

WRITTEN TESTIMONY
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UNITED STATES NUCLEAR REGULATORY COMMISSION
TO THE
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY AND AIR QUALITY
UNITED STATES HOUSE OF REPRESENTATIVES
REGARDING
H.R. 5632, A BILL TO PROHIBIT THE IMPORTATION OF CERTAIN
LOW-LEVEL RADIOACTIVE WASTE INTO THE UNITED STATES

MAY 20, 2008

Mr. Chairman and Members of the Subcommittee, thank you for inviting the U.S. Nuclear Regulatory Commission (NRC) to this hearing today. As Director of the NRC's Office of International Programs, I am pleased to have this opportunity to discuss NRC's licensing requirement for importation of low-level radioactive waste. As requested by the Subcommittee, my focus today will be on NRC's regulatory framework for licensing the import of low-level radioactive waste.

Framework for Export and Import of Radioactive Waste

I want to describe the NRC's process in detail so that the Subcommittee has an understanding of the complete framework in which the specific case in question, that of the import of low-level radioactive waste from Italy, is taking place. The Atomic Energy

Act of 1954, as amended, grants the NRC exclusive jurisdiction to license exports and imports of source, special nuclear, and byproduct materials to and from the United States. The Act authorizes the import of radioactive material if domestic health and safety and common defense and security criteria are satisfied. The NRC's regulations governing such exports and imports are set forth in Title 10 of the Code of Federal Regulations, Part 110, "Export and Import of Nuclear Equipment and Material." The NRC's role in evaluating a low-level radioactive waste import application is a regulatory one, limited to ensuring that the proposed import can be accomplished safely and securely in accordance with all applicable legal requirements.

It is important for the subcommittee to understand at the outset the nature of NRC import licensing. The only permission granted by an NRC import license is permission to bring radioactive material across the border into the United States to a specified destination. The import license itself does not in any way regulate what is done with the material after it enters the country and becomes domestic material. Rather, a condition of all import licenses, specific or general, is that once the radioactive material enters the United States, the licensee must comply with all existing domestic laws and regulations applicable to the material. For low-level radioactive waste imports, the federal domestic scheme includes compliance with NRC and Agreement State regulations on safety, NRC regulations on security, the Low-Level Radioactive Waste Policy Act Compact system on capacity, and Department of Transportation regulations.

Prior to 1995, the NRC's regulations did not include a separate category for radioactive waste imports or exports. NRC import and export licensing regulations for source, special nuclear, and byproduct materials applied to radioactive waste depending on the waste's composition. In light of the nature of import licensing, which again simply lets

material cross the border into the United States upon the condition that the licensee will comply with all applicable domestic laws, the NRC permitted most radioactive material to be imported into the United States under general licenses promulgated in 10 CFR Part 110. NRC's regulations in Part 110 required specific licenses only for certain imports that had nuclear weapons proliferation significance.

In the late 1980s, the United States joined with the international community in establishing better controls for transboundary movement of radioactive waste. The impetus for this decision was concern about the major industrialized nations "dumping" their radioactive waste in countries which did not have the appropriate administrative or technical infrastructure to safely dispose of it. This effort ultimately led to the International Atomic Energy Agency's (IAEA) adoption in September 1990 of the Code of Practice on the International Transboundary Movement of Radioactive Waste (the Code). The Code, which had strong U.S. Government support, established a set of principles to guide countries in the development and harmonization of policies and laws on the transboundary movement of radioactive waste to ensure its safe management and disposal. A basic principle of the Code is that international movements of radioactive waste should take place only with prior notification and/or consent of the sending country, receiving country, and countries through which it transits. The Code also provides that no receiving country should permit the receipt of radioactive waste for management or disposal unless it has the administrative and technical capacity and regulatory structure to manage and dispose of the waste in a manner consistent with international safety standards. The Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (Joint Convention), which the United States subsequently ratified, is consistent with the Code.

In 1995, the NRC amended its regulations in Part 110 to conform NRC regulatory requirements for the import and export of radioactive waste to the guidelines of the Code. Since a basic principle of the Code was to require countries to track movements of radioactive waste across their borders so as to prevent radioactive waste from ending up in a country ill-equipped for safe management and disposal, the NRC amended its regulations to require specific licensing of both imports and exports of radioactive waste with limited exceptions.

