

January 17, 2008

The Honorable Bart Gordon
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Gordon:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of November 27, 2007, regarding a September 14, 2007 application from EnergySolutions, Inc., to import approximately 20,000 tons of radioactive waste from Italy. The NRC staff is currently reviewing this import application and has made no decision regarding whether it will be approved. I want to assure you that the import application will not be approved until the NRC has sufficient information to conclude that the import can be accomplished safely and in accordance with the applicant's licenses in Tennessee and Utah. Since both Tennessee and Utah are NRC Agreement States, the regulations of the applicant's processing and disposal facilities falls within their regulatory authority.

Based on its initial review, the NRC staff requested additional clarifying information from the applicant. The applicant provided the requested information on December 5, 2007, and included additional information on the screening that the applicant will perform in Italy before the waste is shipped to the United States. The staff reviewed this information and determined that supplementary information was needed, and sent another set of questions to the applicant. On January 11, 2008, EnergySolutions submitted the additional information, and the NRC staff review of this information is ongoing.

NRC's evaluation of the environmental and public health consequences of processing and disposing of imported waste is limited to ensuring that the import and transportation of the waste to the disposal facility is conducted safely and that the possession limits for the disposal facility will not be exceeded. As part of our review process, the NRC will consult with Tennessee and Utah before issuing an import license.

EnergySolutions states in its application that shipments will comply with the packaging, labeling, and marking requirements of the International Atomic Energy Agency's "Regulations for the Transport of Radioactive Material" (TS-R-1). U.S. Department of Transportation (DOT) regulations authorize transportation of shipments imported into the United States under the IAEA TS-R-1 regulations. DOT and NRC domestic transport regulations are compatible with TS-R-1. TS-R-1 provides activity limits and values for shipments of unknown radionuclides or mixtures. These activity limits are more restrictive than those for shipments for which relevant data are available (i.e., the transport requirements are more restrictive if there is some uncertainty about the material being shipped). The NRC believes that the material can be transported safely if the transport is compliant with TS-R-1.

While the NRC does not have limits on the amount of material that can be imported, the NRC does not allow imports of radioactive waste into the country without a reasonable understanding of the type and composition of the material. In situations where the type or composition is not fully characterized prior to the import, the NRC allows applicants to provide, with appropriate justification, maximum bounding concentrations or activity levels anticipated in the shipment for NRC to consider in its deliberations. In its import license application, the applicant must identify the maximum quantity of radioactive material, its chemical and physical form, the volume, waste classification (as defined in 10 CFR 61.55, "Waste Classification"), physical and chemical characteristics, route of transit of shipment, and ultimate disposition (including forms of management). The applicant must also describe the industrial or other processes responsible for generating the waste and the status of the arrangements for disposition (e.g., any agreement by a LLW compact or State to accept the material for management purposes or disposal). Some waste may be imported into the United States for processing for disposal, and the ultimate disposal may be in the country of origin. In some cases, maximum values for the amounts of waste may be provided, and these values must not cause the licensee that receives the waste to exceed the limits or terms and conditions of its facility license. Descriptions of the waste must be sufficiently detailed for the NRC staff to conclude that the U.S. transportation, management, and disposal requirements for ensuring protection of public health and safety will be met.

In this instance, the applicant also requested an export license to address the possibility that any material that EnergySolutions wants to send back to Italy can be exported. Therefore, NRC will consider both the import and export license applications together. The material could be returned for a variety of reasons, including having radioactivity levels greater than those allowed by the U.S. disposal facility or because the U.S. facility is reducing the volume of radioactive material and the final disposal will occur in the country of origin. In the EnergySolutions case, the NRC requested the Department of State to contact the Italian government to ensure it will allow the reentry of any material that the applicant wants to return to Italy.

Thank you for your interest in this issue, and please let me know if you have any additional questions.

Sincerely,

/RA/

Dale E. Klein