



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

June 28, 1993

Dianne R. Nielson, Ph.D.
Executive Director
Department of Environmental Quality
168 North 1950 West
P.O. Box 144810
Salt Lake City, Ut 84114-4810

Dear Dr. Nielson:

Thank you for your letters of February 12 and March 17, 1993, responding to our comments and recommendations following our review of the State's radiation control program which were sent to the State of Utah in our letters of September 2 and December 24, 1992.

We appreciate the positive actions you and your staff are implementing in response to our comments. Our understanding is that the State is developing a decommissioning rule that, when adopted, would bring your regulations up-to-date. Your responses to the other comments appear acceptable, except for the land ownership exemption which is discussed below, and we will verify them during the next review of your program.

The State's response on the rationale for the exemption from the land ownership requirement presented the concept of exercising control of the site equivalent to that provided by governmental ownership. The Nuclear Regulatory Commission (NRC) staff considers this to be an acceptable approach to providing the rationale for the exemption. The State presented several clarifying points on how the State would exercise control of the site without the need for the State or Federal government to have title to the site. The Commission approved this approach as acceptable with the proper implementing mechanism(s) put in place. With the implementation of a restrictive covenant that will run with the land (an example is presented as Enclosure 1), the Commission considers the State's controls to be adequate. Please submit a copy of a final restrictive covenant when it is implemented so that our documentation will be complete.

The State may wish to consider requiring some level of trust fund to support the potential activities contained in the deed covenants after the license is terminated. The States response indicates that the entire remaining trust fund would be returned to the licensee when the licensee has met the requirements for license termination. Such funding would be a reasonable additional level of compensation for government ownership that, while not necessary, would be prudent.

The Commission decided that the State of Utah's rationale of exercising effective control of the waste disposal site without State or Federal land ownership is acceptable and is equivalent control to that which would be provided by implementing State or Federal land ownership. (See SECY-93-136 and the resulting Staff Requirements Memorandum, Enclosures 2 and 3).

Dr. Dianne R. Nielson

2

JUN 28 1993

In discussions with your staff on February 17, 1993 and in subsequent discussions, your staff agreed to update, as part of the annual review, the Trust Agreement and supporting calculations to remove the inconsistencies identified in the attachment to the December 24, 1992 letter from me to Mr. Kenneth Alkema. Enclosure 4 contains a discussion of the major issues and the comments identified by the NRC staff. We will review this update during our next program review.

I appreciate your support of the State's radiation control program and look forward to working with you in the future. Should you have any questions, please feel free to contact me or Robert Doda, Region IV, State Agreements Officer.

Sincerely,


Carlton Kammerer, Director
Office of State Programs

Enclosures:
As stated

cc: W. Sinclair, State of Utah
L. Anderson, State of Utah

AGREEMENT

ESTABLISHING OF RESTRICTIVE COVENANTS

THIS AGREEMENT is made the day and year herein after given by and between Envirocare of Utah, Inc. (hereafter "Envirocare"), a Utah corporation having its general offices at 215 South State Street, Suite 1160, Salt Lake City, Utah 84111, and UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY (hereinafter the "Department").

RECITALS:

(1) Envirocare is the record owner of the following described premises located in Tooele County, Utah, to wit:

SEE ATTACHED EXHIBIT A FOR A LEGAL DESCRIPTION AND EXHIBIT B FOR A DIAGRAM OF THE PROPERTY.

(2) Envirocare is in the process of constructing and operating a low-level radioactive waste disposal facility described in Exhibit B for the permanent disposal of radioactive material pursuant to a license granted by the Department under R447-25.

(3) The parties desire to clarify and supplement the Agreement Establishing Covenants and Restrictions recorded March 16, 1993 at Book 348, pages 104-107.

Now, therefore, these restrictive covenants are executed by Envirocare to ensure the long-term integrity of the disposal facility for the safety of the people of the State of Utah, to wit:

(1) These covenants shall be in addition to any restrictive covenants currently on record affecting the above-described premises, and recorded at , Tooele County Records.

(2) No excavation or construction, except as necessary to maintain the integrity of the above described premises, shall be allowed after the low-level radioactive waste is disposed of and the facility closed.

(3) No uses of the property shall be made which may impair its integrity. Any change in use following closure of the facility shall require the prior written consent of the Department, or its successors or assigns, which shall not be unreasonably withheld.

