

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE AND TECHNOLOGY

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February 12, 2008

The Honorable Dale Klein
Chairman
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
One White Flint North
Rockville, Maryland 20852

Dear Chairman Klein:

On November 27, 2007, I wrote to you to express my concerns about an application submitted to the Nuclear Regulatory Commission (NRC) by EnergySolutions, Inc., for a license to import 20,000 tons of low-level radioactive waste (LLRW) into the United States from Italy for treatment and disposal. Yesterday, the NRC published a notice setting a 30-day comment period for that application in the *Federal Register*.¹ The waste would result from a contract between EnergySolutions and Sogin, a government-owned Italian company, which is decommissioning several nuclear reactors. The waste would be processed in Tennessee with the resulting product to be disposed of in EnergySolutions' Clive, Utah, Class A disposal site. This application is the first attempt by a U.S. waste processing company to import large amounts of LLRW as part of an agreement to decommission foreign nuclear reactors and, if granted, it is anticipated that many other such license applications will follow.

In addition to providing you with a letter, I recently wrote a letter to the executive director of the Northwest Interstate Compact on Low-Level Radioactive Waste Management, and to the governors of the Compact's member states (copy attached), I want to reiterate and provide additional information to support my opposition to the granting of this license.

Section 274(c)(2) of the Atomic Energy Act clearly places the responsibility for granting licenses for the importing of radioactive waste in the hands of the Commission. However, to approve EnergySolutions' license would run counter to congressionally established national policies that stem from the beginning of this nation's role as a generator of nuclear energy. For almost 30 years, Congress has been attempting

¹ 73 Fed.Reg. 7764 (July 11, 2008).

Received SECY/C&R

Date: 2/13/08

Time: 9:30 AM

2/13..To OIP/EBO to Prepare Response for Chairman's Signature
Date due Comm: Feb 28...Cpy to: RF, EDO, OCA to Ack..08-0080
Commission Correspondence (OIP should coordinate response with EDO)

legislative solutions to the national need for sufficient disposal capacity for LLRW generated here in the U.S. There is no indication in this legislative history, nor in the NRC's regulatory actions, that there was any intention that the United States would ever become a welcome repository of foreign-generated radioactive waste. The Nuclear Waste Policy Act of 1980 (P.L. 96-573) established state compacts to find disposal sites for the waste generated inside of those compacts. It also required the Department of Energy to "define the disposal capacity needed for present and future low-level radioactive waste on a regional basis."² As Senator J. Bennett Johnston stated during the debate on the Nuclear Waste Policy Act of 1980, it was the "national interest" that was to be protected by this law. Senator Ernest Hollings said that, "It has become clear that a national solution to low-level waste storage must be worked out."³ The Senate report on the legislation stated that the nation's waste "must be stored somewhere."⁴

Similar positions were expressed by Members of Congress during the debate on the passage of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (P.L. 99-240). "By passing this bill . . . [w]e can avert a crisis in the disposal of low-level nuclear waste, and we can work toward a solution of a problem that has troubled our Nation since the onset of nuclear technology," Rep. John Spratt argued on the floor of the House.⁵

The promulgation of the regulations establishing the licensing system for the importation of LLRW also do not refer to any policy change designed to further or encourage the processing and disposal of foreign-generated LLRW in U.S. sites. In fact, such commerce was not even anticipated. The NRC stated that the rule would not be a burden under the Paperwork Reduction Act because

We expect that there will be few export and imports per year that will be covered by the new requirements established by the rule

To the NRC's knowledge, there is no appreciable U.S. import or export traffic in radioactive waste. A possible exception is the widely accepted practice of returning depleted sealed radioactive sources to a manufacturer for recycle or disposal. This practice is generally encouraged For this reason, such shipments are excluded from the definition of "radioactive waste" in the final rule.⁶

Moreover, the regulations in 10 CFR 110 were amended specifically to conform to the guidelines of the International Atomic Energy Agency (IAEA) Code of Practice on the International Transboundary Movement of Radioactive Waste which the U.S. had strongly supported. According to the final rule, the Code resulted from a concern within

² 42 USC 2021d(b)(1)(A).

