

Hearing Docket

From: TomClements329@cs.com
Sent: Monday, June 09, 2008 12:15 PM
To: Hearing Docket
Subject: Italian Waste Import, Docket Numbers 11005710 and 11005711
Attachments: Louisiana report 4.08.pdf; Letter Import Ban 2008 05 12 b.pdf; South Carolina General Assembly resolutions2.08.docx

June 9, 2008

Attn: Rulemakings and Adjudications Staff
 From: Tom Clements, Friends of the Earth, Columbia, SC
 RE: Comment on Italian Waste Import; Docket Numbers 11005710 and 11005711

I am hereby submitting a comment and information pertinent to the proposed import of Italian nuclear waste by Energy Solutions. I ask that the attachments to this message be included in the record.

Friends of the Earth is opposed to the import and believes that Italy and all other countries should deal with their own waste. Especially given the talk in Italy of reviving nuclear power, it is time for Italy to come up with its own plan to handle nuclear waste generated within its own borders. It is the height of absurdity to dump this material on the US, particularly in light of the fact that more such waste from other countries could follow.

While EnergySolutions names Charleston, SC and New Orleans, LA as possible port of entries, the record must reflect opposition by governmental entities to such import. In a report entitled "Importation of Low-Level Radioactive Waste Through the Port of New Orleans" and dated April 18, 2008, the Louisiana Department of Environmental Quality unequivocally states opposition to the import: "granting the license may be harmful to national security and may pose an unreasonable risk to the environment, human health and safety."

I am attaching the LA DEQ report and ask that it be placed in ADAMS.

Likewise, the South Carolina State Ports Authority has stated that the port cannot handle the waste. This June 4, 2008 e-mail to me from the director of public relations of the Port Authority explains the inability to handle the radioactive waste:

Hi Mr. Clements,

The South Carolina State Ports Authority has not submitted comments on this matter as we have nuclear exclusions on all of our insurance policies and therefore do not handle such shipments at our public marine terminals in Charleston.

Sincerely,
 Byron

Byron D. Miller
 Director, Public Relations
 S.C. State Ports Authority
 Phone: 843-577-8197
 E-mail: bmiller@scspa.com

DOCKETED
 USNRC

June 11, 2008 (4:07pm)

OFFICE OF SECRETARY
 RULEMAKINGS AND
 ADJUDICATIONS STAFF

Given that Charleston can't even handle the waste, it is unclear why EnergySolutions would have named the port in its license application as a possible port of entry. Obviously, the waste can't move through Charleston. I ask that the NRC consider the position of the South Carolina State Ports Authority in this matter and that the license be denied based on the fact that South Carolina can't handle the waste and given the concern of the Louisiana DEQ.

Template = Secy - 043

Secy - 02

Friends of the Earth will oppose any attempt to allow nuclear waste through Charleston as we do not want to see our state become the gateway to dumping of foreign nuclear waste in the US.

Given that EnergySolutions has misrepresented the possible use of Charleston, I request that the NRC contact all possible commercial ports of entry and inquire if nuclear waste can be handled. Such an assessment must be concluded before a decision is made on the license application.

Additionally, I am attaching a May 18, 2008 letter from the South Carolina State Budget and Control Board in which it is clearly stated that any nuclear waste generated outside the Atlantic Compact states of South Carolina, New Jersey and Connecticut will not be allowed to be disposed of in the Barnwell LLW dump as of July 1, 2008. There has been some fear that processors such as that which EnergySolutions operates at Bear Creek, TN would move to SC in order to access Barnwell for disposal of nuclear waste generated outside the compact. With this letter it is clear that such will not be allowed and that no Italian waste could be disposed of in Barnwell (which is owned by the State of South Carolina).

As you know, the Barnwell dump will close to out-of-compact waste on July 1, 2008. After so many years of being dumped on by the nation, we celebrate this achievement. Likewise, the people of Utah do not deserve to bear the nation's LLW burden and certainly do not deserve to have foreign waste dumped on them. (See more information on the Barnwell closure on the South Carolina Energy Office website: <http://www.energy.sc.gov/index.aspx?m=8>)

I am attaching the May 18 SC Budget and Control Board letter and ask that it be considered for the record and posted on ADAMS.

