



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 16, 2016

Mr. Daniel B. Shrum
Senior Vice President
Regulatory Affairs
EnergySolutions
209 South Main Street, Suite 1700
Salt Lake City, UT 84111

SUBJECT: ENERYSOLUTIONS LLC REQUEST REGARDING UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY'S CONDITIONAL APPROVAL OF EXEMPT LEVELS OF SPECIAL NUCLEAR MATERIAL (CAC NO. L00905)

Dear Mr. Shrum:

By letter dated March 30, 2016, EnergySolutions LLC (ES) requested that the U.S. Nuclear Regulatory Commission (NRC) concur with the Utah Department of Environmental Quality's (UTDEQ's) conditional approval of its previous request for a "variance"¹ from the State of Utah to dispose of a waste stream containing special nuclear material (SNM) (i.e., Waste Stream 9509-30) in its Mixed Waste Facility (MWF) located in the restricted area of the ES-Clive, Utah low-level waste site (ES Site). ES' request specifically asked the NRC to agree that the State of Utah has the authority to grant the exemption without further review and approval by the NRC.

The licensing requirements in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70, "Domestic Licensing of Special Nuclear Material," apply to persons in Agreement States possessing greater than critical mass quantities, as defined in 10 CFR 150.11, "Critical Mass." However, pursuant to 10 CFR 70.17(a), the NRC issued the currently effective Order dated January 30, 2003, granting Envirocare (subsequently known as EnergySolutions)² an exemption from obtaining an NRC Part 70 license, contingent on Envirocare's compliance with the NRC Order and the State of Utah incorporating the NRC Order conditions into Envirocare's State license. The NRC 2003 Order was published in the Federal Register on February 13, 2003 (68 FR 7399). The State of Utah has regulatory authority over disposal of low-level waste at the ES Site, but the NRC retains regulatory authority over SNM greater than critical mass quantities at the ES Site pursuant to the terms of the State Agreement with the NRC.

The State of Utah does not have authority to grant ES' request regarding the handling of SNM in Waste Stream 9509-30 aboveground at the MWF. Under the terms of the State Agreement with the NRC, the State of Utah only has regulatory authority over SNM less than a critical mass, as defined

¹Hereafter, the NRC will use the term "exemption" in this letter to be consistent with NRC regulation 10 CFR 70.17 (Specific Exemptions)

² In 2006, the NRC approved the name change from Envirocare to EnergySolutions in an NRC Order.

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in 10 CFR 150.11. The ES request for handling Waste Stream 9509-30 aboveground at the MWF involves possession of SNM greater than the critical mass limit in 10 CFR 150.11, which is under the NRC's regulatory authority. Therefore, the State of Utah does not have regulatory authority to amend the state license to grant ES' request because it involves possession of SNM greater than the critical mass limit in 10 CFR 150.11. ES would need to submit an exemption request to the NRC for consideration for aboveground activities at the MWF regarding SNM greater than the critical mass limit in 10 CFR 150.11.

If you have any questions regarding this matter, then please contact Mr. Harry Felsher of my staff at (301) 415-6559 or via e-mail at Harry.Felsher@nrc.gov.

Sincerely,

/RA/

Stephen Dembek, Acting Chief
Low-Level Waste Branch
Division of Decommissioning, Uranium Recovery
and Waste Programs
Office of Nuclear Material Safety
and Safeguards

Docket No.: 040-8989

cc:
Scott T. Anderson, Director
Division of Waste Management
and Radiation Control
P.O. Box 14480
Salt Lake City, UT 84114

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Stephen Dembek, Acting Chief
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