³ 126 *Cong. Record* 11978 (July 28, 1980) and 126 *Cong. Record* 20138 (July 29, 1980).

⁴ "Background and Need," Senate Report 96-548, Jan. 3, 1980.

⁵ 131 *Cong. Record* 11403 (Dec. 9, 1985).

⁶ 60 *Fed. Reg.* 37556, 37561-2 (July 21, 1995).

the IAEA about possible "improper transfer and disposal of radioactive waste."⁷ There was particular concern that LLRW would be shipped from countries with nuclear generators to other countries under false pretenses.⁸ These amendments were also intended to strengthen the NRC's control over radioactive waste entering and leaving the United States.

However, when two commenters on the proposed rule suggested that no category of radioactive waste be moved into or out of the U.S., the NRC did not agree with these restrictive approaches because it might interfere with some higher national policy goal.

International commerce in radioactive waste, including movement of waste into and out of the United States, may be desirable from a policy perspective. For example, some commerce involving radioactive waste may further important policy goals of the international community (such as waste shipments for international research) and other shipments may embody desirable take-back features (such as return of U.S. Government radioactive waste and shipments of used radioactive sources to authorized consignees).⁹

That "important policy goal" is not apparent in this license application. What is absolutely clear from this legislative and regulatory history is that neither the Congress nor the NRC ever intended or anticipated that this rule might be used to further the commercial importation of LLRW from foreign decommissioned reactors or other nuclear generators to fill our domestic disposal sites. The legislative and regulatory record reflects only very narrow circumstances where the national interest may open the door to importing waste for disposal. To accept a license for importation absent a clear showing that this furthers a national or international policy goal establishes a major policy change which the Congress has not yet addressed and which the NRC should not implement through the façade of this single licensing action.

According to a recent report from the Government Accountability Office, there is not a single European nation with adequate disposal options for its LLRW. GAO also found that Japan, Canada, Mexico and Australia did not have adequate capacity.¹⁰ Obviously, if the U.S. opens its doors through this license to become the world's nuclear garbage dump, there will be many generators only too happy to come in. There seems little effort in the current regulatory process to prevent this from happening precisely because no one ever anticipated that it could happen.

The United States cannot be put in this position based on the revenue aspirations of a single company, which at this moment also is the single U.S. facility that will take Class A LLRW waste from all generators except those located within the Northwest Compact. This would not further our national interest.

⁷ 60 *Fed.Reg.* 37556, *supra*.

⁸ 60 *Fed.Reg.* 37556, 37557-8, *supra*.

⁹ 60 *Fed.Reg.* 37556, 37557, *supra*.

¹⁰ "Low-Level Radioactive Waste Management," GAO-07-221, Figure 8, p. 24 (March 2007).

Therefore, by this letter, I am asking you to study the broader policy implications contained in this license application. I believe that when you measure this application against the clear national interest standards that underpin both the relevant statutes and regulations, you will conclude that you should reject this license application.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bart Gordon".

BART GORDON
Chairman

Cc: The Honorable Ralph Hall
Ranking Member

Attachments

U.S. HOUSE OF REPRESENTATIVES
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SUITE 2320 RAYBURN HOUSE OFFICE BUILDING
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February 1, 2008

The Honorable Jon Huntsman, Jr.
Governor of Utah
Utah State Capitol Complex
350 North State Street, Suite 200
PO Box 142220
Salt Lake City, Utah 84114-2220

Dear Governor Huntsman,

Enclosed is a letter I sent today to the Northwest Interstate Compact of Low-Level Radioactive Waste Management to address a very significant issue: the disposal of low-level radioactive waste (LLRW) from foreign nuclear power companies in a private site located within the boundaries of the Northwest Interstate Compact.

