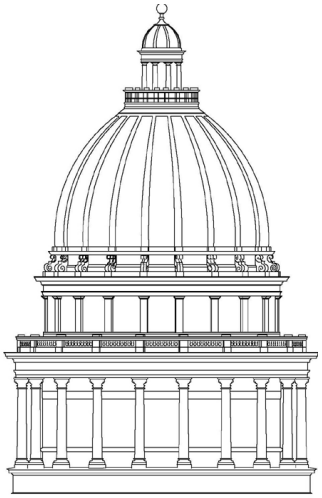
REPORT TO THE

UTAH LEGISLATURE

Number 2012-09



A Performance Audit of Utah's Radioactive Waste Facility Tax

September 2012

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

STATE OF UTAH
Office of the Legislative Auditor General

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JOHN M. SCHAFF, CIA
AUDITOR GENERAL

September 11, 2012

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of Utah's Radioactive Waste Facility Tax** (Report #2012-09). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

John M. Schaff, CIA
Auditor General

JMS:KRM/lm

Digest of A Performance Audit of Utah's Radioactive Waste Facility Tax

Chapter I: Introduction

The Legislature requested that we review Utah's Radioactive Waste Facility Tax for accuracy and sufficiency of payment, as well as alternatives to the current tax structure. Two companies pay this tax, though Energy*Solutions* is the primary payer of the tax. Energy*Solutions* holds the records needed to perform such an audit, but because Energy*Solutions* is a private company, we have no legal authority to audit them. However, Energy*Solutions* provided limited cooperation with some areas of the audit.

This report concludes that there are concerns with the tax structure. Specifically, Energy*Solutions* has the ability to control portions of the tax through vertical integration. While Energy*Solutions* has not violated the law or acted with the intent to avoid taxes, we believe the Legislature should consider a new tax structure that is more straightforward and reduces the risk to the state that some tax dollars may not be collected. Specifically, we recommend that the Legislature consider moving away from a tax based on gross receipts to a tax structure based on the radioactive intensity of the waste (millicurie) or a combination of radioactive intensity and volume (cubic feet). We also recommend that the Legislature examine the revenue other states receive from taxing radioactive waste, to determine if the revenue Utah is receiving is at the level desired by the Legislature.

Chapter II: Radioactive Waste Tax Is Susceptible to Control

Energy*Solutions*' Vertical Integration Allows It to Control Some Parts of Waste Tax. Vertical integration allows Energy*Solutions* to earn revenue outside of Utah for waste disposal in Utah. This occurs when Energy*Solutions* earns revenue by accepting waste destined for Utah in a company-owned facility outside of Utah. The company can then decide what amount of revenue it wants to recognize in the state. This is done through a special internal pricing structure whereby the Utah disposal arm of the company (known as the Clive disposal site) charges a reduced amount to its waste processing counterpart (the predominant example being the Bear Creek facility in Tennessee).

The other way Energy*Solutions* receives waste and earns revenue is through direct shipment from generators to the Clive site. We found that Energy*Solutions*' internal price is significantly less than the price it charges its outside customers. This price disparity can reduce the revenue recognized in Utah and, thereby, reduce the tax collections received by the state. We reviewed financial information from Energy*Solutions* that demonstrated this practice. However, due to the sensitive nature of this private business information, we do not disclose it in this report.

Tax on Processed Waste Creates Some Concerns. Another way the tax structure is susceptible to price control is through Energy*Solutions*' ability to choose where waste is volume reduced (processed) and avoid paying the higher 10 percent tax on waste that has been reduced or processed. The Legislature placed a higher tax on processed waste to counteract the lower volumes that result from processed waste; the tax rate for unprocessed waste is only 5 percent. Since Energy*Solutions* charges by volume, lower volumes (achieved through volume reduction or processing) translate to lower revenue earned by Energy*Solutions* in Utah and, therefore, less tax revenue collected on a gross receipts tax. Another concern with the 10 percent tax on processed waste is the inability to verify if Energy*Solutions* is correctly applying it. We were unable to obtain independent source documents that verified which shipments were processed or unprocessed.

Chapter III: Legislature Should Consider Changes to Radioactive Waste Tax

Policy Options Exist for Revising Tax. The Legislature should consider a new radioactive waste tax structure that could reduce the risk of uncollected tax revenues. As a state that accepts radioactive waste, Utah is distinct in that no other state has a private, vertically integrated company that owns and runs the site receiving the waste. In addition, Utah is the only state that has a disposal site that generators inside of the state cannot use (due to compact rules that require disposal in Washington). Therefore, Utah should have a tax solution that effectively accounts for these differences.

To account for these differences, the Legislature could choose among three options, the first of which would bring the greatest level of accountability:

- Impose a straight tax based on millicurie rather than on gross receipts.
- Impose a hybrid tax based on both volume and millicurie.
- Make no change to the tax, but require greater accountability by those paying the tax.

Legislature Should Review Other State Revenue Information from Radioactive Waste Tax. We found Utah's tax policy treats waste generated outside its borders (or out-of-compact waste) differently from other states' policies. Specifically, other states appear to get more economic benefit from outside waste. Energy*Solutions*' Clive facility is the only site we are aware of in the country that accepts no in-state waste. Utah generators must ship their waste to Washington, the designated site of the Northwest Interstate Compact (NWIC). Since the Clive site only serves generators outside of Utah, we agree with the assessment made by one local expert that the benefit to Utah citizens of the Clive site is purely economic. Estimates show that if Utah adopted a tax methodology similar to that used in Texas and South Carolina, revenue could be significantly increased. For example, South Carolina has earned on average $27.5 million a year from its radioactive waste tax. Utah is earning just a small portion of that amount on average each year.

REPORT TO THE

UTAH LEGISLATURE

Report No. 2012-09

A Performance Audit of Utah's Radioactive Waste Facility Tax

September 2012

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Chapter I
Introduction

The Legislature requested that we review Utah's Radioactive Waste Facility Tax (radioactive waste tax, or the tax) for accuracy and sufficiency of payment, as well as alternatives to the current tax structure. Two companies pay this tax, though Energy*Solutions*[1] is the primary payer of the tax. Energy*Solutions* holds the records needed to perform such an audit, but because Energy*Solutions* is a private company, we have no legal authority to audit them. However, Energy*Solutions* provided limited cooperation with some areas of the audit.

This report concludes that there are concerns with the tax structure currently in place and recommends that the Legislature consider revising the tax structure. Concerns with the tax structure stem largely from the vertical integration[2] of Energy*Solutions* and the ability Energy*Solutions* has to control portions of the tax. In other words, Energy*Solutions* can earn revenue *outside* Utah for disposal of waste *inside* the state. The company can then decide what amount of revenue it wants to recognize inside the state that would be subject to taxation. Information we reviewed from Energy*Solutions* shows this to be a concern, though we do not release specific details of this concern due to the sensitive business nature of the information.

We have concerns with the radioactive waste tax structure, specifically, that Energy*Solutions* can control the amount of tax it pays.

To correct for control weaknesses in the tax, we recommend that the Legislature consider moving away from a tax based on gross receipts[3] to a tax structure based on radioactive intensity or

To correct for weaknesses in the tax, we recommend that the Legislature consider a new tax structure.

[1] Energy*Solutions* is an international nuclear services company headquartered in Salt Lake City. They operate a radioactive disposal site at Clive, Utah. The site disposes of waste contaminated with radiation.

