



State of Utah

Department of
Environmental Quality

Richard W. Sprott
Executive Director

Division of Radiation Control
Dane L. Finerfrock
Director

Radiation Control Board

Kent J. Bradford, P.G., *Chair*
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Lieutenant Governor

Testimony of
Kent J. Bradford, P.G., C.H.M.M.
Chair, Utah Radiation Control Board

Before the Subcommittee on Energy and Air Quality
Of The United States House of Representatives
Washington, DC

Tuesday, May 20, 2008

10:00 AM

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you today to provide testimony regarding actions of the Utah Radiation Control Board with respect to importation of foreign radioactive waste.

Background

The Utah Radiation Control Board is charged with regulating radioactive materials and radiation sources to ensure the protection of the general public. The Utah Radiation Control Board is established by statute and consists of 13 members appointed by the Governor of Utah and confirmed by the Utah Senate. The members have a broad range of experience, representing regulated industry, academia, local governments, medical and dental professions, and the general public. Twelve of the 13 members, including myself, are volunteers.

I am the current Chair of the Utah Radiation Control Board. My profession is environmental and safety management and I work for a company that is regulated by the Board. A copy of my Curriculum Vitae is included as Attachment 1 to this testimony.

I would like to turn now to the questions you asked in your May 12, 2008 letter.

1. *What is the role, authority, and responsibilities of the Utah Radiation Control Board in regulating low-level radioactive waste?*

Utah is an "Agreement State" for low-level radioactive waste under the Atomic Energy Act, and the Board therefore regulates radioactive waste facilities, including disposal facilities, in the place of the Nuclear Regulatory Commission. The Board makes rules and enforces rules and statutes that govern radioactive waste facilities.

Among the Board's duties are two that are pertinent to importation of radioactive waste from foreign countries. The Board is charged with regulatory oversight of low-level radioactive waste disposal facilities, including EnergySolutions. It also has statutory authority to promote the planning and application of pollution prevention and radioactive waste minimization measures to prevent the unnecessary waste and depletion of natural resources.

A copy of the Board's statutory authority is provided as Attachment 2 to this testimony.

2. *Please address any past actions by the Board with respect to foreign low-level radioactive waste imports to Utah.*

When issues arise that are of interest or concern to the citizens of Utah,

the Board may issue rules, or it may elect to issue position statements to guide the development of State and national policy.

When the matter of disposal of low- level radioactive waste from foreign countries arose, the Board first considered issuing a rule prohibiting that disposal. However, we received legal advice that such a rule could be challenged as a violation of the Commerce Clause of the U.S. Constitution.

The Board elected then to issue a position statement in the form of a letter to the Chairman of the Nuclear Regulatory Commission. A copy of the letter is included as Attachment 3 to this Testimony. The letter expressed the Board's opposition to license amendments under review by the Nuclear Regulatory Commission for the importation of foreign waste from Italy.

In the letter to the Nuclear Regulatory Commission the Board expressed what it had heard: the citizens of the State of Utah strongly opposed the importation of foreign waste. The Board believes that the State has done its fair share and more in providing appropriate disposal capacity for the nation's low-level waste by permitting a low-level waste facility in the state. Providing disposal capacity for foreign waste was never discussed or contemplated at the time the State issued a license to the predecessor to EnergySolutions.

The Utah Radiation Control Board has not taken any previous action or position with respect to foreign low-level radioactive waste imports to Utah.

3. *Please address the Board's views on the adequacy of disposal capacity for low-level waste in the U.S. and whether there is a policy reason related to capacity to consider limiting importation of foreign waste for disposal in Utah.*

As noted in the letter to the Nuclear Regulatory Commission the Board has not taken a position with respect to domestic capacity for low-level waste except to note that the nation's capacity is finite and that we must ensure that the nation provides and retains domestic capacity for our own radioactive waste.

The letter to the NRC also states that "the U.S. Nuclear Regulatory Commission and the United States Congress should work together to adopt a workable National Low- Level Radioactive Waste plan." This current system has not been successful in locating low-level disposal sites within the various State Compacts. As a result, the large majority of volume of radioactive waste – over 90% – is disposed at EnergySolutions. The majority of that waste has been from federal generators. Congress should evaluate the current system and encourage other States and Compacts to establish low-level disposal sites.

4. *Please address any position or observations the Board may have with respect to H.R. 5632.*

The Utah Radiation Control Board has not taken a position with respect to H.R. 5632.

As requested, a one page summary of the major points of this testimony is included as Attachment 4 to this testimony.

Thank you for your time and attention to this matter. I would be happy to answer any questions at this time.

ATTACHMENT 2

Utah Radiation Control Board's
Statutory Authority

19-3-103.5. Board authority and duties.

(1) The board may:

(a) require submittal of specifications or other information relating to licensing applications for radioactive materials or registration of radiation sources for review, approval, disapproval, or termination;

(b) issue orders necessary to enforce the provisions of this part, enforce the orders by appropriate administrative and judicial proceedings, and institute judicial proceedings to secure compliance with this part;

(c) hold hearings and compel the attendance of witnesses, the production of documents, and other evidence, administer oaths and take testimony, and receive evidence it finds proper, or appoint hearing officers and authorize them to exercise the powers under this subsection;

(d) settle or compromise any administrative or civil action initiated to compel compliance with this part or any rules adopted under this part;

(e) advise, consult, cooperate with, and provide technical assistance to other agencies of the state and federal government, other states, interstate agencies, and affected groups, political subdivisions, industries, and other persons in carrying out the provisions of this part;

(f) promote the planning and application of pollution prevention and radioactive waste minimization measures to prevent the unnecessary waste and depletion of natural resources;

(g) cooperate with any persons in studies, research, or demonstration projects regarding radioactive waste management or control of radiation sources;

(h) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this part;

(i) exercise all incidental powers necessary to carry out the purposes of this part;

(j) submit an application to the U.S. Food and Drug Administration for approval as an accrediting body in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of 1992;

(k) accredit mammography facilities, pursuant to approval as an accrediting body from the U.S. Food and Drug Administration, in accordance with 42 U.S.C. 263b, Mammography Quality Standards Act of 1992; and

(l) review the qualifications of and issue certificates of approval to individuals who survey mammography equipment and oversee quality assurance practices at mammography facilities.

