

April 21, 2008

The Honorable Jim Matheson
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Matheson:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of February 28, 2008, requesting that the NRC study the broader policy implications associated with the September 14, 2007 application from EnergySolutions, Inc., to import approximately 20,000 tons of radioactive waste from Italy. The Commission appreciates the concerns you and others have expressed about this license application.

The Atomic Energy Act of 1954, as amended, authorizes the import of radioactive material if domestic health and safety and common defense and security criteria are satisfied. Overall, the Act does not distinguish between domestic and foreign waste. The NRC's role in evaluating a low-level radioactive waste (LLRW) import application is a regulatory one, limited to ensuring that the proposed import can be accomplished safely and securely in accordance with all applicable laws and that the material will be accepted by an authorized recipient. In carrying out its regulatory responsibilities with respect to a LLRW import application, the NRC routinely consults affected States and LLRW Compacts to ensure that an appropriate facility has agreed to accept the waste for management or disposal if legally authorized to do so. LLRW Compacts may restrict out of compact LLRW from being disposed in their regional facilities if they so choose.

To date, the NRC has received the views of the States of Tennessee and Utah. By letter dated March 4, 2008, the Tennessee Division of Radiological Health, Department of Environmental Conservation, informed the NRC that the "Division finds no technical reason to prohibit processing of [the] described waste at the Duratek Facilities in Tennessee." By email dated March 26, 2008, the Utah Division of Radiation Control informed the NRC that the "Utah Radiation Control Rules do not prohibit the disposal of low-level radioactive waste from foreign generators." The Utah Division of Radiation Control email continues by stating "All LLRW sent to EnergySolutions for disposal must meet the license conditions" and refers to a letter from the State Governor asking the NRC to "take into account several national policy issues relating to the application." The NRC has also received a letter dated March 24, 2008, from the Southeast Compact Commission, but the letter did not comment on acceptance of imported waste within its own member State of Tennessee. The NRC is still waiting on the views of the Northwest Interstate Compact, which are not expected until after their board meeting in May. The NRC is also seeking, but has not yet received, the views of the Executive Branch (through the Department of State) to assist it in evaluating this specific waste import application.

The Commission believes that, under current law, responsibility for addressing the Nation's future LLRW disposal needs rests with the States, assisted by the Department of Energy. The NRC's position is based on the Low-Level Radioactive Waste Policy Amendments Act of 1985 and the Low-Level Radioactive Waste Policy Act of 1980. These Acts clearly place upon the States the responsibility for providing for disposal of low-level radioactive waste, with the Department of Energy providing technical and other assistance (including an assessment of future disposal needs). Thus, a key aspect of the NRC's determination as to whether a proposed import satisfies domestic licensing criteria is whether the specific Agreement State to which the waste would be sent has concluded that acceptance of the waste is permitted under the license for the State-regulated facility.

Additionally, in your letter you expressed concerns regarding the transportation of radioactive material. If this import is authorized, the material is required to be transported in a safe manner in accordance with existing regulations. EnergySolutions states in its application that shipments would 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 IAEA TS-R-1 regulations. Both DOT and NRC domestic transport regulations incorporate, and are compatible with, TS-R-1.

In summary, the NRC decision on an application for import of LLRW for disposal will depend on a determination on whether the established import requirements are satisfied. The NRC would be pleased to provide technical information or assistance if you desire to examine this important policy matter further.

Sincerely,

/RA/

Dale E. Klein