[2] Vertical integration refers to a company that has expanded into its own supply line, such as a grocery store that produces some or all of the food it sells. In the case of Energy*Solutions,* it refers to the ownership of some waste generating/processing facilities in places like Tennessee and the United Kingdom.

[3] "Gross receipts "means all consideration an owner or operator of a radioactive waste facility receives for the disposal of radioactive waste in the state, without any deduction or expense paid or accrued related to the disposal of the radioactive waste"(***Utah Code*** 59-24-102(5)(a)).

millicurie[4] or a combination of millicurie and volume (cubic feet). We also recommend that the Legislature examine the radioactive waste taxes and revenues of other states to help determine if the revenue Utah is obtaining from its radioactive waste tax is at the desired level.

Radioactive Waste Tax Benefits Public Schools

The radioactive waste tax was established in 2001. All collections from the tax benefit the Uniform School Fund. The radioactive waste tax is separate from other taxes and fees Energy*Solutions* pays to the state and Tooele County.

Tax Is Separate From Regulatory Fees

Collections from the radioactive waste disposal tax support public education.

Collections from the radioactive waste disposal tax support public education. ***Utah Code*** 59-24-105 states, "The commission shall deposit the tax revenue collected under this chapter into the Uniform School Fund." This tax is separate from other fees and taxes Energy*Solutions* pays to the state and Tooele County for regulatory oversight and mitigation efforts. Regulatory oversight expenses incurred by the Division of Radiation Control (DRC) are not funded from the radiation tax; instead, a separate fee is assessed to Energy*Solutions* to fund this oversight. See Appendix A for a listing of some taxes and fees other states impose on the disposal of radioactive waste.

Utah Radioactive Waste Tax Is a Three-Tiered Structure Based on Gross Receipts

The current radioactive waste tax structure is based on gross receipts.

Utah's radioactive waste disposal tax is assessed on gross receipts, or revenue earned by a company that disposes of radioactive waste in the state. Specifically, a 12 percent tax is assessed on containerized waste, 10 percent for processed waste, and 5 percent for most other

[4]A millicurie is a common measurement of radioactivity used by Energy*Solutions*. It is equal to one-thousandth of a curie, a unit of radioactivity equal to the amount of radioactive isotopes that decays at the rate of 37 million disintegrations per second.

waste.[5] Figure 1.1 provides some of the key statutory language as well as definitions for the different types of waste received.

Figure 1.1 Utah Radioactive Waste Tax. The statute authorizing the radioactive waste tax passed in 2001, well before Energy*Solutions* (then Envirocare) was vertically integrated.

Utah Code 59-24-103.5.
Radioactive waste disposal, processing, and recycling facility tax.

(1) On and after July 1, 2003 [original tax was imposed in 2001], there is imposed a tax on a radioactive waste facility, or a processing or recycling facility, as provided in this chapter.
(2) The tax is equal to the sum of the following amounts:
(a) 12% of the gross receipts of a radioactive waste facility derived from the disposal of containerized class A waste;[1]
(b) 10% of the gross receipts of a radioactive waste facility derived from the disposal of processed class A waste;[2]
(c) 5% of the gross receipts of a radioactive waste facility derived from the disposal of uncontainerized, unprocessed[3] class A waste from a governmental entity or an agent of a governmental entity . . . [and] class A waste received by the facility from an entity other than a governmental entity or an agent of a governmental entity.

1. ***Containerized Waste*** *refers to waste that generally comes to the site in a sealed container and is disposed of in that container in the area of the "waste facility that is licensed to receive containerized class A waste"* (***Utah Code*** *59-24-102 (4)*).
2. ***Processed Waste*** *refers to waste that has been "concentrated by a processor"* (***Utah Code*** *59-24-102 (6)*).*This typically occurs through volume reduction activities such as incineration, shredding, or other compaction methods.*
3. ***Uncontainerized, Unprocessed Waste*** *refers to waste that "is neither containerized class A waste, nor processed class A waste"* (***Utah Code*** *59-24-102 (9)(i)*).

The Legislature made the last substantial change to the tax in 2005, which included mostly clarifying language.

Access to Information, Personnel, and Site Locations Were Limited by Energy*Solutions*

This audit was unique from other Legislative audits in that Energy*Solutions* is a private company, so we had no legal authority to audit them. However, the Legislature requested impartial information about the radioactive waste disposal tax and asked our office to conduct a review of the tax and associated issues.

Energy*Solutions* voluntary cooperated with some aspects of the audit, but we were not given complete access.

Energy*Solutions* voluntarily cooperated with some aspects of the audit, but we were not given complete access. While we do not

[5] The company also pays 10 cents per cubic foot on alternate feed material and byproduct material received at the site (not addressed in the audit due to its small size and lower risk).

consider Energy*Solutions* an auditee, they held the radioactive waste tax information that we needed to conduct our analysis. Consequently, we believe we must still report access limitations placed upon us, in accordance with *Government Auditing Standards (*The Yellow Book*)*. *Government Auditing Standards* are published by the Comptroller General of the United States Government Accountability Office. Audit Standard 7.11 states the following:

> Auditors should also report any significant constraints imposed on the audit approach by information limitations or scope impairments, including denials or excessive delays of access to certain records or individuals.

During the audit, we experienced denial to some information, personnel, and the facility. We also experienced excessive delays in obtaining some information. However, it is also important to note that Energy*Solutions*' cooperation with the audit was voluntary. The company was helpful in several ways, assisting in some portions of the audit. For example, the company voluntarily provided us access to some staff and a portion of its financial information.

Due to access limitations, we are concerned that some risk areas may have gone undetected.

Nevertheless, as stated, we did not have access to all records, personnel, and site locations that we requested. Therefore, we are concerned that some risk areas may have gone undetected or have been underdeveloped. Other states taking radioactive waste have greater oversight access to their sites because they own the sites and lease them to contractors. If the Legislature desired greater oversight of Energy*Solutions*, they could stipulate access requirements in statute as a condition of Energy*Solutions*' license in the state. The issue of access will be discussed in more detail in the companion audit to this report, *A Performance Audit of the Division of Radiation Control* (Report #2012-10).

Audit Scope and Objectives

We were asked to audit radioactive waste disposal issues in the state and address concerns raised by the Legislature. The scope of the audit included the following objectives:

- Review the payment of the gross receipts tax for accuracy.
- Review sufficiency of Utah's radioactive waste tax.
- Review alternatives to Utah's radioactive waste tax.

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Chapter II
Radioactive Waste Tax
Is Susceptible to Control

Utah's current Radioactive Waste Facility Tax (radioactive waste tax or the tax) is susceptible to price control by Energy*Solutions*. Control over the tax occurs primarily through the vertical integration[6] of Energy*Solutions*. When the tax was first implemented in 2001, Envirocare (now Energy*Solutions*) was not yet vertically integrated, so the tax structure on gross receipts was not a concern. Vertical integration is a problem for the current tax structure in two ways.

The current radioactive waste tax structure is susceptible to control.

- First, vertical integration allows Energy*Solutions* to earn revenue outside Utah on waste to be disposed of in Utah. Through a special internal pricing structure, the company can then decide what amount of revenue it wants to recognize in the state that will be subject to taxation. For example, Energy*Solutions* can accept waste and earn revenue outside the state for disposal of waste inside the state (discussed in more detail below). Since the waste tax is based on gross receipts, fewer taxes are collected in Utah because less revenue is recognized in the state. To be clear, it is not our intent to dissect the appropriateness of internal and external pricing strategies of a vertically integrated company. We are also not saying that Energy*Solutions* has violated the law or acted with the intent to avoid taxes. Rather, we believe the Legislature should consider a new tax structure that is more straightforward and reduces the risk to the state that some tax dollars may not be collected.

