



State of Utah

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Environmental Quality

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DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
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Director

October 21, 2015

Josephine Piccone, Director
Division of Material Safety, State, Tribal and Rulemaking Programs
Office of Nuclear Material Safety and Safeguards
T8-E18
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Ms. Piccone:

The Division of Waste Management and Radiation Control has completed its review of your letter dated March 18, 2015 providing the NRC's comments on two bills enacted by the Utah Legislature during the 2015 General Session.

As you know, during the NRC's evaluation of Utah's radioactive materials programs recently performed under procedures established by the Integrated Materials Performance Evaluation Program (IMPEP), the evaluation team noted that the Division had not provided a response to the March 18, 2015 letter. During this IMPEP review, the team was informed that an administrative appeal filed by the licensee in response to actions taken by the Division regarding financial surety matters similar to those addressed by S.B. 173 was in progress and that the timing of our response to the March 18, 2015 letter would be impacted by our need to respond to the issues raised by this appeal. This appeal has proceeded to a point that we can now provide our responses to each of the comments. These responses were prepared in consultation with the Utah Attorney General's office.

We note that the NRC was provided with copies of the referenced bills at the time they were publically available. We also note that, although the letter came after the conclusion of our legislative session, the particular sections of the two bills pertinent to the NRC's comments remained unchanged from the version of the bills reviewed by the NRC prior to their final passage.

Specifically, the NRC offered two comments on S.B. 173, *Financial Assurance Determination Review Process* and one comment on S.B. 244, *Department of Environmental Quality Modifications*. The three comments are provided below with our responses.

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NRC Comment 1:

In Utah S.B. 173 (line 578)/10 CFR § 61.62(d) (Cat. H&S): Utah has already adopted an approved section corresponding to NRC Section 61.62 (Utah Section R313-25-31). State Section S.B. 173 goes beyond the existing compatible Utah provisions on decommissioning funding and must not conflict with NRC Section 61.62. The NRC provision requires changes in the surety amount in accordance with predicted factors affecting costs of stabilization. One of those factors required by the NRC regulations is potential “increases in the amount of disturbed land.” (Section 61.62(d)/R313-25-31(4)).

Line 173 conflicts with this provision, as it specifies, “financial assurance for closing the areas within the disposal embankments shall be limited to the cost of closing areas where waste has been disposed.” Utah needs to modify this provision to account for potential increases in the amount of disturbed land to satisfy the essential health and safety objectives of Section 61.62.

Response to Comment 1:

The Division acknowledges the NRC’s concerns and recommended changes to S.B. 173 and is committed to work with the NRC to resolve this matter appropriately. The Division and its counsel are preparing to meet with stakeholders to determine whether statutory changes are necessary or whether NRC’s concerns can be met with rulemaking or other action. The resolution will take some time given these statutory and regulatory considerations and the possibility of legislative action during the 2016 General Session. As part of this process, the Division expects to seek additional input from the NRC.

NRC Comment 2:

In Utah S.B. 173 (line 582)/10 CFR 61.62(c)-(d) (Cat. H&S): Utah has already adopted a compatible section corresponding to NRC Section 61.62 (Utah Section R313-25-31). State Section S.B. 173 goes beyond the existing compatible Utah provisions on decommissioning funding and must not conflict with NRC Section 61.62. The State section at issue allows the licensee or permittee to elect the financial assurance requirements as either “an annual calculation using the current edition of RS Means Facilities Construction Cost Data or using a process, including an indirect cost multiplier, previously agreed to between the licensee or permittee and the director; or . . . a competitive site-specific bid for closure and postclosure care of the facility...” This conflicts with NRC Section 61.62(c) which requires that “(t)he licensee’s surety mechanism will be annually reviewed by the Commission (State Director) to assure that sufficient funds are available for completion of the closure plan.” NRC Section 61.62(d) also specifies periodic changes of the surety in order to “yield a surety that is at least sufficient at all times to cover the costs of closure of the disposal units that are expected to be used before the next license renewal.” The State section appears to remove mandatory Director approval of the surety mechanism, and allow a separate “RS Means Facilities Construction Cost Data” election by the licensee to be independently sufficient to satisfy the surety requirements.

Utah needs to modify this provision to incorporate State Director approval of all sureties, and to assure that all sureties—whether or not they are based on the RS Means Facilities Construction Cost Data—are sufficient to cover the costs of closure until the next license renewal to satisfy the essential health and safety objectives of Section 61.62.

