Clive facility's Director of Health Physics, EnergySolutions Director of Compliance and Permitting, and other EnergySolutions personnel documenting that EnergySolutions personnel were aware that the three Drums in shipment 9096-17-0001 were previously rejected for exceeding U-235 SNM concentration limits. These emails are dated February 17, 2011 and therefore precede EnergySolutions' notification of March 7, 2011 to the DRC for shipment 9069-17-0001 exceeding depleted Uranium concentration limits. The written notification dated March 7, 2011 from EnergySolutions to the DRC did not include that the shipment also exceeded the SNM limits for U-235.

Based off the information in the emails submitted on March 17, 2011 by LATA/Parallax Portsmouth and the emails provided by EnergySolutions on June 22, 2011, there is enough evidence that EnergySolutions had prior knowledge that the drums being rejected for exceeding U-235 SNM limits in shipment 9069-01-0006 were reclassified as U-nat and sent back to the Clive facility in shipment 9069-17-0001. Therefore, the NRC should have been notified of the SNM exceedance for U-235 SNM limits for shipment 9069-17-0001.

This violation is of significant concern and has been characterized as Severity Level III. The base penalty for a Severity Level III violation is \$2,500.00. No Civil Penalty is proposed.

NOTICE

Compliance with the provisions of this Notice of (NOV) is mandatory. Under Utah Administrative Code R. 313-14-15, the licensee's good faith efforts to comply with the NOV may impact the monetary penalty that would apply in a settlement. Providing false information may subject licensee to further civil penalties.

**UTAH RADIATION CONTROL BOARD
NOTICE OF VIOLATION**

Page 3

EnergySolutions, LLC.

Radioactive Materials License No. UT
2300249

CONTESTING THIS NOV

This NOV notice of agency action is effective immediately and shall become final unless responded to in writing within thirty (30) calendar days after the date this NOV was mailed. See Utah Code Ann. §63G-4-204 and 209(1)(c). Any further administrative proceedings in this case shall be conducted formally under Utah Code Ann. §§ 63G-4-201 to -601 and § 19-1-301.

To contest this NOV, you must respond in writing and must comply with the requirements of the Administrative Rules of the Radiation Control Board, found at Utah Admin. Code R313-17 and with the requirements of the Utah Administrative Procedures Act, including Utah Code Ann. § 63G-4-204. Those provisions of the Utah Administrative Procedures Act require, among other things, that you state your factual and legal reasons for disagreeing with the Notice of Violation, and that you state the action that you would like the agency to take (e.g., withdrawing the NOV).

A response to this notice of agency action must be received by the Executive Secretary within 30 calendar days of the date this NOV was mailed.

Any response or written answer to this Notice of Violation should be addressed to Rusty Lundberg, Executive Secretary, Utah Radiation Control Board, 195 North 1950 West, P.O. Box 144850, Salt Lake City, Utah 84114-4850. The licensee's attention is directed to the Administrative Procedures set forth in UCA 63G-4 and Adjudicative Proceedings in UCA 19-1-301.

Dated at Salt Lake City, Utah
This 11th day of August, 2011

UTAH RADIATION CONTROL BOARD



Rusty Lundberg, Executive Secretary