(2) The board shall:

(a) hear appeals of final decisions made by the executive secretary or appoint a hearing officer to hear the appeal and make recommendations to the board;

(b) prepare a radioactive waste management plan in compliance with Section **19-3-107** as soon as practicable; and

(c) impound radioactive material as authorized in Section **19-3-111**.

(3) Representatives of the board upon presentation of appropriate credentials may

enter at reasonable times upon the premises of public and private properties subject to regulation under this part to perform inspections to insure compliance with this part and rules made by the board.

Amended by Chapter 90, 1995 General Session

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Last revised: Thursday, May 01, 2008

ATTACHMENT 3

March 10, 2008 Letter from the Utah Radiation Control Board to
the U.S. Nuclear Regulatory Commission



State of Utah

Department of
Environmental Quality

Richard W. Sprott
Executive Director

Division of Radiation Control
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GARY HERBERT
Lieutenant Governor

March 10, 2008

Dale E. Klein, Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Reference: Utah Radiation Control Board Position Statement on Importation
of Foreign Low-Level Radioactive Waste

Dear Chairman Klein:

The Nuclear Regulatory Commission (NRC) is currently considering license applications (IW023 and XW013) from EnergySolutions, LLC, for importation of foreign waste for disposal in the State of Utah. The purpose of this letter is to inform you that the Utah Radiation Control Board opposes these licenses and importation of foreign radioactive waste for the purpose of disposal, even if the materials do not represent any incremental risk to public health and safety.

As you may be aware, Utah Governor Jon M. Huntsman, Jr. signed an agreement with EnergySolutions to limit the capacity of their Clive facility to accept additional waste. The Federal Government needs to ensure the nation's capability to safely dispose of our own future low-level radioactive waste. The nation's capacity is finite.

We recognize that there are legitimate reasons why radioactive materials cross international borders. One country may have more skill than another in reducing the volume or contamination level of wastes. In these cases countries may agree that wastes can be processed by the country with the expertise and returned to the country of origin for disposal. We also recognize that under certain circumstances it may be beneficial for two or more countries to share a waste disposal site where all contribute to the financing and operation of the facility and when it is acceptable to the host community. None of these situations exist for the proposed importation of Italian waste.

We believe that any country that has the technological capability of producing nuclear power within its borders should not seek to dispose of its

Page 2

Dale E. Klein, Chairman

U.S. Nuclear Regulatory Commission (NRC)

March 10, 2008

waste outside them. Development of nuclear power should go hand in hand with the development of disposal options.

On February 1, 2008, the Utah Radiation Control Board heard from members of the public who are united in strong opposition to license applications leading to the importation and disposal of foreign nuclear waste. This is an issue of great concern to the citizens of Utah.

Therefore, we request that the Commission deny the importation licenses. Furthermore, the U.S. Nuclear Regulatory Commission and the United States Congress should work together to adopt a workable National Low Level Radioactive Waste plan. We must ensure that the nation provides and retains domestic capacity for our own radioactive waste.

Respectfully,

[Original Signed by: Kent J. Bradford, P.G., Chair]

Kent Bradford, Chair

Utah Radiation Control Board

cc: The Honorable Jon M. Huntsman, Jr.
The Honorable Bart Gordon
The Honorable Robert Bennett
The Honorable Orrin G. Hatch
The Honorable Rob Bishop
The Honorable Jim Matheson
The Honorable Chris Cannon
The Honorable Greg Curtis
The Honorable John Valentine
Mike Garner, Executive Director

ATTACHMENT 4

Summary of Testimony of Kent J. Bradford

Summary of Testimony of Kent J. Bradford, P.G., C.H.M.M.
Chair, Utah Radiation Control Board
Before the Subcommittee on Energy and Air Quality
Of The United States House of Representatives
Washington, D.C., Tuesday, May 20, 2008, 10:00 AM

1. I am the current Chair of the Utah Radiation Control Board, which is responsible for the regulatory oversight of low- level radioactive waste facilities in the state.
2. The Board prepared a policy statement that it sent to the Nuclear Regulatory Commission on Marcy 10, 2008. In that statement, the Board expressed what it had heard: the citizens of the State of Utah strongly oppose the importation of foreign waste. The State has done its fair share and more in providing appropriate disposal capacity for our nation's low-level waste by permitting EnergySolutions, a low-level waste disposal facility, to operate in the State. EnergySolutions provides disposal for the large majority – over 90% – of the volume of the nation's radioactive waste.
3. The nation's low- level radioactive waste capacity is finite and the Federal Government must work to ensure the nation's capability to safely dispose of our own future low-level radioactive waste.
4. The Board believes that any country that has the technological capability of producing nuclear power within its borders should not seek to dispose of its waste outside them. Development of nuclear power should go hand in hand with the development of disposal options.