- Second, the current tax structure imposes a 10 percent tax on processed waste. This is a concern, again, because vertical integration allows Energy*Solutions* the ability to choose where it wants to reduce volume or to compact waste disposed of at its site. In other words, because processed waste brought into the state is taxed at a higher rate than unprocessed waste, Energy*Solutions* can opt to process the waste at its Clive, Utah

Vertical integration also allows Energy*Solutions* to decide where it processes (concentrates) the waste. This can affect tax revenue.

[6] As discussed more in footnote 2 in Chapter 1, this refers to a company that has expanded into its own supply line.

facility and avoid paying the higher tax. This can affect the amount of taxes paid in Utah. Also, adequate documentation was not available for us to independently verify which waste streams were actually being processed. Accordingly, we could not verify if all processed waste was being assessed the higher 10 percent tax.

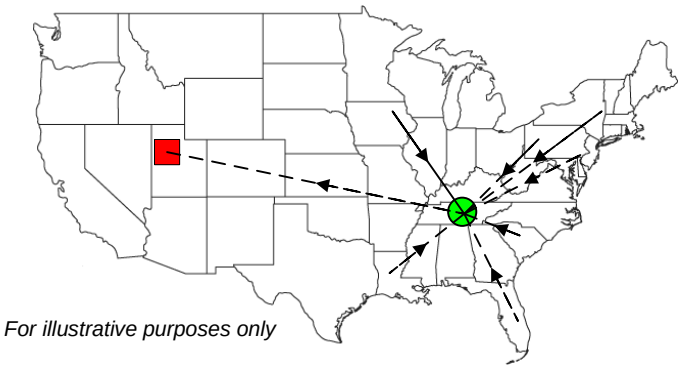
To control for these concerns we recommend that the Legislature change the tax structure of the radioactive waste facility tax (discussed more in Chapter III). The next section of the report describes how vertical integration can impact taxes paid to the state. We reviewed financial information from Energy*Solutions* that demonstrated this practice. However, due to the sensitive nature of this private business information, we do not disclose it in this report.

Energy*Solutions'* Vertical Integration Allows It to Control Some Parts of Waste Tax

Through vertical integration, Energy*Solutions* can earn revenue outside Utah for waste disposal in Utah.

Vertical integration allows Energy*Solutions* to earn revenue outside Utah for waste disposal in Utah. This occurs when Energy*Solutions* earns revenue by accepting waste destined for Utah in a company-owned facility outside Utah. The company can then decide what amount of revenue it wants to recognize in the state. The below graphic (Scenario 1) illustrates that waste can be accepted and revenue earned at an Energy*Solutions*-owned facility in Tennessee (Bear Creek), then shipped to Utah for disposal.

Scenario 1
Vertical Integration Is Used to
Bring Waste to Utah



For illustrative purposes only

In Scenario 1, revenue is recognized through a special internal pricing structure whereby the Utah disposal arm of the company (known as the Clive disposal site) charges a reduced amount to its waste processing counterpart (the predominant example being the Bear Creek, Tennessee facility). The arrows pointing to Tennessee represent generator waste that is accepted by Energy*Solutions* in Tennessee before it is transported to and disposed of at the Clive facility.

The other way Energy*Solutions* receives waste and earns revenue is through direct shipment from generators to the Clive site as shown by the multiple arrows in the below graphic (Scenario 2).

Scenario 2
Vertical Integration Not Used
to Bring Waste to Utah

For illustrative purposes only

We found that Energy*Solutions*' internal price under Scenario 1 is significantly less than the price it charges its outside customers under Scenario 2. This price disparity (when Scenario 1 is chosen over Scenario 2) can reduce the revenue recognized in Utah and, thereby, reduce the tax collections received by the state. This practice occurred in the calendar year 2010 data that we reviewed.

When Energy*Solutions* accepts waste outside of Utah, it can charge itself a lower rate than the rate charged to its outside customers. This can affect tax revenue in Utah.

To reiterate, we are not suggesting Energy*Solutions* has violated the law, or acted with the intent to avoid taxes. In fact, Energy*Solutions* has several reasonable explanations for its practice of charging itself a price lower than its competitors' price (or recognizing a majority of its revenue for *some* shipments in another state). Energy*Solutions* provided us information that shows its price break to itself is equivalent to a volume discount. Energy*Solutions*' personnel explained that while its internal price may be less than the price charged to its competitors, they believe increased volume is a compensating factor. The practice

of giving volume discounts is generally accepted and does not violate the law as far as we are aware.

Our position is not to critique the appropriateness of Energy*Solutions*' internal pricing. Instead, we believe the Legislature should consider a new tax structure.

Nevertheless, it still holds true that (1) Energy*Solutions* can control some of the taxes it pays, and (2) if the company had charged itself the same rate as charged to its outside clients, Utah would have received higher tax collections in calendar year 2010. Data we reviewed as part of this audit illustrated this but, as previously mentioned, is not disclosed in this report due to the sensitive nature of the information. To remedy this concern, we believe the Legislature should consider other tax structures, as discussed in Chapter III.

Tax on Processed Waste Creates Some Concerns

Another way the tax structure is susceptible to price control is through the ability Energy*Solutions* has to decide where to process waste.

Another way the tax structure is susceptible to price control is through Energy*Solutions*' ability to choose where waste is processed and avoid paying the higher 10 percent tax on processed waste. The Legislature placed a higher tax on processed waste to counteract the lower volumes that result from processed waste; the tax rate for unprocessed waste is only 5 percent. Since Energy*Solutions* charges by volume, lower volumes can translate to lower revenue earned by Energy*Solutions* in Utah and, therefore, less tax revenue collected on a gross receipts tax.

Waste-processing facilities, such as Energy*Solutions*' Bear Creek facility in Tennessee, receive waste from generators and then volume-reduce it through incineration or other methods. Waste processed at the Bear Creek facility enters Utah as processed waste and is susceptible to the higher 10 percent tax. While compacting waste affects the volume of waste, it does not affect the radioactive intensity of the waste.

However, since Energy*Solutions* now owns the Bear Creek processing facility, it may not always be to their advantage to actually process waste at that facility. Energy*Solutions* personnel told us that they rarely use the facility to process or concentrate waste. Instead, the Bear Creek facility can ship waste directly to the Clive site and compact it within the gate of Clive. The practice can save them processing costs up front and could allow them to avoid the higher

10 percent tax on processed waste. Energy*Solutions* indicated to us that the volume reduction that occurs within Clive is not done to avoid paying taxes. Instead, the company stated it is simply a compaction done to remove air pockets from the waste and stabilize the disposal site. This may be true, but Energy*Solutions* could still control its tax rate by selecting where to volume-reduce waste. This is another reason we believe the Legislature should consider a new radioactive waste tax structure, as discussed in Chapter III.

Another concern we have with the 10 percent tax on processed waste is the inability to verify if Energy*Solutions* is correctly applying it. We were unable to obtain independent source documents that verified which shipments were processed or unprocessed upon arriving at Clive. Instead, we had to rely on Energy*Solutions'* personnel to tell us which shipments they believed were processed or unprocessed.

We had to rely on Energy*Solutions'* personnel to tell us which shipments were processed. Independent documentation did not exist.