Further, I am attaching a copy of the language of the bi-partisan resolutions against the Italian waste import which were introduced into the South Carolina House of Representatives and South Carolina Senate in February 2008. These resolutions, S. 1044 and H. 4691, can be found by searching on the South Carolina Legislature website at <http://www.scstatehouse.net/>.

Thank you for considering our views and taking into account the attached documents. I request to be notified when decision is reached in this matter.

Sincerely,

Tom Clements
Southeastern Nuclear Campaign Coordinator Friends of the Earth
1112 Florence St.
Columbia, SC 29201
tomclements329(at)cs(dot)com

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

importation of
low-level radioactive waste
Through the Port of New Orleans



DEQ
LOUISIANA

APRIL 18, 2008

PREPARED BY THE LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

HAROLD LEGGETT, Ph.D. Secretary

Office of the Secretary • P.O. Box 4301¹ • Baton Rouge, Louisiana 70821-4301

I. Executive Summary

Energy Solutions submitted an application to the Nuclear Regulatory Commission (NRC) to import 20,000 tons of radioactive waste into the Port of New Orleans and/or the Port of Charleston, S.C., to have it disposed at the Clive, Utah, disposal facility. The State of Louisiana is limited in its ability to regulate the importation and transportation of such waste within its boundaries by the Interstate Commerce Clause. The Low-Level Radioactive Waste Policy Act gives groups of states (called compacts) the ability to regulate the disposal of Low Level Radiation Waste (LLRW). Louisiana is a member of the Central States Compact. That Compact's authority extends to waste generated, exported or disposed of within the Central States Compact. Its ability to deny having the waste imported through the Port of New Orleans is limited since the waste will be disposed of in Utah, a Northwest Compact member. Louisiana, however, has the option to petition the NRC to deny the applicant's license request. The NRC's review process requires consultation with all affected states, and may result in the denial of an importation license if the proposed import is inimical to the common defense and security, constitutes an unreasonable risk to the public health and safety, or an appropriate facility could not be found to accept the waste for management or disposal. Due to the strategic location and large population surrounding the Port, granting the license may be harmful to national security and may pose an unreasonable risk to the environment, human health and safety. At the moment, the Northwest Compact has not yet agreed to allow the designated facility to accept the waste.

II. Background

On September 14, 2007, Energy Solutions, a private low-level radioactive waste disposal site in the United States, filed an application with the Nuclear Regulatory Commission to import 20,000 tons of radioactive waste. The waste is from the decommissioning of six Italian nuclear reactors. According to the application submitted to the NRC, the radioactive waste will enter the U.S. through the Port of New Orleans and/or the Port of Charleston where it will then be transported by truck to the Oak Ridge, Tennessee, processing facility. Once processed, the waste will be re-characterized and shipped by rail to Clive, Utah, for disposal.

Any waste not accepted by the Clive disposal site (Type A waste) will be repackaged and shipped back to Italy. The NRC is currently reviewing Energy Solution's application. Due to the hazardous and potentially detrimental nature of the material, the NRC decided to extend the original comment period deadline of March 12, 2008, to June 10, 2008. Several congressmen and governors have already announced their position that the application should be denied.

The importation of the LLRW into the Port of New Orleans poses environmental and health risks to the people of Louisiana, as well as a potential threat to the U.S. economy. This paper discusses Louisiana's rights regarding the importation of radioactive waste into its port and across its highways, and what steps the state can take to either prevent the event or limit the risks.

III. Key Issues

A. Current Status/Actions by NRC

Energy Solution's application is currently being reviewed by the NRC. Due to the hazardous nature of the material, the March 12, 2008, comment period deadline was extended to June 10, 2008. The NRC decision will come after a full review of all comments. Congressmen and governors have already objected to the application. The NRC has indicated that it will consider the opinions of all affected states and could deny the application if certain conditions are met.

B. Authority of NRC

The NRC has primary jurisdiction over matters involving radioactive materials and waste pursuant to The Energy Reorganization Act of 1974, Public Law 93-438, 42 U.S.C. Sect. 5801, *et seq.*

C. Authority of Louisiana (La R.S. 30:2101-2119)

Louisiana has limited authority to control the importation of low-level radioactive waste. The Louisiana Department of Environmental Quality (LDEQ) can require advanced notification of the intent to transfer waste through the state and detailed route information as to Type B radiation waste only. (LAC 33:XV.1516). All other control of this particular activity of this type of material is preempted by federal law.

