



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor
Toni Hardesty, Director

September 14, 2009

The Honorable Stephen Hartgen
Idaho House of Representatives
1681 Wildflower Lane
Twin Falls, ID 83301

Dear Representative Hartgen:

In response to your request, I will provide some background on Westinghouse's request to the U.S. Nuclear Regulatory Commission (NRC); DEQ's permitting and inspection authorities for hazardous and radioactive wastes; specific information about DEQ's regulatory oversight of US Ecology Idaho (USEI); and finally, DEQ's possible future role in regulating these materials should they be disposed at the USEI facility.

The Westinghouse request

The Westinghouse Electric Plant located in Hematite, Missouri, manufactured Low Enriched Uranium (LEU) and Intermediate and High Enriched Uranium (HEU) from 1956 - 1974 for the U.S. Government. From 1974 - 2001, they manufactured fuel assemblies for commercial nuclear power plants. Small quantities of HEU were present in plant wastes and debris (trash, rags, personal protection clothing, empty bottles, floor tiles, etc.) which were disposed in burial pits on site.

In May, 2009, Westinghouse submitted a request to the NRC for an exemption to dispose, at USEI, approximately 50,000 tons of waste and soil originating from the on-site burial pits, contaminated debris, and underlying soil from building demolition activities. That waste contains trace amount of Plutonium-239, Americium-241, and Neptunium-237. The target radionuclides have the following expected concentrations:

Radium-226 - 1 pCi/g
Thorium-232 - 1.2 pCi/g
Technetium-99 - 27 pCi/g
Uranium-234 - 113 pCi/g
Uranium-235 - 5.5 pCi/g
Uranium-238 - 18 pCi/g

Where pCi/g means picocuries per gram (one trillionth of a Curie per gram).

These materials are currently under the sole regulatory authority of the NRC. It is only if NRC exempts the material that it could be disposed at the USEI site, and then only if it meets the waste acceptance criteria in the DEQ-issued USEI permit.

NRC has a public comment process that they follow when considering these exemptions. A public meeting was held by the NRC on July 28th, near Grandview, which was the beginning of the initial comment period. That comment period has been extended 30 days to October 5, 2009. The NRC will prepare an Environmental Assessment, and if it finds that there are no significant impacts, the NRC will issue a draft "Finding of No Significant Impact" or FONSI, which itself will go through a 30-day comment period before the FONSI is final. As far as we can tell, the NRC final decision would probably occur April or May of 2010, unless they grant a formal hearing, which could extend the decision up to an additional 18 months.

DEQ Hazardous Waste and Radiation Regulatory Authorities

DEQ regulates hazardous waste pursuant to the authority vested in the Board of Environmental Quality (DEQ Board) by the Hazardous Waste Management Act of 1983 (HWMA), as amended, Sections 39-4401 et seq., Idaho Code, and the authority vested in the Director of DEQ by the Hazardous Waste Facility Siting Act of 1985, as amended, Sections 39-5801 et seq., Idaho Code. In the HWMA, DEQ is directed to "enact and carry out a hazardous waste program that will enable the state to assume primacy over hazardous waste control from the federal government." DEQ has received authorization from EPA to run the hazardous waste program, or RCRA (Resource Conservation and Recovery Act) in lieu of EPA in Idaho. DEQ annually updates its hazardous waste rules (IDAPA 58.01.05) to maintain consistency with federal law. These rules undergo public-noticed rulemaking, DEQ Board review and approval, and finally, legislative approval; all public processes.