In September of 2007, *EnergySolutions* filed an application with the Nuclear Regulatory Commission (NRC) to import 20,000 tons of radioactive waste from nuclear reactors being decommissioned in Italy. According to that application, the waste would be processed in Tennessee with the resulting product to be disposed on in *EnergySolutions'* Clive, Utah, Class A disposal site. Under the import licensing regulations of the Nuclear Regulatory Commission, the Northwest Compact will be asked to comment on that application.

EnergySolutions has the only low-level radioactive waste (LLRW) disposal site in private hands in the United States. By its own accounting, it disposes of more than 90 percent of the LLRW generated in the United States. It does so through a license granted by the State of Utah as an NRC agreement state and with the permission of the Northwest Interstate Compact on Low-Level Radioactive Waste Management. However, in its 1998 Second Amended Resolution and Order, permitting LLRW to be disposed of at the Utah, site, the Compact stated that only because the facility served "an important national purpose" would it be allowed to accept waste from states outside of the compact. The Compact also reserved the right to "modify or rescind" its authorization at any time.¹

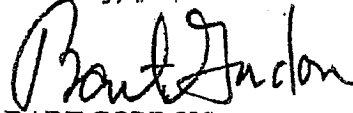
The U.S. has a long-term storage challenge for both low-level and high-level waste, and many European countries face exactly the same challenge. It is not at all clear what "national purpose" would be served by allowing LLRW from other countries to utilize our limited disposal resources. I bring all this to your attention to let you know that I have asked the Compact to

¹ "Second Amended Resolution and Order," Northwest Interstate Compact, Nov. 9, 1998, p. 2.

review the authorization granted to *EnergySolutions* and undertake a modification of their policy to disallow the storage of waste of which any part has come from a foreign waste generator.

I hope, after consideration of the situation, that you will direct your representative to the Compact to amend *EnergySolutions*' authorization so that this country does not simply become the nuclear garbage dump for the world.

Sincerely,

A handwritten signature in cursive script that reads "Bart Gordon".

BART GORDON
Chairman

Cc: The Honorable Ralph Hall
Ranking Member

Attachment

Letter also sent to:

The Honorable Dave Freudenthal
Governor of Wyoming
State Capitol, 200 West 24th Street
Cheyenne, WY 82002-0010

The Honorable Linda Lingle
Governor, State of Hawai'i
Executive Chambers
State Capitol
Honolulu, Hawai'i 96813

The Honorable Chris Gregoire
Governor of Washington
PO Box 40002
Olympia, WA 98504-0002
Governor's Office (360) 902-4111

The Honorable Ted Kulongoski
Governor of Oregon
160 State Capitol
900 Court Street
Salem, Oregon 97301-4047

The Honorable C.L. "Butch" Otter
Governor of Idaho
P.O. Box 83720
Boise, Idaho 83720

The Honorable Sarah Palin
Governor of Alaska
State Capitol
P.O. Box 110001
Juneau, AK 99811-0001

The Honorable Brian D. Schweitzer
Governor of Montana
Montana State Capitol Bldg.
P.O. Box 200801
Helena MT 59620-0801

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February 1, 2008

Mr. Michael Garner, Executive Director
Northwest Interstate Compact on
Low-Level Radioactive Waste Management
Washington State Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

Dear Mr. Garner:

In September of 2007, *EnergySolutions* filed an application with the Nuclear Regulatory Commission (NRC) to import 20,000 tons of radioactive waste from nuclear reactors being decommissioned in Italy. According to that application, the waste would be processed in Tennessee with the resulting product to be disposed of in *EnergySolutions'* Clive, Utah, Class A disposal site.