(4) Envirocare, its successors or assigns, shall erect monuments and markers and shall thereafter continuously maintain, while it has title, these monuments and markers. These monuments and markers are to be approved by the Department to warn of the presence of radioactive material at the site.

(5) Envirocare shall notify the Department of its intent to convey any interest in the property described herein. Such conveyance shall not be made without the prior written approval of the Department, provided however that such approval is not to be unreasonably withheld. No conveyance of title, easement or other interest in the property shall be consummated by Envirocare

without adequate and complete provision for continued maintenance of the property.

(6) Any State or Federal governmental agency, affected by any violations of these restrictive covenants, may enforce them by legal action in the District Court for Tooele County.

(7) Any of the parties mentioned in the previous paragraph may obtain an immediate temporary restraining order from the District Court upon allegation that these restrictive covenants have been violated without any further showing being required. Envirocare, its successors or assigns, shall then bear the burden of proof as to why such temporary restraining order should not be made a permanent injunction by the Court.

(8) Envirocare, its successors and assigns, shall not at any time institute legal proceedings, by way of quiet title or otherwise, to remove or amend these restrictive covenants unless the Department has given advance written approval.

These restrictive covenants shall run with the land in perpetuity and shall be binding upon Envirocare, its successors and assigns.

Dated this _____ day of _____, 1993.

UTAH DEPARTMENT OF ENVIRONMENTAL
QUALITY

ENVIROCARE OF UTAH, INC., a
Utah corporation

By: _____
Executive Director, Department
of Environmental Quality

By: _____
Khosrow B. Semnani, President

STATE OF UTAH)
) ss.
COUNTY OF TOOELE)

The foregoing instrument was acknowledged before me this _____ day of _____, 1993, by _____ of Envirocare of Utah, Inc. on behalf of the Corporation.

NOTARY PUBLIC

Enclosure 2 to the June 28, 1993 letter is SECY-93-136,
which is not included here because of the size of the paper.

ENCLOSURE 2



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

June 28, 1993

OFFICE OF THE
SECRETARY

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: *S. J. Chilk*
Samuel J. Chilk, Secretary

SUBJECT: **SECY-93-136 - UPDATE ON THE RESOLUTION OF
THE UTAH LAND OWNERSHIP ISSUE**

This is to advise you that the Commission (with all Commissioners agreeing) has approved the course of action recommended by the staff. The draft letter to the State of Utah should be modified to reflect that the Commission decided this matter and a copy of the SECY paper and this memorandum should be enclosed.

If, as the Commission understands the case to be, the trust fund applies only to the non-mixed low-level wastes, in describing the situation in Utah in the future, the staff should make this distinction clear, since separate funding arrangements have been made for the mixed waste portions of the site. The letter to the State should suggest that it consider whether it should require some level of trust fund to support the potential activities contained in the deed covenants after the license is terminated. The plans indicate that the entire remaining trust would be returned to the licensee when the licensee has met the requirements for license termination. Such funding would be a reasonable additional level of compensation for government ownership that, while not necessary, would be prudent.

In addition, the staff should prepare and publish an advanced notice of proposed rulemaking which would seek public input on the advisability of proceeding with rulemaking to reflect the Commission decision in this case in a generic manner in 10 CFR Part 61. In the ANPR the staff should iterate the basis for the original requirement for government land ownership and ask for

SECY NOTE: This SRM and the subject SECY paper will be made publicly available upon transmittal of the letter to Utah.

ENCLOSURE 3

public comments on whether it should continue to be required in light of the Utah decision while noting that such ownership is not required for hazardous material disposal sites and sanitary land fills. The advantages and disadvantages of codifying the options for alternatives to government ownership should be fully developed in conjunction with the notice. The staff should carefully consider all input in providing a recommendation to the Commission on a proposed rule.

(EDO)

(SECY SUSPENSE: 3/94)

cc: The Chairman
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
Commissioner de Planque
OGC

SUMMARY OF MAJOR CONCERNS REGARDING THE
ENVIROCARE OF UTAH LLW DISPOSAL FACILITY,
AND ACCEPTABLE RESPONSES

I. ISSUE: Implications of Bankruptcy

- A. Specific Concern: The responsibility and authority of a court appointed trustee in the event of the licensee filing for bankruptcy.

Acceptable Response: A trustee appointed by a Federal court has a fiduciary responsibility to exercise the safe control of all assets. In the case of a disposal site, the trustee would be responsible for the control of access to the site and any other obligations of the license pertaining to maintaining the site in a safe condition. The State would be able to continue to exercise its police powers to protect the public health and safety at the site.