Regulatory Review of Applications for the Export and Import of Radioactive Waste

I would now like to turn to how the NRC processes applications for the export and import of radioactive waste.

The NRC reviews import/export license applications against the criteria defined in Part 110. The NRC determines whether or not to issue an import license for radioactive waste based on its own health and safety and common defense and security evaluation. The NRC's evaluation is formed only after consulting with the Executive Branch, the applicable host State, and the applicable Low-Level Radioactive Waste Compact, and considering public comments. The NRC bases its licensing decisions on the following criteria found in 10 CFR Part 110.43: (1) the proposed import will not be inimical to the common defense and security; (2) the proposed import will not constitute an unreasonable risk to the public health and safety; and (3) an appropriate facility has agreed to accept the waste for management or disposal.

An applicant seeking to import (or export) radioactive waste must specify the maximum quantity of material in grams or kilograms (or terabequerels for byproduct material) and

its chemical and physical form, the volume, waste classification (as defined in 10 CFR 61.55 of NRC's regulations), the physical and chemical characteristics, the route of transit of shipment, and the ultimate disposition including forms of management of the waste. The applicant must also specify the industrial or other process responsible for generation of the waste, and the status of the arrangements for disposition, for example, any agreement by a Low-Level Radioactive Waste Compact and/or host State to accept the material for management purposes or disposal. In some cases, bounding values for the amounts of waste may be provided, and in no case can the maximum amount specified result in the licensee exceeding the limits of its domestic materials possession license without a license amendment. The description must be sufficiently detailed so that the NRC staff can be assured that transportation, management and disposal requirements in the U.S. will be met for ensuring protection of public health, safety, and security.

NRC's regulations and practices provide for significant coordination with the Executive Branch through the Department of State (DOS) and the host State and Low-Level Radioactive Waste Compacts where the waste would be processed and/or disposed. The NRC also consults with the U.S. Environmental Protection Agency regarding applications that include mixed waste, in other words, radioactive waste mixed with other hazardous wastes. All license applications for the import and export of radioactive waste are made available to the public through the NRC Web site. The NRC publishes a notice in the *Federal Register* to provide the public with an opportunity to comment on the application and to request a hearing or petition for leave to intervene.

Early in the review process, the NRC forwards the application to the DOS. DOS is responsible for coordinating review by interested U.S. Federal Government agencies.

To either provide notice or obtain consent in accordance with the Joint Convention obligations, DOS also contacts the foreign government in the nation where the material originated or is destined to go. If necessary to satisfy the Joint Convention obligations, DOS may also consult with foreign governments of nations through which the material may transit. For proposed imports of radioactive waste, DOS contacts the government of the exporting nation and seeks acknowledgement they are aware of the proposed transaction and requests any comments they might wish to provide.

The NRC has exclusive jurisdiction within the United States for granting or denying licenses to import radioactive waste. The NRC, however, recognizes the legal authority of the relevant host State and Low-Level Radioactive Waste Compact to accept or reject low-level radioactive waste for disposal or management in the compact region.

Accordingly, the NRC consults the applicable host Agreement State regulatory officials for their health and safety views on the proposed import and to confirm that the proposed import of radioactive waste is consistent with the state-issued possession license for the disposal facility. Likewise, the NRC consults the applicable Low-Level Radioactive Waste Compact Commission to determine whether the compact will accept out-of-compact waste for disposal in a regional facility. To ensure that no radioactive waste imported into the United States becomes orphaned waste, the NRC will not grant an import license for waste intended for disposal unless it is clear from these consultations that the waste will be accepted by the applicable host Agreement State and where applicable Low-Level Radioactive Waste Compact.

Implementation Experience

Since the 1995 rule was promulgated, the NRC has issued 13 licenses for the import of radioactive waste. Of those 13 issued licenses, seven have authorized import for disposal in the United States; of those seven, three have authorized import of U.S.-origin waste; and the remaining six licenses authorized import for processing and return of the processed waste to the country of origin. For additional information on licenses issued by the NRC since 1995, please see the attached table.