Louisiana's authority to control the importation of radioactive material is limited by Article I, Section 8, Clause 3, of the U.S. Constitution. It states that the U.S. Congress has the power to regulate commerce with foreign nations and among the several states. This clause prevents states from taking any type of discriminatory or protectionist actions which would interfere with the commerce of any state or foreign nation. This prevents states from passing legislation which would place any undue burden on any out of state or foreign commerce. The clause prevents a state from denying the importation, transportation or disposal of hazardous waste into the state from any other state or foreign nation. For example, in *Chemical Waste Management Inc v. Templet* (967 F.2d 1058, CA5 1992) a hazardous waste disposal facility attempted to import waste from Mexico for disposal in Louisiana and challenged the constitutionality of a Louisiana statute which prevented the importation, storage, treatment, and disposal of foreign waste. The Court held that the statute was unconstitutional and a violation of the Commerce Clause. The disposal of radioactive waste is not an exception to this rule.

Under certain conditions, the State of Louisiana, through LAC 33:XV.1516, can require advance notification of radiation transported through the state. LAC 33:XV.1516.C requires the transporter (shipper, carrier and receiver) to provide the following necessary contact information:

- a description of the nuclear waste contained in the shipment;
- the point of origin and 7 day period during which departure is estimated to occur;
- the 7 day period during which arrival of the shipment at state boundaries is estimated to occur;
- the destination of the shipment and the 7 day period during which arrival of the shipment is estimated to occur; and
- a point of contact.

Advance notification is required only if the nuclear waste must be in Type B packaging for transportation, is being transported to, through or across state boundaries and the quantity of licensed material in a single package exceeds 3,000 times the A1 and A2 value as specified in LAC 33:XV.1517 or 1000 TBq (27,000 Ci). Based on the information provided, it is unclear if the waste being imported meets these requirements.

D. Authority of Central Interstate Low-Level Radioactive Waste Compact (The Commission): Low-Level Radioactive Waste Policy Act, Public Law 96-573, 42 U.S.C. Sect. 2021b, *et seq.*

After states failed in their attempt to control the importation of waste, the states lobbied the U.S. Congress to provide a solution. Congress responded to the states' concerns by establishing the Low-Level Radioactive Waste Policy Act of 1980 (amended in 1985). This act was established to promote the creation of regional LLRW disposal facilities throughout the U.S. Groups of states joined together to form compacts. Each compact was responsible for the development of LLRW disposal facilities for waste generated within their compact. This not only encouraged states to build more LLRW disposal facilities, but also gave each compact the power to deny other states not within their compact access to their disposal facilities. Currently, there are 11 compacts in the U.S. Louisiana is part of the Central States Compact which includes Kansas, Oklahoma, and Arkansas.

The Central States Compact's authority extends to waste generated, exported or disposed of within the Central State Compact. Its ability to deny having the waste imported through the Port of New Orleans is limited since the waste will be disposed of in Utah, a Northwest Compact member. The Central States Compact may have the ability to regulate the transportation of the waste through a member state.

IV. Bases to Object to the NRC License

Due to the provisions of the Commerce Clause, Louisiana's ability (as opposed to the Compact's) to deny the radiation transporters access to its ports and roads is limited. However, Louisiana can participate in the NRC's licensing process. The NRC's review process requires consultation with all affected states, low-level waste compacts, the U.S. Environmental Protection Agency (EPA), and the U.S. Department of State. The NRC may deny an importation license, among other grounds, if the proposed import is inimical to the common defense and security, constitutes an unreasonable risk to the public health and safety, or an appropriate facility could not be found to accept the waste for management or disposal. (10 CFR 110.43).

A. Harmful to Common Defense and Security

If a release of LLRW were to occur in the Port of New Orleans, either by terrorist activity or human folly, the closing of the Port of New Orleans would be catastrophic to the U.S. economy. The Port of New

Orleans is the largest inland port in the U.S. and serves as a major hub for the importation and exportation of agricultural products, iron and steel, manufactured products and petrochemicals. Remediation of the contamination could result in long-term closure of the Port, and damage to the U.S. economy would take years to correct. The economic damage could severely undermine U.S. security.