Response to Comment 2:

The Division acknowledges the NRC's concerns and recommended changes to S.B. 173 and is committed to work with the NRC to resolve this matter appropriately. The Division and its counsel are preparing to meet with stakeholders to determine whether statutory changes are necessary or whether NRC's concerns can be met with rulemaking or other action. The resolution will take some time given these statutory and regulatory considerations and the possibility of legislative action during the 2016 General Session. As part of this process, the Division expects to seek additional input from the NRC.

NRC Comment 3:

In Utah S.B. 244, 1st Sub (line 838) [S.B. 244, enrolled (line 842)]/10 CFR 61.82 (NRC): The proposed State Section authorizes the new State Director of the consolidated Division of Waste Management and Radiation Control to "conduct inspections pursuant to UCA 19-6-109." UCA 19-6-109 authorizes any officer of the Director, "at any reasonable time . . . (to) inspect any property, premise, or place on or at which solid or hazardous wastes are generated, transported, stored, treated, or disposed of . . . for the purpose of ascertaining compliance with this part and the rules of the board."

In a February 28, 2013 letter from NRC to the Utah Director of Radiation Control, (ML13052A441), NRC issued a comment indicating that, although Utah may verify waste shipped to the state under the waste acceptance criteria, a similar proposed State Section (UCA 19-3-106.4(2)) was outside of the 274b Agreement authority of the State, as Utah did not have the regulatory authority to conduct inspections of facilities under the regulatory jurisdiction of the NRC or other Agreement States, and Utah's State section authority needed to be limited to only the verification of the waste being disposed of in the State.

By authorizing the Director under the newly combined Division of Waste Management and Radiation Control to conduct these inspections, the State's proposed legislation contemplates inspections of facilities beyond the waste shipment verification purview of Utah's 274b authority. The plain language of S.B. 244 indicates that the Division of Solid and Hazardous Waste is being consolidated with the Division of Radiation Control, and the new Director of both (now-combined) previous Divisions will have this inspection authority. Furthermore, the State's contemplated inspection authority reference is located in what was previously one of the sections applying specifically to the Director of the State's Division of Solid and Hazardous Waste. As such, whether or not Utah has plans to conduct inspections, the current wording of this State provision at least contemplates authority to conduct such inspections, and as such, exceeds Utah's 274b authority.

Utah needs to indicate that the State provision will limit the inspection authority to exclude inspections of facilities under the regulatory jurisdiction of the NRC or other Agreement States.

Response to Comment 3:

We note that paragraph 19-6-107(2)(i) of the Utah Code Annotated authorizes the Director of the Division of Waste Management and Radiation Control to perform inspections pursuant to 19-6-109. We also note that the only change to this paragraph under S.B. 244 is simply to renumber it from paragraph "(a)" to paragraph "(i)" in order to incorporate, in the preceding paragraphs, the additional authorities previously granted to the director of the former Division of Radiation Control formerly found in paragraphs (2)(a) to and including (2)(h) of 19-3-108 of the Radiation Control Act.

First and foremost, the quoted reference to 19-6-109 regarding inspections is, as explicitly stated in this section, limited to inspections of solid and hazardous waste and is not inclusive of inspections of radioactive materials. The director's inspection authority for radioactive materials, as amended by S.B. 244, is found in paragraph 19-6-107(3)(i) and is included below for your convenience.

The director may authorize employees or representatives of the department to enter, at reasonable times and upon reasonable notice, in and upon public or private property for the purpose of inspecting and investigating conditions and records concerning radiation sources. (Emphasis added.)

Please note that this paragraph was previously found in paragraph 19-3-108(3)(c) of the Radiation Control Act and was transferred to paragraph 19-6-107(3)(i).

The Division will rely on paragraph 19-6-107(3)(i) and not paragraph 19-6-107(2)(i) as the legal authority for performing radioactive materials inspections. Consequently, the concern raised by this comment is not a matter related to the Agreement between Utah and the NRC since the legal authority for that Agreement is based on radioactive materials defined under the federal Atomic Energy Act and not solid and hazardous waste as defined under the federal Resource Conservation and Recovery Act.

The consolidation of the two divisions does not change the separate and distinct inspection authorities of the solid and hazardous waste program and the radioactive materials/waste program even though the programs are now administered under the direction of a single division director. Hence, in our opinion, the issue that the statute (i.e., 19-6-107(2)(i)) potentially exceeds Utah's 274b authority simply does not exist and 19-6-107(3)(i) properly authorizes inspections of radioactive materials in Utah.

We appreciate the NRC's review of and comments on changes to Utah's radiation control statutes. If you have any questions, please call me at (801) 536-0203. For legal questions, please call Laura Lockhart at (801) 536-0283.

Sincerely,



Scott T. Anderson, Director
Division of Waste Management and Radiation Control

c: Alan Matheson, Executive Director, Utah DEQ (Email)
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