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UTAH MANUFACTURERS ASSOCIATION



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Utah Department of Environmental Quality
Division of Radiation Control
Room 212, Airport East Building (BLDG #2)
168 North 1950 West
Salt Lake City, Utah 84114-4850

Comments on Notice of Proposed Rule Regarding a Moratorium on the Disposal of Depleted Uranium

Utah Manufacturers Association

Utah Manufacturers Association, the "voice of industry", representing more than 800 member companies in Utah, has grave concerns about the process the Radiation Control Board is proposing to promulgate rules regarding the disposal of depleted uranium in Utah.

The existing NRC Regulations are adequate to protect public health and the environment of the State. The NRC recently reviewed its regulations and confirmed that depleted uranium is Class A waste and may be suitable for near-surface disposal. The NRC has initiated a limited rulemaking to specify a requirement for site-specific analyses to ensure the continued safe disposal of DU; however, they have explicitly stated that uranium is properly classified as Class A waste as part of this process.

The NRC found no need for any immediate action while its limited rulemaking proceeds. The NRC has concluded there is no immediate health and safety issue regarding the disposal of DU. In determining how to proceed with its limited rulemaking, it explicitly considered and rejected the need for an expedited rulemaking or Order regarding the ongoing disposal of DU.

Existing technical analyses demonstrate that a moratorium on DU disposal pending the NRC rulemaking is not necessary to protect public health and the environment of the State. EnergySolutions has conducted technical analyses that clearly demonstrate that there is no near-term threat from continuing disposal while the NRC rulemaking proceeds, and furthermore that the site is safe for the continued disposal of large quantities of depleted uranium. These studies consist of current performance assessment, analyses by NRC staff in SECY-08-0147, an assessment of the site-specific conditions at Clive and their impact on exposure scenarios, and comparison with the concentration considered by the NRC in the 1981 rulemaking (0.05 uCi/gm). In fact, the current performance assessment, which EnergySolutions is in the process of updating, is itself adequate to demonstrate the absence of any near-term impact.

The existing license provisions are more than adequate to protect public health and the environment of the State during the NRC rulemaking and for thousands of years.

EnergySolutions already has agreed to modifications to its license that include, among other things, ensuring that DU is disposed of a minimum of 10 feet from the top of the cover on the site. This additional depth will specifically serve to retard the emission of radon at that point in the future when it begins to be generated. Radon is the principal source of the potential dose resulting from the decay of uranium.

The proposed rule is in conflict with State law. Utah Annotated Code (§19-3-104(8)) prohibits the Radiation Control Board from adopting rules "...that are more stringent than the corresponding federal regulations which address the same circumstances." The proposed rule is clearly more stringent than NRC rules that govern the disposal of depleted uranium as Class A waste (10 CFR 61).

The Radiation Control Board has not made the finding necessary that would allow it to promulgate rules "more stringent than" NRC regulations. Utah Annotated Code (§19-3-104(9)) allows the Radiation Control Board to adopt rules "more stringent than corresponding federal regulations for the purpose described in Subsection (8) only if it makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal regulations are not adequate to protect public health and the environment of the state." The Board has not initiated a process, including holding hearings to take evidence. Without such evidence, the Board cannot make any such finding.

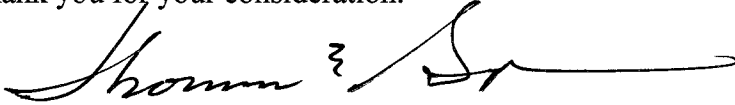
Furthermore, the Radiation Control Board has not identified which standard or part of a standard is inadequate. To make the finding necessary that would allow it to promulgate rules "more stringent than" NRC regulations the RCB would have to be explicit about the inadequacy of the subject standard and no such identification has been made.

The proposed rule places the State of Utah in direct conflict with the NRC's Agreement State Program. The rules under which the State of Utah is delegated the authority to oversee compliance with the Atomic Energy Act, the Agreement State program, imposes certain limitations on the state. Among those are designations regarding the compatibility of state regulations with NRC regulations. The NRC requires that State regulations governing the disposal of low level radioactive waste be "essentially identical" to those of the NRC. The proposed rule fails to satisfy that requirement.

UMA was intimately involved in the passage of the legislation restricting Utah State regulatory agencies from adopting rules and regulations "more stringent than corresponding federal regulations" unless after a public hearing and based on evidence in the record that corresponding federal regulations are not adequate to protect public health and the environment of the state. It has served us well and has fostered a healthy business climate in Utah. Predictability is crucial to Utah businesses and failure to comply with state statute upsets that principle. We therefore, respectfully request the Radiation Control Board follow Utah statute. If state agencies ignore this law Utah businesses will experience damage to there business climate. It is our understanding that the Radiation Control Board members have been informed of the law but have chosen to ignore it. UMA representing manufacturers across the state will not tolerate violation of this law.

For the reasons stated above Utah Manufacturers Association opposes the process underway by the Radiation Control Board and requests they withdraw the proposed regulations until they can make a finding that would support promulgating rules more stringent than corresponding federal rules.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "Thomas E. Bingham". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Thomas E. Bingham, President
Utah Manufacturers Association