In conversations with the Tax Commission auditors, they also expressed some of the same concerns and experiences we encountered. The Tax Commission auditors also must rely on Energy*Solutions*' processed waste classifications, without additional verification, to accomplish their audit work.

With the nuclear energy industry's continued focus on volume reduction and processed waste, we believe this documentation problem will only increase if not corrected. This focus is evident in a policy from the Nuclear Regulatory Commission (NRC) encouraging volume reduction, which states:

> The Commission continues to believe that volume reduction is important to the management of LLRW.[7] A continued focus on volume reduction will extend the operational lifetime of the existing commercial LLRW disposal sites and will reduce the number of waste shipments to disposal facilities (77 FR 25760).

The NRC is affirming its desire to have waste processed or compacted before disposal. This means concerns with processed waste, as discussed in this report, could increase if not corrected.

Based on the evidence shown herein, the next chapter will discuss our recommendations that the Legislature review other tax options that will promote accountability and reduce Energy*Solutions'* ability to control the tax through price and volume methods.

[7] LLRW or LLW refers to low-level (radioactive) waste that has been "contaminated with radioactive material or [has] become radioactive through exposure to neutron radiation."

Recommendations

1. We recommend that the Utah State Tax Commission expand its work with the Division of Radiation Control to validate and track the requirements of Utah's Radioactive Waste Facility Tax.

Chapter III
Legislature Should Consider Changes to Radioactive Waste Tax

Because Utah's Radioactive Waste Facility Tax (radioactive waste tax or the tax) is susceptible to control by Energy*Solutions*, the Legislature should consider revisions. We recommend that the Legislature move away from the current gross receipts tax, which is based on volume of radioactive waste, to a new tax structure based on the millicurie—a unit of radioactive intensity. In addition, the Legislature can examine the tax policies of other states that accept radioactive waste. Two states, Texas and South Carolina, have made policy decisions to obtain higher revenue from incoming waste. Estimates indicate that by changing the tax structure, Utah could bring in significantly more revenue and be more commensurate with other states that tax radioactive waste. For example, South Carolina has earned on average $27.5 million a year from its radioactive waste tax. Utah is earning just a small portion of that amount on average each year.

We recommend the Legislature move away from the gross receipts tax to a new tax structure that is not susceptible to price control.

We have calculated estimates of how much more the state could receive in tax funds by making revenue earned from the Radioactive Waste Facility Tax more commensurate with other states. However, ***Utah Code*** is unclear on the public release of the data, so we have not disclosed the amounts in the report.

Policy Options Exist for Revising Tax

The Legislature should consider a new radioactive waste tax structure that could reduce the risk of uncollected tax revenues. As a state that accepts radioactive waste, Utah is distinct in that no other state has a private, vertically integrated company that owns and runs the site receiving the waste. Also, Utah is the state that has a disposal site that generators inside the state cannot use due to compact rules that stipulate Utah waste must be shipped to Washington state.

Therefore, Utah should have a tax solution that effectively matches and accounts for these differences. To account for these differences,

the Legislature could choose one of the following three options, the first of which would bring the greatest level of accountability:

- Impose a straight tax based on millicurie rather than on gross receipts.
- Impose a hybrid tax based on both volume and millicurie.
- Make no change to the tax, but require greater accountability by those paying the tax (increased documentation and independent audit access).

Millicurie-Based Tax Recognized in Industry

We talked to several radiation disposal experts, both in and out of Utah. Each of them expressed somewhat similar views that a millicurie-based tax is not typical, but it is very effective. There are only three other states besides Utah that accept commercial radioactive waste: Washington, South Carolina, and Texas. Each of these states has somewhat unique tax and fee policies, so there is no consensus or proven method on how best to tax radioactive waste. However, taxing or charging based on radioactivity does have some precedent in Utah. For example, the regulatory fee that Energy*Solutions* paid to the state for the Division of Radiation Control's (DRC) oversight was partially based on millicurie (or curie) until just recently, when the fee was changed to a flat amount.

Experts in other states outlined three guiding principles for the state when reviewing the radioactive waste tax.

The experts further explained that since the radioactive waste disposal business is unique and Utah has special considerations, Utah should do what is in its best interest and not be overly concerned with what other states are doing. One expert outlined three principles that Utah should consider when reviewing the tax on radioactive waste. We agree with these principles, which are as follows:

- Tax the nature of the disposal site
- Ensure the tax accomplishes state goals
- Normalize the tax amount from year to year

We believe a per-millicurie tax could provide a strong tax structure for the state.

We believe a millcurie-based tax best accomplishes the above goals because the tax is based on the nature of the site (disposal of radioactive waste), and it can easily be structured to ensure that projected revenues (or goals) from the tax are achieved. However, other options exist for the Legislature to consider. The following bullet points summarize these options. The options are listed from

highest (Option 1) to lowest (Option 3) in terms of impact and accountability to the state.

- Option 1: Millicurie-based tax
- Option 2: Hybrid tax based on volume and millicurie
- Option 3: No change, but an increase in oversight requirements

Option 1: Millicurie Tax Not Susceptible to Price Control

We recognize that a per-millicurie tax may be perceived by some as a substantial change in tax policy. However, this method would allow for a highly transparent tax that is more easily audited by the Tax Commission and is not susceptible to price control. A millicurie-based tax would solve the problems explained in Chapter II and would allow for a high amount of accountability. A millicurie cannot be changed or reduced through processing. Millicuries coming into the site can be carefully reviewed by the DRC and reported to the Tax Commission for verification. Figure 3.1 summarizes the key points of this proposed new tax structure.

A per-millicurie tax would allow for a highly transparent tax that is not susceptible to price control.

Figure 3.1 Millicurie-Based Tax Structure. This figure provides a structure for how a millicurie-based tax structure could be organized.

Option 1:
Millicurie-Based Tax
Highest Level of Accountability – Most Significant Change

- An assessment of up to $1.00 per millicurie would generally keep revenue neutral at the current level.
- A sliding scale could also be implemented, where the millicurie charge would be higher if fewer millicuries than normal came in and lower if more came in—in order to stabilize revenue year to year.

This option is the strongest from an accountability perspective. The millicurie cannot be altered or changed through processing or volume reduction. In contrast, the volume currently received can be controlled through Energy*Solutions*' vertical integration, which affects the tax. DRC could be tasked to carefully track and publicly report the annual number of millicuries disposed of at the Clive, Utah site.

Currently, the Nuclear Regulatory Commission (NRC) is updating its rules, first published in 1982, dealing with the requirements for the disposal of low-level radioactive waste (LLRW) in near-surface facilities. This rule could impact how waste is classified and potentially bring material with higher activity levels to Utah. A per-millicurie tax

A per-millicurie tax would automatically adjust if higher concentrated waste came to the state.

would automatically adjust for this potential change in federal regulations and would help ensure that Utah is receiving revenue for the nature and purpose of the site: disposal of radioactive material. An NRC proposal to change the rule includes the following language:

> Flexibility for disposal facilities to establish site-specific waste acceptance criteria based on the results of the site's performance assessment and intruder assessment.

An expert familiar with the rule change indicated to us that this change could increase the total number of millicuries that are disposed of at the Clive site. A per-millicurie tax would reflect this increase.

Option 2: Hybrid Tax Partially Susceptible to Price Control

A hybrid tax structure (based on millicuries and volume) is another option the Legislature could consider. It has less accountability, but is also a less dramatic change.