B. Unreasonable Risk to Human Health, Environment and Safety

The granting of the license to import through the Port of New Orleans would represent an unreasonable risk to the environment, human health and safety. The Port of New Orleans is unique in its size, location, and is recovering from the devastation caused by Hurricanes Katrina and Rita in 2005. Moreover, south Louisiana contains the largest concentration of wetlands in the U.S. Citizens, wildlife and the wetlands would be adversely impacted should a release in the Port of New Orleans occur.

C. There may not be an appropriate facility to accept LLRW.

The Northwest Compact has not yet agreed to allow the designated facility to accept the waste. Utah's Governor has made public his instructions that Utah's representative on the Compact vote to deny any proposals for foreign nuclear waste to be disposed of in Utah. The NRC should not grant the license until an appropriate disposal facility has been fully approved. Should the NRC grant the license prior to approval, but subsequent to the delivery of the waste to Louisiana, there is a risk that the waste could become stranded in Louisiana.

V. Recommendations/solutions

Louisiana should formally request that the license be denied prior to the closure of the NRC's public comment deadline set for June 10, 2008. Louisiana should also communicate to the Northwest Compact for its May 8, 2008, meeting, Louisiana's support of Utah's decision to oppose the importation of the waste.

If the license is granted, Louisiana should ask its Compact representative to use all means possible including the denial of an export license to prevent the transportation of the material through the Compact states. Additionally, if the license is granted, Louisiana could seek judicial redress.

Finally, a bill has been filed in the U.S. Congress, HR 5632, which would prohibit the importation of certain LLRW into the U.S. The Governor should request the Louisiana Congressional Delegation expedite the passage of HR 5632 before approval of the license.

Rec'd 5/19/08
WB

STATE OF SOUTH CAROLINA
State Budget and Control Board
OFFICE OF THE EXECUTIVE DIRECTOR

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CHAIRMAN, WAYS AND MEANS COMMITTEE

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EXECUTIVE DIRECTOR

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COLUMBIA, SOUTH CAROLINA 29211
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May 12, 2008

Mr. Benjamin Johnson, Esq.
Chairman
Atlantic Compact Commission
1201 Main Street, Suite 1830
Columbia, South Carolina 29201

Re: Notice Regarding Ban on Importation of Waste for Purposes of Disposal

Dear Mr. Johnson:

By resolution on March 12, 2002, the Atlantic Compact Commission granted South Carolina, as the Compact's host state, limited authority to allow importation of waste into the region for purposes of disposal at the regional disposal facility in Barnwell County through June 30, 2008.

The purpose of this letter is to provide the Compact Commission and other interested parties public notice on behalf of the board that the board, effective July 1, 2008, no longer authorizes importation for purposes of disposal at the Barnwell site. "Importation," for these purposes, means the acceptance at the regional disposal facility of any waste that was generated in any foreign country or any state or territory of the United States other than Connecticut, New Jersey and South Carolina.

"After January 1, 1986, no person shall deposit at a regional facility waste generated outside the region, and further, no regional facility shall accept waste generated outside the region unless approved by the Commission and the affected host state." Federal Compact Law, P.L. 99-240, Title II, Section 227, Article III(A)(2); also Section 48-46-70, South Carolina Code of Laws.

"'Region' means the entire area of the party states." Compact Law... Article II(m).

"After fiscal year 2008, the board shall not authorize the importation of nonregional waste for purposes of disposal." Section 48-46-40(A)(6)(a), S.C.C.

Waste generated within the Atlantic Compact region that is shipped to facilities outside the Atlantic Compact region for purposes of treatment or processing en route to disposal at Barnwell is considered waste generated within the Atlantic Compact region, as long as the treatment residue is not commingled in the same package with residue generated by organizations outside the Atlantic Compact region. Decontamination residue generated from radioactive materials owned by Atlantic Compact organizations may be considered Atlantic Compact waste, whether or not the decontamination process takes place within the Atlantic Compact region.

Sealed sources or other radioactive materials shipped from outside the Atlantic Compact region to waste brokering facilities or other facilities within the Atlantic Compact region for purposes of packaging or consolidation are not considered wastes generated within the Atlantic Compact region. The Barnwell site may not accept radioactive material or waste that has been transported into the Atlantic Compact region and re-manifested as radioactive waste solely for purposes of establishing eligibility for disposal at the Barnwell site as Atlantic Compact waste.