EnergySolutions has the only low-level radioactive waste (LLRW) disposal site in private hands in the United States. By its own accounting, it disposes of more than 90 percent of the LLRW generated in the United States. It does so through a license granted by the State of Utah as an NRC agreement state and with the permission of the Northwest Interstate Compact on Low-Level Radioactive Waste Management. However, in its 1998 Second Amended Resolution and Order, permitting LLRW to be disposed of at the Utah, site, the Compact stated that only because the facility served "an important national purpose" would it be allowed to accept waste from states outside of the compact. The Compact reserved the right to "modify or rescind" its authorization at any time.¹

In the next few days, the Compact will be asked by the NRC to approve or disapprove this license to dispose of foreign nuclear waste at *EnergySolutions'* Utah site. These plans by *EnergySolutions* suggest that it is time for the Northwest Compact to reexamine the basis of its earlier approval and determine what national purpose is served by allowing *EnergySolutions* to open its site to foreign waste. This is a very important decision. If granted, this import license would represent an unprecedented reversal in this nation's approach to the disposal of its own LLRW. It would say to the world that the United States is open for business and will take the world's low-level radioactive waste until our facilities are filled, regardless of the needs of our own country. Additionally, such an action would have the additional effect of making the United States responsible for monitoring foreign waste for hundreds of years as some LLRW has a half-life of 500 or more years.

¹ "Second Amended Resolution and Order," Northwest Interstate Compact, Nov. 9, 1998, p. 2.

Mr. Michael Garner
February 1, 2008
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The U.S. has a long-term storage challenge for both low-level and high-level waste, and many European countries face exactly the same challenge. We are rapidly approaching the limits of the existing Class B and C LLRW disposal sites. It has been projected that there are 20 years of storage available for Class A LLRW, but this is based on using all of the *EnergySolutions*' capacity for domestic waste.² Currently, not a single country in Europe has disposal options for all classes of its LLRW. Despite the plans of various countries for siting LLRW disposal facilities, they have had the same difficulties as in the U.S. to actually implement those plans.³ *EnergySolutions* would offer a convenient alternative to confronting those thorny issues.

Since the Low-Level Radioactive Waste Policy Act of 1980 was passed to address the problem of disposal of LLRW from U.S. nuclear reactors and other sources, and amended in 1985 to establish regional compacts to look for LLRW disposal sites, the focus of our regulatory system has been on establishing a process to site and license facilities to handle domestic waste. Although small amounts of foreign radioactive waste occasionally have been processed in the United States over the years, the largest appears to have been 1.4 million pounds.⁴ *EnergySolutions* is asking to import 40 million pounds, an increase of more than 25-fold.

If this application were a one-time occurrence, perhaps it would be of less significance. However, a review of the documents filed with the Securities and Exchange Commission by *EnergySolutions* at the time of its initial public offering in November of 2007 make it clear that it plans to aggressively pursue "specialized decommissioning and disposal services" in both the United States and Europe.⁵ One of its greatest assets is its large site for disposing of LLRW material. It is highly likely that *EnergySolutions*' application to import, process and dispose of Italian LLRW is simply the first in a string that will follow if this one is approved.

I would ask the Compact to carefully examine the situation that is unfolding with *EnergySolutions* to determine if it serves a national purpose. It appears that it is exploiting a loophole in our country's nuclear waste regulatory framework and its agreement with the Compact to put the United States on a path to becoming the nuclear garbage repository for the world. I cannot believe this was the intention of the Compact when the 1998 approval was granted. In particular, I ask the Compact to examine these matters with an eye toward the long-term storage needs of the country and to revoke or amend the Second Amended Resolution and Order.

² General Accounting Office, "Low-Level Radioactive Waste: Disposal Availability Adequate in the Short Term, but Oversight Needed to Identify any Future Shortfalls," GAO-04-604, June 2004, p. 5.

³ Government Accountability Office, "Low-Level Radioactive Waste Management: Approaches Used by Foreign Countries May Provide Useful Lessons for Managing U.S. Radioactive Waste," GAO-07-221, March 2007, p. 24.

⁴ There have been a total of 24 applications to import low-level radioactive waste filed with the NRC, of which six were withdrawn or not issued, and five are pending. Some are for amounts as small as a cubic meter or a few dozen kilograms. NRC, "Import License Spreadsheet" (copy attached).

⁵ Prospectus of *EnergySolutions*, SEC Registration No. 333-141645, Nov. 17, 2007, pp. 4-5.