The hybrid tax is a less-dramatic tax policy shift in that it incorporates a volume charge (cubic foot) along with a millicurie charge. However, unlike the straight millicurie tax, the hybrid tax still has some risk associated with it. The cubic-foot portion of the tax could still be controlled through processing waste outside the state, which would result in less volume being disposed of in Utah and, therefore, less tax revenue earned. Figure 3.2 summarizes the key points of this proposed new tax structure.

Figure 3.2 Option 2: Hybrid Tax Structure. This figure provides a summary of how a hybrid tax structure could be organized.

Option 2:
Hybrid Tax Based on Volume and Millicurie
Moderate Accountability – Moderate Change

- An assessment of up to $1.00 per cubic foot (50% of the tax)
- An assessment of up to $1.00 per millicurie (50% of the tax)
- Sliding scale could also be developed in this system to stabilize the tax

This system does not entirely account for the control Energy*Solutions* could have on the tax because Energy*Solutions* could still use its Tennessee processing facility to reduce the volume (cubic feet) of waste before it arrives in Utah, thereby lowering its tax burden. However, this system does take away the incentive for Energy*Solution*s to realize revenue in another state by putting some focus on the unchangeable millicurie.

Nevertheless, this option does move away from gross receipts and the concerns previously raised about that structure. The hybrid tax also introduces a tax partially based on millicuries; this tax exemplifies the

principle of taxing the very nature and existence of the site, which is to dispose of radioactive material.

Option 3: If the Legislature Makes No Change to Tax Structure, More Accountability Requirements Are Needed

If the Legislature determines that no change is desired in the current radioactive waste tax structure, then we recommend, at a minimum, greater accountability and access requirements should be written into Utah law. Figure 3.3 summarizes the key points of this proposal.

Figure 3.3 No Change, but Increased Oversight Structure. This figure provides a summary of how increased oversight could be achieved while keeping the current tax structure in place.

Option 3:
Keep Current Tax Structures, Add More Oversight Requirements
Least Amount of Accountability – Least Amount of Change

- Keep current tax structure in place
- Require greater accountability, such as: expanded access allowance for government auditors and state oversight entities, and better reporting from Energy*Solutions* that can be independently validated by the DRC.

This tax provides the least accountability to the state because it still allows Energy*Solutions* to control the tax. However, stronger oversight requirements that could be statutorily required would help ensure more accountability.

If the Legislature determines no change in the tax structure is desired, then we recommend greater accountability and access requirements be considered.

The two requirements listed below should be considered:

- **Grant Government Auditors Full Access to Records and Site Locations:** As mentioned previously, limitations were placed upon us regarding the records and locations we could access during the audit. For example, we were only provided with one year of financial data and were not given access to the Tennessee-based Energy*Solutions* locations. This limited our ability to test for the company's internal controls. If the Legislature decides more access is needed, they could stipulate, in statute, greater access requirements as a condition of receiving and maintaining a license to dispose of waste. Full access could be granted to the Utah State Tax Commission, the State Auditors, the Legislative Auditor General, and the DRC.

- **Strengthen Reporting Requirements:** A company with a permit/license to dispose of radioactive waste should be

Independent documentation of which waste streams were processed is needed.

required to submit monthly or quarterly reports to the DRC for validation. Currently, no independent document exists to help determine whether waste is processed or unprocessed. Instead, the Tax Commission and other auditors must rely on the statements of Energy*Solutions* personnel. Independent verification is needed so the Tax Commission can know that waste information is correct when they conduct their audits.

Along with revising the radioactive waste tax to give it more accountability, we believe the Legislature should also review the amount of revenue it is collecting from waste generated ouside of Utah.

Legislature Should Review Other State Revenue Information from Radioactive Waste Tax

We also compared revenue amounts from other states. While comparisons are difficult, it does appear Utah's tax structure is inconsistent with waste generated outside of Utah.

Instituting and amending taxes on individuals and corporations is an important issue for policymakers. Information presented in this section of the report is intended to help policymakers compare Utah's radioactive waste tax to similar taxes in other states. As previously stated, comparing Utah to the three other states that have agreed to dispose of radioactive waste is difficult. Accurate and credible comparisons, in some instances, are not always possible. Nevertheless, we did find what appears to be one substantial inconsistency in Utah's tax structure: how Utah treats waste generated outside[8] of its borders (or out-of-compact waste).

Energy*Solutions*' Clive facility is the only site we are aware of in the country that does not accept waste from its own state. Utah generators must ship their LLRW waste to Washington, the designated disposal site of the Northwest Interstate Compact (NWIC). We are not suggesting changes to the NWIC bylaws or Utah's membership therein (as established in ***Utah Code*** 19-3-201). Rather, our point is that since the Clive site only serves LLRW generators outside Utah, we agree with the assessment made by one expert in the state, that the

[8] For purposes of this report "outside waste" refers to waste that is generated outside of the group of states that form a compact. A compact, according to the NRC, refers to "a group of two or more states that have formed business alliances to dispose of low-level radioactive waste on a regional basis." See Appendix B for more information. This report does *not* recommend changes to Utah's membership in the Northwest Interstate Compact.

benefit of the Clive site to Utah citizens is purely economic. In other words, entities in Utah needing to dispose of low-level radioactive waste get no benefit from the Clive site because they cannot use it. Estimates show that if Utah adopted a tax methodology similar to that used in Texas and South Carolina, a target revenue could be significantly higher. For example, South Carolina, which takes Class A, B and C waste, has earned on average $27.5 million a year from its radioactive waste tax. Utah is earning just a small portion of that amount on average each year. Energy*Solutions* feels that South Carolina's higher revenues are directly related to its acceptance of higher class waste.

Other States Appear to Gain More Economic Benefit from Outside Waste

We understand that there are differences, some substantial, in other states' radioactive waste acceptance. For example, the most obvious difference is that Washington and South Carolina take significantly less volume, but higher radioactive concentrations, than Utah takes. Texas just began taking waste, so volume and millicurie information was not available. Nevertheless, a review of Texas's tax and fee structure and South Carolina's past tax collections shows that these two states intend to gain, or have gained, more economic benefit from their disposal sites than Utah is currently receiving.

Other states have gained or plan to gain more economic benefit from the disposal of outside waste.

While we believe there is value in comparing Utah to the other states that take radioactive waste, and we provide general data from other states in Appendix A, we caution against strict comparisons. Rather, we think the Legislature should use the data for target comparisons and determine if the maximum benefit of Utah's radioactive waste tax is being achieved.

A close review of other states' policies appears to show a greater willingness to increase taxes on outside waste. We were able to estimate revenue differences in Utah's tax structure from Texas, which will take some outside waste, and South Carolina, which stopped taking outside waste a few years ago. The following section discusses these differences.

South Carolina Received Significant Income When It Accepted Outside Waste. South Carolina, which took outside (or out-of-compact) waste until 2008, has a tax of $235 per cubic foot on

waste. South Carolina also accepts higher levels of waste (Class B and C waste). Information from the South Carolina Department of Revenue shows that over the last 10 years, South Carolina generated $275 million. While South Carolina's disposal fees have reportedly changed and been lowered over time, South Carolina's tax on radioactive waste has stayed the same for at least the last 10 years, ($235 per cubic foot). South Carolina's average annual tax between 2001 and 2007, when it accepted outside waste, was about $32 million. The average annual revenue dropped to $18 million when it stopped taking outside waste. Utah, in the last 10 years, earned significantly less revenue.

