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MORATORIUM ON THE DISPOSAL OF DEPLETED URANIUM

As a paralegal and a citizen of the State of Utah, I am concerned that the Division of Radiation Control (DRC) is now willing to skirt established law in favor of becoming politically popular.

Opposing *EnergySolutions* has become increasingly politically popular. We have seen big name political figures jump on the hate *EnergySolutions* bandwagon, joining the chorus of antagonist fanatics who pitch outright lies in the attempt to generate fear, which spends just like cash. They use it to buy votes, elected officials, press coverage, funds and to press their own political agenda.

The one voice of reason in this whole debate has been the DRC. As those who regulate *EnergySolutions*, the DRC has always known the truth and thus could sift through the mountain of lies and threat them with the contempt they deserve – ignore them. But the Division, is so doing, has received much criticism from *EnergySolutions* antagonist, accused of receiving bribes, kickbacks and turning a blind eye to the dangerous and polluting *EnergySolutions*.

The Division, to their credit, has discarded such attacks and continued with their business. But it seems that all that is about to change. The Division has been under pressure from Heal Utah and other antagonists, to enact rules regarding the disposal of Depleted Uranium (DU) that are more stringent than federal regulations.

May I remind the Division that 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).

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The 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 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 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.

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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.

Independent of the NRC rulemaking, *EnergySolutions* already has commenced preparation of technical analyses. The updated technical analyses will explicitly address the longer performance period that arises from the decay of uranium and its progeny.

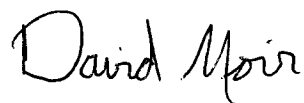
Any findings from the updated technical analyses can be addressed before any health and safety issues arise. The disposal of depleted uranium during the interim period while the NRC conducts its rulemaking results in no irreversible harm. Steps necessary to provide additional mitigation, if necessary, for example, providing additional depth, can be taken long before there is any threat from the disposal of depleted uranium.

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.

I encourage compliance with establish law and the discarding of those with funds enough to buy the loudest voices. Has anyone ever asked the antagonist, where are the facts necessary to support their arguments? Based on what do they make their allegations? Or are the voices of those who continue to yell – help us defeat *EnergySolutions* – all we need is your check or credit card number, just accepted without ever being questioned?

You must make decisions based on facts, not fiction. In so doing, you cannot ignore established law in favor of those who say – trust us, we're cute and we make Dutch apple pie (it is terrific!) **While ignoring law that prohibits the passing of regulations more stringent than federal rules may make you popular with such people, it does not make it right.**

The correct thing to do is obvious.



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