Pursuant to Idaho Code § 39-4403(17) materials regulated by the Nuclear Regulatory Commission under the Atomic Energy Act (AEA) are considered a "restricted waste" and cannot be land disposed in Idaho. See Idaho Code § 39-4423. In Idaho Code § 39-4405(9), the Legislature directed DEQ to promulgate rules governing the management and disposal of radioactive materials that may be disposed at a commercial hazardous waste disposal facility and which are not regulated under the AEA. This includes materials that NRC has exempted from regulation. Consistent with this directive DEQ has promulgated the Rules Regulating the Disposal of Radioactive Materials not Regulated Under the Atomic Energy Act of 1954, as amended (IDAPA 58.01.10). These rules generally prohibit the disposal of radioactive material at any facility other than a permitted hazardous waste disposal facility such as USEI, and then only if the disposal is consistent with all conditions related to such in the facility permit. See IDAPA 58.01.10.020.03. Accordingly, under these regulations, disposal of waste exempted under 10 CFR Part 70.17 (i.e. special nuclear material or "SNM", including enriched uranium) is allowed at an authorized hazardous waste site in Idaho such as USEI, but only in accordance with the terms of the USEI permit. These rules were approved by the Board of Environmental Quality and the Idaho legislature through processes that also included public comment opportunities. No adverse comments were received.

DEQ's Regulatory Oversight of USEI

The RCRA Hazardous Waste Treatment, Storage and Disposal Permit for USEI Site B became effective November 12, 2004. Issuance followed the public notification provisions of IDAPA 58.01.05.012 & 013 which include: notifying the mailing list; publication of notice in local and statewide newspapers; opportunity for hearing (none requested); and opportunity for appeal following final decision (none).

Subsequent modifications to the permit regarding radioactive materials (referred to as Class 2 permit modifications) went through the required public notice and public comment process, including public notice in newspapers regarding the modifications and the public meetings for them, as well as where information regarding these modifications could be obtained. The process allows 60 days for the public to submit comments.

The permit regulates all of the waste streams that are processed and disposed at the USEI site. The permit contains detailed "Waste Acceptance Criteria" (WAC) that specify the types and amounts of waste that can be received by USEI. Materials that do not meet the WAC cannot be disposed at USEI.

For radioactive materials, Table C.4b of the permit's WAC allows up to 3000 pCi/g of total activity for waste of this nature. This is calculated by summing the activity of all radionuclides present in the waste stream. The reported activity for the proposed Westinghouse material would be allowable under USEI's permitted WAC.

DEQ performs monthly inspections at the site, and our respective management teams also meet on a monthly basis. DEQ inspections are conducted by experienced hazardous waste specialists and a full-time radiation health physicist.

Our radiation health physicist, in addition to monthly inspections (and special inspections when unique waste streams arrive), also evaluates site monitoring data to ascertain the impact of the radioactive materials at the site, and prepares an annual report. Radionuclide impacts are determined by the dose (an amount received over time, measured in *milliRems per year*, or mRem/yr) that could be received by a hypothetical person spending 2000 hours a year at the USEI fence line. The threshold limit for determination of human health impacts is considered to be 100 mRem/yr. For 2008, the annual report concludes that "a public TEDE [Total Effective Dose Equivalent] of 5.9 mRem is obtained. As the data in this report demonstrate, the levels measured on and around the USEI Site B facility are of such levels that the potential public doses, due to USEI activities, are far below the 100 mRem/yr limit."

DEQ's role in regulating the Westinghouse waste.

To be clear, this waste can only be disposed in Idaho if NRC grants an exemption to the material. Thus, DEQ will have no role in regulating this waste if the exemption is denied. If an NRC exemption is granted, then USEI would submit a concurrence request to DEQ with the

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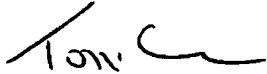
Westinghouse exemption letter and its own safety and permit compliance findings. DEQ would then review this information and advise USEI of its findings.

If DEQ confirms that the material meets the USEI permit waste acceptance criteria, then the waste can be disposed at USEI. DEQ's hazardous waste and radiation health physicist will be on site when the first shipments arrive to assure that the waste meets the waste acceptance criteria and is being properly handled. Site monitoring and inspections will continue to occur on a regular basis throughout the year.

I hope this clarifies DEQ's role and responsibility with respect to the Westinghouse waste, the open public involvement opportunities provided by the legislative process, DEQ rulemaking, and DEQ permitting, and the extensive, frequent regulatory oversight of USEI.

If I can be of further assistance, please give me a call.

Best Regards,

A handwritten signature in black ink, appearing to read "Toni", followed by a stylized flourish.

Toni Hardesty