We believe that these guidelines are consistent with State and Federal laws, longstanding federal practices, and the regulations of the South Carolina Department of Health and Environmental Control (DHEC) at Chapter 61-63, RHA 3.2.98 and RHA 3.55. . If you have any questions regarding this Notice, please do not hesitate to contact Bill Newberry, Manager, Radioactive Waste Disposal Program, at 803-737-8037. If you have any questions regarding DHEC regulations related to identifying and manifesting radioactive waste shipped to the Barnwell facility, please contact Richard Haynes, Director, Division of Waste Management, DHEC, at 803-896-4070.

Sincerely,



Frank W. Fusco
Executive Director

cc: Bo Aughtry, Chairman, DHEC Board
Daphne Neel, Chief, BLWM, DHEC

South Carolina General Assembly
117th Session, 2007-2008

At <http://www.scstatehouse.net/>, search for bill numbers: S. 1044, H. 4691

A CONCURRENT RESOLUTION

URGING THE FEDERAL NUCLEAR REGULATORY COMMISSION TO DISAPPROVE THE REQUEST TO IMPORT AND DISPOSE OF ITALIAN LOW-LEVEL RADIOACTIVE WASTE IN THIS COUNTRY.

Whereas, the disposal of nuclear waste, low-level, as well as more toxic levels, has been an ongoing concern not only in South Carolina but throughout the United States and around the world; and

Whereas, the nuclear waste disposal facility in Barnwell, which has been in place for the past thirty-six years, has been a contentious issue in this State for decades; and

Whereas, on the eve of the Barnwell facility closing to the nation this coming summer, the issue of importing and disposing of foreign radioactive waste has arisen not only as a concern in South Carolina, but also as a concern facing the United States; and

Whereas, Foreign Solutions, Inc., of Utah, which, among other things, operates the Barnwell facility, is seeking approval from the Nuclear Regulatory Commission to import twenty thousand tons of Italian low-level radioactive waste through Charleston or New Orleans for processing and disposal in the United States; and

Whereas, Italy, which currently stores its radioactive waste at power plants and other sites throughout Italy, has no permanent repository for this waste, has four closed nuclear power stations and other nuclear facilities with low-level radioactive waste, and for the past number of years has been unable to construct a waste disposal facility due to strong citizen opposition; and

Whereas, due to having closed facilities and citizen opposition to construction of any new facilities, Italy reportedly has no nuclear waste disposal plan and, according to a 2006 Italian report, is seeking assistance from other countries to manage different types of nuclear waste; and

Whereas, the approval being sought from the United States for disposition of twenty thousand tons of Italy's low-level waste, which equates to approximately one million cubic feet, is allegedly a substantial percentage of the waste temporarily stored in Italy and is believed to be unprecedented in the United States; and

Whereas, transporting tons of nuclear waste through South Carolina renews issues that our State has struggled with for decades and raises concern over the potential danger to the people and environment of South Carolina; and

Whereas, having battled for years over the closure of the Barnwell facility, South Carolina must stand strong in its opposition to the importation of foreign waste and the transportation of such waste through this State; and

Whereas, importation of foreign waste is an issue that not only South Carolina must strongly resist, but also that the United States must stand firmly against. As a nation we have our own challenges in disposing of nuclear waste generated in this country, and it is incumbent upon us to insist that other countries take responsibility for the disposal of their own nuclear waste and not attempt to utilize the United States as a dumping ground; and

Whereas, the members of the South Carolina General Assembly adamantly oppose the importation of low-level radioactive waste from Italy and the transportation of this waste through South Carolina for the disposal of such waste in this country. Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

That the members of the South Carolina General Assembly, by this resolution, urge the federal Nuclear Regulatory Commission to disapprove the request to import and dispose of Italian low-level radioactive waste in this country.

Be it further resolved that a copy of this resolution be forwarded to each member of the South Carolina Congressional Delegation and to Dale Klein, Chairman of the Nuclear Regulatory Commission.

---XX---

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cia-db08.mx.aol.com (v121.5) with ESMTP id MAILCIADB086-90f4484d571b13e; Mon,
09 Jun 2008 12:15:23 -0400

Date: Mon, 9 Jun 2008 12:15:23 -0400

From: <TomClements329@cs.com>

To: hearingdocket@nrc.gov

Subject: Italian Waste Import, Docket Numbers 11005710 and 11005711

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