Mr. Michael Garner
February 1, 2008
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Pending completion of this effort, I ask that you indicate to the NRC that the Northwest Compact cannot support the application by EnergySolutions to import 20,000 tons of Italian nuclear waste for processing and disposal in Utah.

If you have any questions or need additional information, please contact Edith Holleman, counsel, Investigations and Oversight Subcommittee, at (202) 225-8459, or Erica Antonson, legislative assistant in my office, at (202) 225-4231.

Thank you for your consideration of this matter.

Sincerely,



BART GORDON
Chairman

Cc: The Honorable Ralph Hall
Ranking Member

Number	Name	DocRef	Commodity	Quantity	Unit	Country	Use	Action
IW001	NEN Life Science Products		LLW, Containing Nickel-63	26.6	m ³	Mexico	Treatment in Texas, Disposal at Barnwell, SC	RWA
IW002	Siemens Power Corp		Class A radwaste, LEU, 5.0%, oxide, comb. Material	1200	kg	Germany	Incinerate & re-export for uranium recovery	Issued
IW002/01	Framatome ANP Richland, Inc.		Class A radioactive waste in the form of LEU, 5.0%, oxide, comb.	0	kg	Germany	Amend to change licensee name from Siemens Power Corporation to Framatome	Issued
IW003	ALARON Corp		Class A radwaste, contaminated condenser tubing. Class A waste	110	m ³	Taiwan	Decontaminate, recycle, dispose of contaminants	Withdrawn
IW004	Diversified Scientific Services, Inc		Class A mixed radwaste in the form of liquid products	1000	Cl	Canada	Thermal destruction	Issued
IW004/01	Diversified Scientific Services, Inc		Class A mixed radwaste in the form of liquid products			Canada	Amend to change radioactive material license number reference from R-73014.K98	Issued
IW004/02	Diversified Scientific Services, Inc		Class A mixed radwaste in the form of liquid products			Canada	Amend to ext expiration date from 4/30/02 to 12/31/04	Issued
IW004/03	Diversified Scientific Services, Inc		Class A mixed radwaste in the form of liquid products			Canada	Amend to 1) ext exp from 12/31/04 to 12/31/06; & 2) update domestic license info	Issued
IW004/04	Diversified Scientific Services Inc (DSSI)	Ltr. Dtd. 12/22/06	Class A mixed radwaste in the form of liquid products	0	kg	Canada	Amend to ext exp date	Issued
IW005	Chem-Nuclear Systems		Class A radwaste, contaminated condenser tubing. Class A waste	635035.8	kg	Taiwan	Decontaminate, recycle, dispose of contaminants	Withdrawn
IW006	Allied Technology Group, Inc		Class A radwaste, contaminated metal	626000	kg	Taiwan	Decontaminate, recycle, dispose of contaminants	Issued
IW007	GTS Duratek		Class A radioactive waste, contaminated condenser tubing	612356	kg	Taiwan	Decontaminate, recycle, dispose of contaminants	RWA
IW008	Starmet CMI		Class A radwaste, in the form of DU & mineral oil	80000	kg	Ukraine	Processing & re-manufacture of DU into shielding material	Issued
IW008/01	Starmet CMI		Class A radwaste, (DU metal & oxide & mineral oil)	170000	kg	Ukraine	Amend to incr qty of DU from 80,000 kgs to 250,000 kgs; incr qty of mineral oil	RWA
IW009	Framatome ANP		Class A radwaste, (LEU contam combustible material)	1200	kg	Germany	Incinerate, recover U; disp of residue	Issued

