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Rulemaking Comments

From: Christopher Thomas [christopher@healutah.org]
Sent: Tuesday, September 08, 2009 9:09 PM
To: Rulemaking Comments; Smith, Brooke
Subject: Comments on proposed changes to 10 CFR Part 110
Attachments: NrcSeptemberImportExportREVISED.pdf

Dear Brooke,

Attached please find my revised comments on proposed changes to 10 CFR Part 110. These comments supersede the comments I emailed to Rulemaking.Comments@nrc.gov earlier today.

Please let me know that you received my comments and will consider them as part of the rulemaking process.

Sincerely,

--
Christopher Thomas
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USNRC

September 8, 2009 (9:00am)

OFFICE OF SECRETARY
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Subject: Comments on proposed changes to 10 CFR Part 110
From: Christopher Thomas <christopher@healutah.org>
To: Rulemaking.Comments@nrc.gov, Brooke.Smith@nrc.gov
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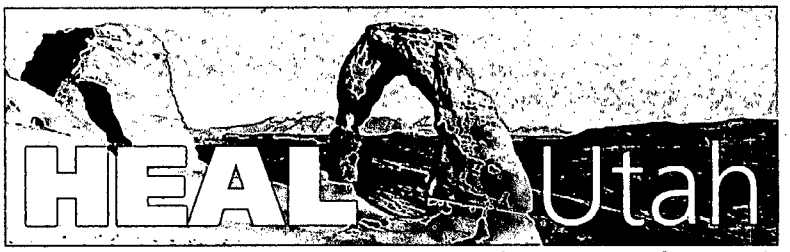

Healthy Environment ALliance of Utah

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Secretary, US Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

Sent by email to Rulemaking.Comments@nrc.gov and Brooke.Smith@nrc.gov

To Whom It May Concern:

I am submitting these revised comments with regard to proposed changes to 10 CFR Part 110 *Export and Import of Nuclear Equipment and Material; Updates and Clarifications.* This document supersedes the comments I submitted earlier today.

My primary concern is that companies like EnergySolutions not be allowed to import foreign nuclear waste for processing and/or disposal without public disclosure and opportunity for comment, oversight, and consent from appropriate bodies.

As for public disclosure and comment, it appears that none of the proposed changes would remove the requirement that EnergySolutions submit an application for a specific license to import radioactive waste for land disposal in the future. The public would thus continue to have the opportunity to see all such import applications and comment on those applications.

As for consent, I believe that the NRC should codify the requirement to obtain the consent of any host state that is the proposed destination for imported nuclear waste before approving an import application. Thus, under proposed changes to § 110.43 *Import licensing criteria* I would add another part: "(g) With respect to the import of radioactive waste, the host state of the proposed disposal facility has consented to the import."

Additionally, some of the exclusions under the new definition of radioactive waste should be made more restrictive. For instance, under the "contaminant" exclusion, protective clothing could be imported that, when laundered, creates radioactive waste that must necessarily be disposed. That disposable radioactive portion of the imported material should be recognized as "radioactive waste" at the time of import; otherwise, that disposable radioactive portion could simply appear to be domestic waste resulting from domestic processes.

Furthermore, an entire import of radioactive material should not fall under the contaminant exclusion simply because a small fraction of that material can be re-used. For instance, if only one pipe can be re-used out of a total 20,000 ton import (the rest of which must be disposed), that entire import should not fall under the "contaminant" exclusion simply because one pipe could be re-used. The term "solely for waste management purposes or disposal" must be further clarified, changed, or replaced to indicate that the portion of the import destined for disposal must at all times be considered radioactive waste.

Under both current and proposed rules, radioactive material destined for re-use can be imported under a general license. I believe such importation should be amended to require a specific license. Application for a specific license constitutes a form of public disclosure and the public should be made aware of radioactive materials, such as radioactive metal, that may be re-used. I note that the Metals Industries Recycling Coalition (MIRC) opposed the EnergySolutions Italian waste import in part because MIRC believes ensuring long-term restricted use of re-used radioactive metals is quite challenging, and that in fact, re-used radioactive metal could end up contaminating the general supply of re-used scrap metal. As long as radioactively contaminated metal could eventually make its way back into unrestricted use, the public deserves notification and the ability to comment on a specific license for import of radioactive materials proposed for re-use.

There is another exclusion under the definition of "radioactive waste" that should be further defined. The exclusion having to do with "a US Government waste research and development testing program under international arrangements" appears far too broad. If there are such programs, those programs should be specifically identified, along with appropriate caps on the total amounts of relevant wastes to be imported and exported every year.

As a final comment, I note that no longer requiring specific licenses for Category I and II material appears to erode public disclosure and oversight in general – since, as far as I am aware, imports conducted under the authority of a general license are not subject to the same public notification and comment rules as imports conducted under specific licenses. I believe that in general, the public should be made aware of and have an opportunity to comment on radioactive material imports of any kind.

Please feel free to contact me if you have any questions.

Sincerely,

Christopher Thomas