

June 9, 2005

The Honorable Mark Udall  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Udall:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of April 6, 2005, in which you expressed concerns about an application by Clean Harbors Deer Trail for disposal of radioactive materials in Colorado. In addition, you requested the status of an application by Connecticut Yankee Atomic Power Company (CYAPCO) for disposal of radioactive demolition debris from the decommissioning of CYAPCO's Haddam Neck plant and whether the NRC views the application as a possible precedent for disposal of radioactive materials in other States (possibly including Colorado).

The NRC does not have regulatory authority or jurisdiction over the Clean Harbors Deer Trail application for disposal of radioactive materials in Colorado. Colorado is an Agreement State under Section 274 of the Atomic Energy Act, and it has regulatory authority over the licensing of low-level waste disposal in Colorado. In early February, the Colorado Department of Public Health and Environment received a radioactive materials license application from Clean Harbors Deer Trail for disposal of certain limited low-level radioactive waste materials, including limited Naturally Occurring Radioactive Materials (NORM) and Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM), from licensed facilities. The Commission understands that this application is currently under review. Although both NORM and TENORM represent classes of radioactive material, neither NORM nor TENORM are encompassed within the Atomic Energy Act of 1954, as amended. Therefore, the NRC does not have regulatory jurisdiction over NORM or TENORM's use, storage, or disposal.

Clean Harbors Deer Trail also has a pending hazardous waste permit renewal application to allow its Colorado facility to receive limited unlicensed NORM and TENORM materials. The Colorado Department of Public Health and Environment's Hazardous Materials and Waste Management Division will determine whether a Resource Conservation and Recovery Act (RCRA) C permit may be adapted to provide appropriate protections and controls for these materials. The Commission understands that Colorado is reviewing the hazardous waste permit renewal application in parallel with the radioactive materials license application. Colorado has been conducting a public process since September 2004, and information is available on the Colorado Department of Public Health and Environment Web site at <http://www.cdphe.state.co.us/hm/hwy36.htm>. Other States have also authorized disposal of NORM from industries outside of the nuclear fuel cycle. Facilities disposing of NORM and TENORM, and RCRA Facilities, are not regulated by NRC, but by the States.

You also asked about the status of the application by CYAPCO for disposal of radioactive demolition debris from the decommissioning of CYAPCO's Haddam Neck plant and whether the NRC views the application as a possible precedent for disposal of radioactive materials in other States. CYAPCO, an NRC licensee, requested approval to dispose of demolition debris from decommissioning the Haddam Neck Plant at the U.S. Ecology site in Idaho. The request was submitted on September 16, 2004, pursuant to Section 20.2002 of Title 10 of the Code of Federal Regulations, "Method for Obtaining Approval of Proposed Disposal Procedures."

In reviewing the request, the NRC staff determined that any radiation doses from the disposal would be maintained within the limits set forth in Part 20, "Standards for Protection Against Radiation," and would be as low as is reasonably achievable. The staff also evaluated the proposal to ensure it would not cause significant environmental impact. The staff's Environmental Assessment (EA) for the CYAPCO request was published in the *Federal Register* on April 18, 2005, and the NRC final action was taken on April 19, 2005.

The CYAPCO request was not a precedent for disposal of radioactive materials at RCRA or other non-NRC licensed facilities. The request was submitted pursuant to 10 CFR 20.2002, under which other such requests have been made by licensees and granted by the NRC in the past. If a facility is State regulated, the disposal must comply not only with 10 CFR 20.2002, but also with State requirements.

I hope this letter satisfactorily addresses your questions.

Sincerely,

/RA/

Nils J. Diaz