Reference Number	Company Name	License Type	Material Description	Quantity	Country	Amendment Description	Status
IW009/01	Framatome ANP		Class A radwaste, (LEU contam combustible material)		Germany	Amend to correct description	Issued
IW010	Philotechnics, Ltd.		Class A waste, Depl U	50000 kg	UK	For recycle and/or disposal of aircraft counterweights	Issued
IW010/01	Philotechnics	Ltr Dtd. 06/17/03	Class A radwaste, as DU aircraft counterweights for recycle &/or disposal	100000 kg	United Kingdom	Amend to 1) incr qty; 2) ext exp date; 3) add IC; & 4) update licensee address	Withdrawn
IW011	Allied Technology Group		Class A radioactive waste, contaminated scrap metal	3000 t	Taiwan	For processing and recycle or disposal of metal	Pending
IW012	Diversified Scientific Services, Inc		Class A mixed radwaste, 189,000 kgs in 900 drums	600 Ci	Canada	Thermal destruction	Issued
IW012/01	Diversified Scientific Services, Inc		Class A mixed radwaste, Addl 189,000 kg	600 Ci	Canada	Amend to 1) incr qty & 2) ext exp date	Issued
IW012/02	Diversified Scientific Services, Inc		Class A mixed radwaste, Addl 189,000 kg	600 Ci	Canada	Amend to 1) incr qty & 2) ext exp date	Issued
IW012/03	DSSI/Perma-Fix	Appl Dtd. 05/11/07	Class A mixed radwaste (378,000 kgs of contam mattis)	5500 Ci	Canada	Amend to: 1) incr qty; 2) ext exp date; & 3) chg licensee contact name	Issued
IW013	RACE		LLW				
IW014	Sud-Chemie		Class A mixed radwaste, 1,750 kgs	35 kg	Various South Korea	Processing to reduce volume Return of waste for disposal	RWA RWA
IW015	DSSI/Perma-Fix	Ltr Dtd. 03/16/04	Class A mixed radwaste (Tritium, C-14, Mixed Fission Products)	200 Ci	Mexico	Thermal destruction	Pending
IW016	Eastern Technologies, Inc.		Class A radwaste (Co-60, Co-58, & Mn-54)		Mexico	Laundrying & decontamination of protective clothing & related products	Issued
IW017	Duratek Services		Class A radwaste as contaminants of various mattis (metals, wood, plastics, liquids)		Canada	For recycle and re-use or processing for volume reduction, etc	Issued
IW018	AREVA NP	Ltr Dtd. 05/01/06	Class A & C radwaste, mixed fission products (Fe-55, Co-60, Ni-63 & Pu-241)	545 kg	France	Originally from Surry Power Station - to be returned & processed by	Pending
IW019	UniTech Services	Appl Dtd 08/17/06	Radwaste including metals & dry activity mattis that may be radioactively contam	0.5 TBq	Canada	Mattis to be sorted by type & levels of radioactivity & returned to Canada for	Issued

License No.	Licensee	Activity	Material	Quantity	Country	Remarks	Status
IW019-R	UniTech Services	Radwaste including metals & dry activity mats that may be radioactively contam	0 kg	Canada	License revised to 1) improve precision of licensee addresses & related info; & 2) Return for burial at U.S. Ecology &/or incineration	Issued	
IW020-EX	AREVA NP	DLN:06:069 Radwaste, packing matl contam with UO2 Powder	5000 kg	Canada	Return for disposal at Energy Solutions in Clive, Utah	Issued	
IW021	Westinghouse Electric	EFM-07-0432 Class A Radwaste, as waste filter cake & shot contam with LEU	72.29 kg	Canada	Recycle, re-use, or processing for volume reduction, etc. (Ref XW012)	Issued	
IW022	Perma-Fix Northwest, Inc.	Appl Dtd. 05/16/07 Class A radwaste (as contam metal, dry activity matl & liquids	134 TBq	Canada	Processing & recycling for beneficial reuse at TN facilities &/or disposal at UT facility	Pending	
IW023	EnergySolutions	IT-IM-2007-09 Class A & C radwaste as contam of metal, dry activity matl & liquids	640 TBq	Italy	Originally from XXXXXXXXXX to be returned & processed by EnergySolutions for	Pending	
IW024	AREVA NP	Appl Dtd. 09/25/07 Class A & C radwaste (as contam metal, dry activities matl & liquid)	1 m3	France		Pending	