South Carolina earned about $32 million a year when it accepted out-of-compact waste.

While South Carolina's tax rate probably does not make sense for Utah because of our higher volumes and lower activity rates, South Carolina still generated substantially higher revenues from its radioactive waste tax. Much of this revenue was generated on taxing the waste from outside generators.

Texas Imposes a 20 Percent Surcharge on Outside Waste. Texas's main tax structure is relatively similar to Utah's current system; Texas has a 5 percent gross receipts tax that goes to the state's general fund and a 5 percent gross receipts tax that goes to the host county. As previously mentioned, Utah has a three-tiered system (12 percent, 10 percent, 5 percent) that goes to the state's school programs and a 5 percent gross receipts tax that goes to Tooele County. So the tax structure is fairly similar to Texas's with one important distinction: Texas has an additional 20 percent surcharge on out-of-compact waste.

Texas's tax policy targets out-of-compact waste. Texas assesses a 20 percent surcharge on out-of-compact waste.

Texas appears to have a structure similar to that of South Carolina, which also earned additional revenue on waste generated outside of its compact. The Texas site just began accepting commercial waste and, therefore, does not have actual revenue amounts. However, we were able to review its tax and fee structure. The Texas Legislature passed the Texas Radiation Control Act, which states:

> The commission shall assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. The surcharge is 20 percent of the total contracted rate under Section 401.2456 and must be assessed in addition to the total contracted rate under that section.

Because all of Utah's waste is generated outside of the state (and outside of the NWIC), applying Texas's surcharge to Energy*Solutions*' revenue would generate significantly higher revenues for the State of Utah. It is important to note that the revenue from the Texas surcharge may cover various oversight activities that in Utah are funded other ways and/or by other names. Also, if Utah adopted a policy similar to Texas's—to limit out-of-compact waste—comparative revenue estimates would naturally decrease. Texas places strong limitations on the amount of out-of-compact waste that can be disposed. The Texas Legislature limited outside waste, stating "not more than 30 percent of the volume and curie capacity shall be for nonparty compact waste."

Since all of Utah's waste is out of compact, applying Texas's surcharge would generate significantly higher revenue for Utah.

If the Legislature decided to increase the revenue from the radioactive waste tax it could consider the tax policies of these other states.

Washington Primarily Disposes of Its Own Waste. Washington was not included in the above analysis because it appears to have a different vision for its site. A NWIC official told us that Washington takes a very limited amount of waste outside of its compact (the NWIC has an agreement with the Rocky Mountain Compact to take a limited amount of waste from member states). Also, of the waste that is generated in the NWIC, 90 percent is generated by the state of Washington itself. The NWIC offical told us that since most of the waste comes from Washington and since they take very little waste outside of its compact, Washington's tax policy has been limited to cost recovery. This site is very different from Utah's, where the vast majority of waste comes from outside generators. Appendix A provides a summary of the taxes and fees charged at the Washington site, but Washington is not treated as a comparison state like South Carolina and Texas.

Washington's disposal site is not as comparable to Utah as South Carolina and Texas, because Washington primarily takes in-compact waste.

Legislature Should Decide If Radioactive Waste Tax Is Currently Maximizing Benefit for Utah Citizens

The Clive site could produce more economic benefit to Utah citizens. Radiation and nuclear energy provide benefits to Utah citizens in various ways. Radiation is used in medical treatments, academic and scientific applications, as well as industrial uses. Hospitals, doctors, and dentists use nuclear materials in an assortment

Since Utah LLRW generators cannot use the Energy*Solutions*' site, the primary benefit of Utah's site is economic.

of medical procedures. The NRC reports that "diagnostic x-rays or radiation therapy have been administered to about 7 out of every 10 Americans." However, as one expert in the field pointed out, the benefits of radiation in medicine are voluntary and hopefully result in better health outcomes. Conversely, the benefit of the Clive site to Utah citizens is strictly economic.

The expert cited above further explained that it would be a lot cheaper for his business if it could ship its waste to Clive, not just because of the proximity, but also because Washington's fees are much higher. The expert further said that with the low fees and taxes in Utah, it is no wonder why it is cost-effective for East Coast generators to ship their waste across the country instead of pushing for a site closer in proximity.

We believe the Legislature should review the structure of the radioactive waste tax along with the amount of revenue the tax is bringing in.

The Clive site does not serve Utah residents. In fact, the small amount of low-level radioactive waste generated in Utah is not disposed of at the Clive site. Instead the waste is shipped to Richland, Washington, which is the site of the NWIC; Utah is a member of this compact. The Clive site serves about 30 other states that have failed to create and regulate their own sites, or have not made other arrangements for the disposal of their waste.

We are not suggesting changes to the NWIC bylaws, or a change in Utah's membership in the NWIC. Rather, based on the above analysis and in talking with industry experts, we believe the Legislature should review the structure of the radioactive waste tax along with the amount of revenue brought in from the disposal of low-level radioactive waste in the state. This will provide the Legislature the opportunity to ensure Utah is receiving an appropriate economic benefit for the disposal of radioactive waste in the state.

Recommendations

1. We recommend that the Legislature consider a new radioactive waste tax structure that could effectively mitigate the risk to the state of uncollected tax revenues. The options to consider are the following:
    - Straight tax per millicurie
    - Hybrid tax based on millicurie and volume

- Maintain the current tax structure, but require more oversight and accountability

2. We recommend that the Legislature review, regardless of the response to Recommendation 1, the revenue that is being generated from Utah's Radioactive Waste Facility Tax and determine if the tax is bringing in an appropriate amount of funds relative to other states when considering Utah's unique position in the radioactive waste disposal industry.

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Appendices

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Appendix A

Comparison of Taxes and Fees from States Accepting Commercial Radioactive Waste. Information in this appendix represents self-reported information. Verification was limited to voluntary cooperation of the various states.Therefore we cannot assure the completeness/accuracy of the information and recommend caution in forming definitive conclusions from the data. Utah data is not included in this section because the ***Utah Code*** is unclear on the public release of the data.

South Carolina Radioactive Waste Tax Highlights	
Type of Tax/Fee	Amount[1]
Low-Level Radioactive Waste Tax	$18,100,000
License and Permits	600,000
Disposal Costs	4,800,000
External Care and Decommission Fund	3,300,000
Institutional Costs	2,000,000
Total	***$28,800,000***
Millicurie and Cubic Feet Information	
Three-Year Average Millicuries[2] (Class A,B,C waste)	17,600,000
Three-Year Average Cubic Foot	19,000
Ratio	
Total Tax and Fee Paid/Millicurie	$1.60
Total Tax and Fee Paid/Cubic Feet	$1,500.00

Source: State of South Carolina, Department of Health and Environmental Control

1. Amounts are three-year (2009,10,11) averages and rounded

Texas Radioactive Waste Tax Highlights	
Type of Tax/Fee	Amount
State Gross Receipts Fee 5 percent on gross receipts	Unavailable
County Gross Receipts Fee 5 percent on gross receipts	Unavailable
Out-of-Compact Surcharge 20 percent surcharge on out-of-compact waste (in addition to all other fees)	Unavailable
Total	
Millicurie and Cubic Feet Information	
Three-Year Average Millicurie (Class A,B,C waste)	Unavailable
Three-Year Average Cubic Foot	Unavailable
Ratio	
Total Tax and Fee Paid/Millicurie	Unavailable
Total Tax and Fee Paid/Cubic Foot	Unavailable

