

Comm-033  
DRC-2009-006942

# ENERGYSOLUTIONS

December 21, 2009

Mr. Dane Finerfrock  
Executive Secretary  
Utah Radiation Control Board  
P.O. Box 144850  
Salt Lake City, UT 84114-4850



CD09-0347

Re: Radioactive Material License Number UT 2300249 – Comments Regarding License Amendment Relating to Depleted Uranium Disposal

Dear Mr. Finerfrock:

On November 23, 2009, the Division of Radiation Control opened a 30-day comment period regarding draft License conditions relating to depleted uranium disposal. *EnergySolutions* appreciates the opportunity to comment.

Much of the language in draft License Condition 35 accurately captures commitments *EnergySolutions* has made relating to depleted uranium disposal. However, Condition 35.A introduces editorial comments and that are incorrect and not relevant to compliance of the Clive facility.

For example, Condition 35.A as written alleges that the Nuclear Regulatory Commission (NRC) "...has acknowledged some inadequacies in its past analyses and possibly its current regulatory structure with respect to disposal of substantial quantities of depleted uranium (DU)...". This statement is not correct. The NRC has not suggested that there are inadequacies in past analyses; nor is the rulemaking that the NRC has undertaken intended to "...determine the conditions under which DU and other unique wastes may be safely disposed." Not only has the NRC explicitly indicated that licensed facilities may continue disposal of DU, they voiced opposition to the idea of a moratorium on DU disposal at the September 2009 meeting of the Utah Radiation Control Board. It is inappropriate for DRC to speculate in a Radioactive Material License regarding NRC's intentions regarding a pending rulemaking. The NRC's statements in NRC rulemaking notices speak for themselves.

Condition 35.A as written goes on to state: "*EnergySolutions* has indicated to the Division that it would prefer not to wait until the completion of the NRC's and DRC's rulemaking processes or until completion of the resulting performance analysis that will likely be required before it begins to dispose of depleted uranium at the Clive facility." As DRC is well aware, *EnergySolutions* is not now beginning to dispose of DU.

EnergySolutions has legally disposed of depleted uranium at the Clive facility since March 21, 1991, when Amendment 10 to the Radioactive Material License explicitly approved DU as an isotope for disposal. At that time, DU had a concentration limit of 110,000 pCi/g.

In the License renewal signed on October 22, 1998, DU was listed at Condition 6.XX7 with the concentration limit increased to 370,000 pCi/g, based on a revised performance assessment. Amendment 20, approved on November 8, 2004, removed isotope-specific limits from the license since full Class A limits had then been approved at both the Class A and Mixed Waste cells, negating any need for these limits.

Therefore, it is factually inaccurate to state "...before it begins to dispose of depleted uranium at the Clive facility," since this disposal has been authorized and has occurred for many years. EnergySolutions has voluntarily committed to perform the actions called for in Conditions 35.B through 35.F even though NRC has not yet required, and may not ever require, these actions.

The editorial language in Condition 35.A is both inaccurate and inappropriate. Therefore, we propose that Condition 35.A be deleted in its entirety.

EnergySolutions suggests that Condition 35 be revised to read as follows (redline/strikeout against the text provided for public comment):

Condition 35. Depleted Uranium:

A. ~~Background: The Nuclear Regulatory Commission (NRC) has acknowledged some inadequacies in its past analyses and possibly its current regulatory structure with respect to disposal of substantial quantities of depleted uranium (DU). As a result, it has started a rulemaking process to determine the conditions under which DU and other unique wastes may be safely disposed of in near surface facilities. NRC has stated that new regulatory standards and guidance will be the likely result from that rulemaking process, and that new performance assessments will likely also be required. Rulemaking by the Division of Radiation Control (DRC) would also likely be follow. EnergySolutions has indicated to the Division that it would prefer not to wait until the completion of the NRC's and DRC's rulemaking processes or until completion of the resulting performance analysis that will likely be required before it begins to dispose of depleted uranium at the Clive facility. The additional license conditions in this Condition 35 are therefore required.~~

- AB. Burial Depth: The Licensee shall place all wastes with DU concentrations greater than 5 percent (by weight) a minimum of 10 feet below the top of the cover.
- BC. Performance assessment: A performance assessment, in general conformance with the approach used by the Nuclear Regulatory Commission (NRC) in SECY-08-0147, shall be submitted for Executive Secretary review and approval no later than December 31, 2010. The performance assessment shall be revised as needed to reflect ongoing guidance and rulemaking from NRC. For purposes of this performance assessment, the compliance period will be 10,000 years. Additional simulations will be performed for a 1,000,000-year time frame for qualitative analysis.
- CD. Revised disposal embankment design: If the performance assessment specified in paragraph ~~35C~~ 35.B indicates that changes to disposal operations and cover design are necessary to ensure compliance with the requirements of 10 CFR Part 61 or Utah Administrative Code R313, EnergySolutions will provide a revised design that does meet those requirements, for all wastes that have been and are reasonably anticipated to be disposed of at the facility within 180 days of Executive Secretary approval of the performance assessment.
- DE. Remediation: If following the ~~completion of NRC's and DRC's regulatory processes~~ review of the performance assessment described in paragraph ~~35A~~ 35.B, the disposal of DU as performed after the date of this license condition would not have met the requirements of ~~those new regulatory and performance standards~~ the approved performance assessment, the facility will undertake remediation to ensure that those ~~new regulatory and performance standards~~ requirements are met, or if that is not possible, shall ~~removed~~ remove the DU and transport it off-site to a licensed facility.
- EF. Surety: The Licensee shall fund the surety for the remediation, in License Condition ~~35-E~~ 35 D. Within 30-days of the effective date of this license condition, the licensee shall submit for Executive Secretary review and approval, the surety cost estimates for remediation of existing Savannah River DU waste disposal and planned, similar large quantity DU waste disposal.

Please contact me at 801-649-2109, if you have any questions regarding the foregoing.

Sincerely,





Daniel B. Shrum  
Senior Vice President, Regulatory Compliance