EnergySolutions Low-Level Radioactive Waste Import/Export Application

The NRC is currently evaluating a request from EnergySolutions, Inc. for a license to import low-level radioactive waste from Italy. The application requests the import of up to approximately 20,000 tons of radioactively contaminated material from nuclear power facility operations in Italy. The contaminated material includes metals; graphite; dry activity material, for example, wood, paper, and plastic; liquids, for example, aqueous and organic-based fluids; and ion exchange resins. After characterization in Italy, the contaminated materials would be inspected, sorted and processed at EnergySolutions' facilities in and licensed by the State of Tennessee, for recycling and beneficial reuse. The applicant estimates that after the processing in Tennessee approximately 1,600 tons of material would be sent for disposal at EnergySolutions' Clive, Utah disposal facility, which is licensed by the State of Utah. According to its application, no hazardous or mixed waste would be imported, and EnergySolutions would review and approve the content of each prospective shipment from Italy to the U.S. to ensure compliance with its domestic materials possession limits.

EnergySolutions also requested a radioactive waste export license that would allow it to return any nonconforming materials, that is, material received under its import license and identified at the processing facility in Tennessee that does not meet the waste acceptance criteria for the Clive, Utah disposal facility, to the generator in Italy for appropriate disposition in accordance with Italian requirements.

The NRC has solicited views from the states of Tennessee and Utah, the Southeast Compact Commission and Northwest Interstate Compact, and the Executive Branch (through the Department of State). The regulatory authorities in both Tennessee and Utah have informed the NRC that the material can safely go to the EnergySolutions facilities in their respective states. The Southeast Compact Commission expressed no objection to this application.

The NRC also offered members of the public the opportunity to submit comments or request a hearing on this application. The public comment period and deadline to submit a request for a hearing closes on June 10, 2008. To date the Commission has received over 2,000 comments on the application.

On May 8, 2008, members of the Northwest Interstate Compact unanimously adopted a resolution stating that the existing compact procedures do not address the import of foreign waste, and that such waste would need Compact approval before disposal at the EnergySolutions facility in Utah. The Northwest Compact notified the NRC by letter on May 15, 2008, that “should it choose to issue the import license [] it is doing so with the understanding there is no facility within the Northwest Compact region that is authorized to legally accept this waste for disposal.” Prior to the Compact’s resolution, EnergySolutions filed a lawsuit in Federal district court against the Northwest Compact

challenging the compact's authority over the proposed import. The NRC is carefully monitoring developments and will evaluate the situation after the June 10th deadline to file comments or request a hearing.

National Waste Disposal Capacity and Foreign Waste

As requested by the Subcommittee, I would now like to turn to questions regarding disposal capacity for low-level waste in the United States. In the short-term, the NRC has not identified any capacity issues with regard to Class A disposal at EnergySolutions' Clive, Utah facility. We note that according to a report issued by the General Accounting Office in 2004, under current conditions there appears to be ample available disposal capacity for the foreseeable future for Class A low-level radioactive waste, particularly at the EnergySolutions facility in Utah, which accepts waste from other regions. However, the disposal capacity for Class B, C, and greater than Class C waste is limited and in short supply, in part because of the States' failure to develop new sites under the Low-Level Radioactive Waste Policy Act, and the decisions of two Low-Level Waste Compacts to bar out-of-compact waste disposal in their regional facilities. The availability of storage capacity for Class B and C waste has not arisen in the context of the import of low-level radioactive waste.

In reviewing waste import applications, the agency, as a regulator, would not address future domestic disposal capacity in the absence of a public health and safety or common defense and security concern. The NRC's review focuses on whether there is disposal space available for the material specified in a particular import application. It is conceivable however that a particular import application could raise questions regarding future domestic disposal capacity that the NRC would address in its regulatory role. In

making its determination, the NRC obtains the views of the affected low-level waste compacts and States and the Executive Branch. The pure policy question of whether as a general matter foreign waste should be permitted to take up space in U.S. disposal facilities is a foreign commerce issue which is best addressed by Congress in conjunction with the Departments of State and Energy. Accordingly, the NRC takes no position on H.R. 5632.

Conclusion

The Atomic Energy Act authorizes the import of radioactive material only if domestic health and safety and common defense and security criteria are satisfied. Overall, the Act does not distinguish between domestic and foreign waste. The NRC's role in evaluating a low-level waste import application is a regulatory one, limited to ensuring that the proposed import can be accomplished safely and securely in accordance with all applicable legal requirements.

Again, the NRC appreciates the opportunity to testify today. At this point I would be happy to answer any questions that the Subcommittee may have.