Source: State of Texas, Texas Commission on Environmental Quality

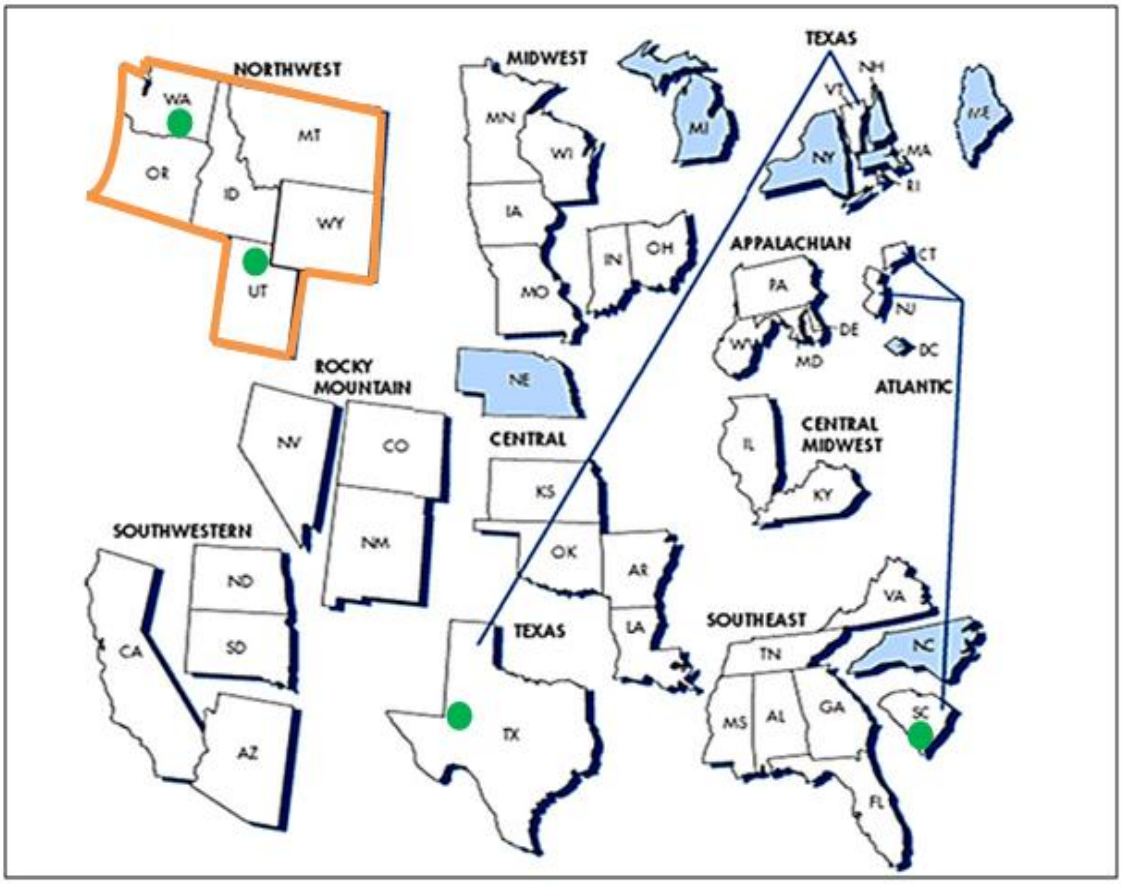
Note: Texas only began taking commercial waste in 2012. Therefore, no data is available.

Washington Radioactive Waste Tax Highlights	
Type of Tax/Fee	Amount[1]
Business Tax 3.3 percent	$183,000
County Surcharge $6.50 per cubic foot	221,000
Perpetual Maintenance $1.75 per cubic foot	60,000
Surveillance and Oversight Fee $9.00 per cubic foot – but is moving to $24.00 per cubic foot	300,000
Total	***$764,000***
Millicurie and Cubic Feet Information	
Three-Year Average Millicurie (Class A,B,C waste)	16,500,000
Three-Year Average Cubic Foot	34,000
Ratio	
Total Tax and Fee Paid/Millicurie	$0.05
Total Tax and Fee Paid/Cubic Foot	$22.50

Source: U.S. Ecology, contractor for State of Washington
1. Amounts are three-year (2009,10,11) averages and rounded

Appendix B

Map of State Compacts: This map shows the various state compacts that have been organized and the member states of the compacts.



Source: United States Nuclear Regulatory Commission. *(http://www.nrc.gov/waste/llw-disposal/licensing/compacts.html)*
Key: green circles = active disposal sites; white state groups = approved compacts; light blue states = unaffiliated.
Note: Alaska and Hawaii belong to the Northwest Interstate Compact. Washington D.C. and Puerto Rico are also unaffiliated.

Breakdown of Volume of Waste from Compacts: The figures below show the relative volume of waste coming from the various state compacts and the breakdown of waste being generated from member states in the Northwest Interstate Compact. Note that Utah makes up less than 1 percent of waste generation in the compact and just a small fraction of the waste being generated in the United States.

State Compacts Shows Where Waste Is Being Produced in the Country – By Compact	
Compact	Amount
Northwest	***1.89%***
Southwestern	28.91
Rocky Mountain	0.09
Midwest	9.53
Central	1.83
Texas	1.96
Central Midwest	11.46
Appalachian	5.80
Atlantic	7.40
Southeast	15.47
Unaffiliated States	15.66
Total	**100.00%**

Northwest Interstate Compact Breakdown Shows Where Waste Is Being Produced in the Compact – By State (the amount below equals to the 1.89 percent in the above figure)	
State	Amount
Alaska	—
Hawaii	9.22%
Idaho	0.29
Montana	—
Oregon	0.22
Utah	***0.22***
Washington	90.06
Wyoming	—
Total	100.00%

Source: Nuclear Regulatory Commission citing the Department of Energy Manifest Information System – see: http://www.nrc.gov/waste/llw-disposal/licensing/compacts.html

Agency Response

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State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

Utah State Tax Commission

R. BRUCE JOHNSON
Commission Chair

MARC B. JOHNSON
Commissioner

D'ARCY DIXON PIGNANELLI
Commissioner

MICHAEL J. CRAGUN
Commissioner

BARRY C. CONOVER
Executive Director

August 9, 2012

John Schaff
Legislative Auditor General
W315 Utah State Capitol Complex
P.O. Box 145314
Salt Lake City UT 84114-5315

Re: A Performance Audit of Utah's Radioactive Waste Facility Tax (Report No. 2012-09)

Dear Mr. Schaff,

We appreciate the opportunity to review your performance audit of Utah's Radioactive Waste Facility Tax. We support the recommendations given, particularly the one on Page 12, Recommendation 1 that the Tax Commission expand the work with the Division of Radiation Control to validate and track the requirements of Utah's Radioactive Waste Facility Tax.

We will work with the Division of Radiation Control in the Department of Environmental Quality to validate and track the requirements of this tax.

Best regards,

Barry C. Conover
Executive Director

210 North 1950 West
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801-297-2200
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If you need an accommodation under the Americans with Disabilities Act, contact the Tax Commission at 801-297-3811 or Telecommunication Device for the Deaf (TDD) 801-297-2020. Please allow three working days for a response.

