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Healthy Environment ALLIANCE of Utah

68 S. Main St, Suite 400 Salt Lake City, Utah 84101 (801) 355-5055

March 3, 2010

Secretary Steven Chu
1000 Independence Avenue, SW
Washington, DC 20585
Sent via email to: The.Secretary@hq.doe.gov

Dear Secretary Chu:

I am writing you today to express several concerns regarding the recent actions of the Department of Energy (DOE) Environmental Management (EM) section, specifically with regard to the shipment of thousands of drums of reprocessed uranium from the chemical processing of irradiated material at the Savannah River Site (SRS) to a disposal site in Utah, using American Recovery and Reinvestment Act (ARRA) funds.

Recently, Utah's Governor Gary Herbert negotiated an agreement with EM Assistant Secretary Inés Triay. That agreement was widely reported in the Utah press, as well as in a press release from the Governor's office. These are the terms of that agreement, as quoted from the Governor's press release:

- "Planned shipments of depleted uranium from the U.S. Department of Energy's Savannah River Site will not be shipped to Utah"
- "Additionally, a DOE representative will travel to Utah to address the state's Radiation Control Board and will work closely with state regulators to develop a site-specific performance assessment to determine if depleted uranium can be safely stored in the State of Utah. That process is expected to take up to two years."
- "If proper storage procedures [for SRS drums already received and in temporary storage] cannot be achieved to the state's satisfaction, or if independent testing of the barrels reveals the waste exceeds Class A levels, the Department of Energy will immediately remove the depleted uranium from the state."

The announcement was made on February 22nd, 2010. Only three days later, the CEO of EnergySolutions, the company proposing to dispose of this waste, told company shareholders the following: "We have been assured by the Department of Energy that the ultimate disposition path is still the Clive facility."

Engaging Citizens in the Effort to Protect Public Health from Nuclear and Toxic Waste

He further stated that the SRS shipments could be expected to arrive in Utah later in 2010, after they are, “temporarily delayed and stored at the [Waste Control Specialists] facility in Texas until the Utah [DU sampling] program is completed...”

If this is true, then the DOE EM program is not dealing in good faith with the Governor and people of Utah. We are concerned that any such agreement brokered between EnergySolutions and DOE EM would contravene the state of Utah’s attempt to keep large quantities of depleted uranium from being disposed in the state until a robust study examining the long-term safety of the waste has been completed. That study is not supposed to be completed until the end of 2010 and is not expected to receive state review and approval until the end of 2011 or later.

Given this recent revelation, the idea that a “DOE representative ... will work closely with state regulators” to undertake the depleted uranium study in Utah is particularly troubling. Any such involvement by the DOE in Utah’s depleted uranium study in this context appears suspicious, and could easily be viewed as an attempt to “rig the game” to ensure that DOE’s vast stockpile of depleted uranium can be disposed in Utah.

While this most recent news is disturbing, it is just the latest in a series of other troubling actions by the DOE with regard to proposed depleted uranium disposal in Utah. Several of these concerns are further documented in the enclosed report, prepared by Dr. Arjun Makhijani, President of the Institute for Energy and Environmental Research (who was elected a Fellow of the American Physical Society), and Dr. Harry Chmelynski, a statistician:

- The disposal of such large amounts of DU as the DOE proposes to dispose of at the EnergySolutions site is not authorized by the NRC regulations that form the basis for the State of Utah’s own regulatory program, nor has it been subjected to the required environmental analysis. Even a very expansive view of the history of the regulation would not allow concentrations of uranium-238 higher than 50 nanocuries per cubic centimeter (cc) or a total amount of uranium-238 in excess of 17 curies (about 51 metric tons). The total number of curies of uranium in the 33,000 DU drums at SRS is 300 times (or more) greater than the maximum amount arguably envisioned under the low-level waste rule. The concentration is more than an order of magnitude greater than 50 nanocuries per cc. The NRC acknowledges that large amounts of DU were not covered by the low-level waste rule and is currently engaged in a process of determining what kinds of restrictions are appropriate for large amounts of depleted uranium. This rulemaking, however, has not been completed.
- Disposal of reprocessed DU in any amount as Class A waste is not permitted. This is because classification as Class A waste under 10 CFR 61.55(a)(6) requires that the waste not contain any of the radionuclides listed in Tables 1 or 2 of the LLRW disposal rule. In fact, the reprocessed DU from SRS that is proposed to be disposed of as Class A waste at the Clive, Utah, site contains radionuclides from both Table 1 and Table 2, including plutonium isotopes, iodine-129, technetium-99, strontium-90, and cesium-137. As a result, reprocessed DU from SRS does not meet the regulatory definition of Class A waste, and disposal of reprocessed DU as Class A waste in any amount at any concentration is not permitted under federal low-level waste regulations. Therefore, the proposed disposal of reprocessed DU at the EnergySolutions site violates the low-level waste rule, independent of arguments related to the quantity of uranium involved.

- Quite apart from the uranium content of the SRS waste, it is virtually certain that the technitium-99 content of many of the drums exceeds the Class A limit of 0.3 curies per cubic meter. Since only 33 samples were taken from 33,000 drums of reprocessed DU and the drums are not segregated between those meeting the Class A limit for Tc-99 and those above it, none of the drums can be disposed of as Class A waste for this reason alone. The DOE's claim that Class A limits for Table 1 and 2 radionuclides are met is based on a misleading interpretation of even the few samples that were taken. A properly conducted statistical analysis shows that it is more than 99 percent likely that a large number of drums would violate the Class A limit of 0.3 curies per cubic meter for Tc-99.

For these reasons, we ask that the temporarily-stored drums of reprocessed uranium be immediately removed from Utah.

Furthermore, we are generally concerned that the DOE has sacrificed the observance of rules, laws, and basic fairness, for the sake of expediently getting rid of its large stockpiles of uranium waste. For example, when one Federal agency (the NRC) moves to update regulations to ensure large quantities of uranium waste are safely disposed, and another Federal agency (the DOE) tries to quickly dispose of uranium waste before those new regulations are put in place, Utahns are left to question the basic fairness of the process.

We believe DOE can now restore that fairness by taking the following steps: first and foremost, removing the reprocessed uranium currently stored in Utah; second, publicly clarifying that the two remaining trainloads of reprocessed uranium waste from SRS will never be disposed in Utah, as articulated by Utah Governor Gary Herbert; and third, pledging to neither manipulate nor circumvent Utah's study of the long-term safety of depleted uranium disposal in the state, for the purposes of ensuring the disposal of DOE's uranium waste stockpile in Utah.

We are bringing these issues to your attention because we believe they merit the diligent concern and attention of the Department. We hope to discuss these issues further with appropriate members of your staff. Please do not hesitate to contact me if you have any questions.

Sincerely,



Vanessa Pierce
Executive Director, HEAL Utah

Encl.: Memorandum from Dr. Arjun Makhijani, dated February 16th, 2010
cc: Inés Triay, Assistant Secretary for Environmental Management