



State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

Department of
Environmental Quality

Amanda Smith
Acting Executive Director

William J. Sinclair
Deputy Director

PR 110
(74FR29614)

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USNRC

September 8, 2009 (4:55pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

September 8, 2009

Secretary
US Nuclear Regulatory Commission
Attention: Rulemaking and Adjudications Staff
Washington, DC 30555-0001

Re: State of Utah's Comments on NRC's Proposed Changes to the Export and Import Rule

The State of Utah submits these comments in response to the NRC's notice of proposed rule change to 10 C.F.R. Part 110. 74 Fed. Reg. 29,614 (June 23, 2009), Docket NRC-2008-0567. The State's comments are directed to the import and export of radioactive waste portion of the proposed rule.

1. An Appropriate Facility Authorized to Accept Imported Radioactive Waste

The State of Utah commends NRC for explicitly adding to sections 110.43(d) and 110.45(b)(4) that it will consult with a host state and applicable low-level radioactive compact with respect to the above. However, what does NRC intend to do if there is an impasse between NRC and a host state or compact concerning whether an appropriate facility is authorized to accept foreign radioactive waste for disposal?

2. Definition of "Radioactive Waste"

The State has concerns about the new Part 110 definitions of a radioactive waste which correlates the need for a specific import/export license with the need for a specific domestic license "under this chapter" for the same contaminated waste. This concept raises a number of questions. How will NRC implement this rule? Will NRC make its determination based on whether a rule requires a specific license for possession of the imported material or will NRC review whether the conditions in the domestic specific license held by a potential importer or exporter allows possession of the foreign material? Does NRC intend to judge the need for an import/export license only against NRC-issued specific licenses or against Agreement State-issued licenses too? Unlike a rule, the NRC and the Agreement States have great flexibility in writing license conditions, so there may be a lack of national uniformity in the kinds of radioactive materials a domestic specific licensee may possess.

3. Exemptions to the Definition of Radioactive Waste

NRC has certain listed exemptions to the definition of "radioactive waste". In particular exemption (2) would eliminate the need for a specific import license "if the material is being shipped for recovery and beneficial use of the non-radioactive material in a nuclear facility and

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not solely for waste management purposes or disposal.” 74 Fed.Reg.29523 (*emphasis added*).

First, this exemption may be abused to create the illusion of recycling as was done early on in the RCRA hazardous waste program or as was done by uranium mills “processing” contaminated material so the tailing could be labeled “11e.2 material”.

Second, what does “non-radioactive material” mean for purpose of Part 110? NRC has eliminated the term “incidental radioactive material” from part 110. Therefore, non-radioactive material must mean something else.

Third, if only a small fraction of the import is for recovery or beneficial use of non-contaminated material, does that negate the need for a specific import license? This could be used as a loophole and exploited to obviate the need to obtain a specific import license to import radioactive waste. While reuse of contaminated materials is a laudable goal, NRC must ensure that such provisions are not used to escape regulation when the bulk of the imported shipment is actually radioactive waste.

4. Information Required on Form 7 and Waste Attribution

The State has two other concerns, (a) the specificity of the information an applicant for an import license must submit to NRC on Form 7 and (b) waste attribution. NRC intends to only require an applicant classify the waste in accordance with 10 C.F.R. 61.55 “when the waste is being imported for direct disposal”.

First, this provision is too narrowly written. Most imported waste would escape classification. For example, if the imported waste were first consolidated, compacted, dewatered, or otherwise “managed” then disposed of, according to the proposed rule, it would not be classified prior to import.

Second, it would depend on the license conditions of the licensee who “manages” the imported waste as to how the waste would be further characterized or attributed.

Third, for the radioactive waste compact system to function, it is imperative that foreign waste retains its country of origin attribution.

Fourth, by allowing the importer to merely characterize waste, NRC may allow the import of radioactive waste that cannot be disposed of in this country. As it is, there is a scarcity of disposal capacity in the United States for Class B and Class C waste, and no capacity for Greater than Class C Waste. Moreover, a compact or host state will have insufficient data to make an informed decision about the appropriateness of the waste for disposal at facilities under its jurisdiction.

The State urges the NRC to (a) require more detailed and verified information on Form 7 from an applicant for a specific import license so that the United States is not faced with the problem of orphan imported radioactive waste and (b) ensure that foreign waste retain its country of origin

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attribution from import through disposal so that NRC's new rule is compatible with the compact system.

Thank you for the opportunity to comment.

Sincerely,

William J. Sinclair
Deputy Director

Rulemaking Comments

From: Gallagher, Carol
Sent: Tuesday, September 08, 2009 4:58 PM
To: Rulemaking Comments
Subject: NRC-2008-0567-DRAFT-0004[1].1.doc
Attachments: NRC-2008-0567-DRAFT-0004[1].1.doc

Van,

Attached for docketing is a comment letter from William J. Sinclair, Department of Environmental Quality, State of Utah, on the proposed rule Export and Import of Nuclear Equipment and Material; Updates and Clarifications (74 FR 29614) that I received via the Regulations.gov website on 9/8/09.

Thanks,
Carol

Received: from HQCLSTR01.nrc.gov ([148.184.44.79]) by OWMS01.nrc.gov
([148.184.100.43]) with mapi; Tue, 8 Sep 2009 16:58:59 -0400
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To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>
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