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Energy*Solutions*

Response

to

Report Number 2012-09
Performance Audit of Utah's Radioactive Waste Facility Tax

September 4, 2012

Response to OLAG Report 2012-09 (Tax)

Energy*Solutions* appreciates the opportunity to formally respond to Report Number 2012-09 Performance Audit of Utah's Radioactive Waste Facility Tax (the Report) by The Office of the Legislative Auditor General (OLAG). Energy*Solutions* pays all of its taxes, as confirmed by previous audits conducted by the Utah State Tax Commission. Energy*Solutions* welcomes audits by the Tax Commission and welcomes an opportunity to address with the legislators and the Tax Commission the Report's assumptions and recommendations related to the existing tax structure.

Background

Energy*Solutions* is a privately owned business. It provides important services to our country, it generates tax revenue for the State of Utah and Tooele County, and it employs many of Utah's citizens. Privately owned businesses are not ordinarily given an opportunity to attach responses to legislative audit reports (to the best of our knowledge no other privately owned business has ever been targeted by an OLAG audit). Although Energy*Solutions* appreciates the opportunity to respond, this response respectfully raises serious concerns about the genesis, audit process, and production of the Report. Energy*Solutions* was not provided any information regarding the origin of the request for the audit or the allegations that may have been made in connection with the audit request. The Report was then produced relying on unnamed experts and on data OLAG had no authority to demand from a privately owned business. Energy*Solutions* cooperated with OLAG's requests because transparency is a core value of the company. Energy*Solutions* will work cooperatively with legislators and the Tax Commission to address the concerns raised by the Report, but we strongly urge that legislators not condone this treatment of Utah's privately owned businesses, regardless of which state agencies regulate their activities.

Summary

Energy*Solutions* safely and efficiently disposes of the lowest level (Class A) of low level radioactive waste (LLRW). Energy*Solutions* fully complies with all tax laws. Its accounting and operational processes and procedures reflect a commitment to the highest standards. Energy*Solutions* competes in an industry comprised of at least 14 LLRW disposal sites in seven states. While Energy*Solutions* intends to work cooperatively with legislators, this response addresses fundamental flaws in the assumptions central to the Report's recommendations.

Specific Responses

OLAG's recommendations are founded on comparisons with States that accept more curies in 1 shipment than Clive receives in 8 years.

OLAG's recommendations are based on comparisons to South Carolina and Texas tax rates. Energy*Solutions* only disposes of the lowest level (Class A) waste at Clive, while South Carolina and Texas facilities accept Class B and C waste. To understand the magnitude of the difference, consider that the South Carolina facility received more curies in a single shipment than the total curies buried at Clive in the last 8 years combined, and more curies in a single day than Clive has received during its entire

existence. The Texas facility is also licensed to accept B & C waste. However, the success of Texas in producing tax revenue is unproven. The Class B and C waste received in South Carolina and Texas is 50 to 100 times more expensive than Class A waste. The Report emphasizes that "South Carolina earned $32 million a year." That revenue was a direct result of pricing for Class B and Class C waste which, of course, is not accepted at Clive. For purposes of tax analysis, comparisons to South Carolina and Texas are not well founded or useful. Therefore one cannot conclude that Clive could or should generate tax revenue comparable to South Carolina or Texas.

The Report ignores approximately half of the relevant market and incorrectly assumes there is no competition.

The Report implies that additional revenue to Utah could be achieved simply by changing the tax code without consideration of the competitive impact of increased tax burdens. This analysis fails to consider government waste, which is approximately half of Clive's business. The Report perpetuates the incorrect belief that Energy*Solutions* takes 97% of the country's LLRW, and the Report fails to consider the competitive nature of the commercial and government waste markets. The Clive facility competes with facilities in Idaho, Texas, Washington, Nevada, New Mexico and Tennessee for government waste. Energy*Solutions* competes with a facility in Texas for commercial waste and DOE waste. The Report's recommendations fail to consider how a change in tax structure would impact Energy*Solutions*' ability to compete in these markets. The suggestion that additional tax revenue could be generated through a tax structure change is unsupportable.

Vertical integration is a fundamentally responsible way to operate a business, not a basis for suspicion or tax restructuring.

The Report expresses concern that Energy*Solutions* is vertically integrated; it owns a processing facility in Bear Creek, Tennessee, which ships some of its waste to Clive. Many Utah businesses are vertically integrated in the same way, with subsidiaries and divisions in other states, operating as suppliers or venders or contractors to the parent companies. Vertical integration is a fundamentally responsible way to operate a business. It is not a basis for tax restructuring. OLAG's presumption that vertically integrated businesses are somehow avoiding their required share of taxes, if extended beyond Energy*Solutions* to every Utah business that has an affiliate in another state, could result in an overly burdensome tax regime for businesses and would be a significant disincentive to operate here in Utah.

More specifically, the Report notes that tax rates are higher for processed waste than unprocessed waste, and suggests that Energy*Solutions* may be in a position to influence the location of processing or the allocation of costs between Clive and Bear Creek. In particular, the Report mischaracterizes the compaction of waste as it relates to the Clive disposal process with the kind of supercompation processing technology employed at the Bear Creek facility. To the extent there may be ambiguities regarding the definition of processing, they may be resolved without tax restructuring or tax increases. Energy*Solutions* is like every other business in that it must honestly report to the Utah State Tax Commission how it calculates its tax liability. The Tax Commission conducted audits for recent years and found no impropriety. Neither did OLAG find any tax violation, only a general suspicion that because Energy*Solutions* has a vertically integrated operation, it must somehow be avoiding its legal obligations to pay taxes. Energy*Solutions* welcomes further discussion with the Tax Commission regarding this subject.

The recommendation to return to a curie-based tax is a step back in time.

The State of Utah has had a curie-based tax in the past. It was changed a number of years ago to the current revenue-based tax. The assumption in the Report is that a curie-based tax would generate more revenue for the State. Of course, this can only be true if the net result is a tax increase. It is just as likely, however, that raising tax rates in a competitive market would result in less revenue to the State because waste would be sent to other sites in states with lower tax burdens. It should be noted again that the Report is premised on revenue generated in South Carolina where more curies may arrive in a single day than have arrived at Clive during its entire existence.

Comments regarding limited access reveal a fundamental error underlying the Report.

Energy*Solutions* is a private business. OLAG had no authority to demand data or access from a private business. Energy*Solutions* cooperated voluntarily pursuant to its policy of transparency. Although the Report states access was limited, all information and site access were offered, subject to reasonable business conditions. OLAG improperly suggests in many places that Energy*Solutions* was the source of restrictions. In fact, it was Utah law that established the boundaries of OLAG's authority, and OLAG's requests for access and documents from a privately owned business were far outside of those boundaries.

Although Energy*Solutions* cooperated voluntarily pursuant to its policy of transparency, Energy*Solutions* is concerned such practices and policies will affect other regulated private businesses in Utah, such as hospitals, banks, mines, and manufacturers. This Report should not become a precedent under which OLAG may demand documents and access from these private businesses.

Miscellaneous Corrections and Clarifications

- Appendix B does not include DOE waste. The government generates and disposes of over 90% of the waste in the LLRW market, only a portion of which is shipped to Clive. The LLRW market, including waste sources and disposal sites, is more competitive and diverse than the Report analysis assumes. As mentioned above, Energy*Solutions* competes in an industry comprised of at least 14 LLRW disposal sites in seven states.

Concluding Comments

Energy*Solutions* will, notwithstanding the many misunderstandings reflected in the Report, work with the Utah State Tax Commission and legislators to resolve concerns. EnergySolutions is fully committed to comply will all tax laws and operate with the highest standards of safety and quality in the industry.