This is acceptable to the staff.

II. ISSUE: Deed Modification

The deed or land records should be modified to place more specific restrictions on (future) activities at the site.

- A. Specific Concern: Documents already in the Public Record, such as the Affidavit enclosed in the letter from D. Nielson (DEQ) to C. Kammerer (NRC) of February 12, 1993, and the Agreement referenced in the March 17, 1993 letter from D. Nielson (DEQ) to C. Kammerer (NRC), are not adequate to effect control over the site equivalent to that of a land owner.

Acceptable Response: The staff has drafted a restrictive covenant document that the State of Utah and Envirocare informally find consistent with State property law. The staff considers the controls in this document, when implemented, along with those already being implemented by the State of Utah to be equivalent to those implemented through the NRC licensing process. The State is being asked to submit the final restrictive covenant to the NRC when implemented. The staff will verify this action as part of the next program review.

This is acceptable to the staff.

III. ISSUE: Passive Institutional Controls Beyond the 100 year Active Institutional Control Period

Neither the State of Utah, nor Envirocare have addressed what happens after 100 years have elapsed.

- A. Specific Concern: The Trust Agreement, which funds the active controls, expires at the end of the 100 year active control period. Subsequent controls have not been addressed.

Acceptable Response: As stated above, the State of Utah and Envirocare have reviewed the draft restrictive covenant which restricts future use of the land in perpetuity and agree that such a document is implementable. The State in the February 12, 1993 letter explained their licensing process and administrative process that they will continue to use to exercise control of the site even if Envirocare is no longer present. The staff considers these activities to be equivalent to those required by the NRC regulations.

This is acceptable to the staff.

- B. Specific Concern: License termination is also an issue. There has been no mention of when the license will be terminated.

Acceptable Response: A commitment from the State of Utah (February 12, 1993 letter) that it will keep Envirocare under license for the duration of the active institutional control period (~100 years), and until an application for license termination has been approved. (The Utah State regulations contain requirements for license termination similar to those in 10 CFR Part 61. These requirements are in Utah Code at R447-25-17.)

Note that 10 CFR 61.31(c)(2) contains a requirement that permanent monuments or markers warning against intrusion be installed as a condition for license termination. There is no funding provided for monuments or markers in the Trust Agreement. Envirocare should also make a commitment to place these markers (this is already required by Utah regulations at R447-25-17(3)(c)). The draft restrictive covenant also includes a commitment to place and maintain these monuments and markers.

This is acceptable to the staff.

- C. Specific Concern: As a part of the December 24, 1992 letter, we pointed out that, "[t]he Land Ownership Exemption Rationale references existing Utah State laws which could provide the means to control the disposal site. These laws address issuing orders to enforce law and rules, civil penalties, criminal proceedings and the State's ability to impound radioactive material if it poses an imminent threat or danger to the public health. We do not understand the relevance of these provisions to ownership of the site, to the responsibility for the site after 100 year active institutional control period, and the possible abandonment of the site by the present owner."

In response, the Department of Environmental Quality stated in their February 12, 1993 letter that, "[t]he relevance of the State's listed enforcement mechanisms (including the issuance of orders, civil penalties, criminal proceedings, and the States' ability to impound

radioactive material) is that these mechanisms are part of the regulatory system that is designed to ensure protection of the public health, safety, and property. They do not stand alone. They supplement the rights of the State under the license and the State's radiation control regulations...."

Acceptable Response: The State has stated that its program to exercise control over the disposal site is equivalent to the control of a disposal site under the land ownership provision in Part 61. These civil, criminal, and police powers of the State of Utah are over and above the authority of the State under its Radiation Control Act. As such, these authorities do provide additional mechanisms to exercise control over this site whether or not the site owner is conducting adequate control of the site. The addition of the restrictive covenant will add an additional control mechanism that the State or the Federal government can use to restrict the future use of this site.

This is acceptable to the staff.

IV. ISSUE: Trust Agreement Modifications

- A. The Trust Agreement needs to be amended as specified in our December 24, 1992 letter to Envirocare. For example: current provisions for routine maintenance in cost estimates appear inadequate, provisions for monitoring appear inadequate, and no funding is provided for record transfers, deed restrictions, markers, etc. (See December 24, 1992 letter for details)

Acceptable Response: This issue may be addressed directly by revising the Trust Agreement to correct or incorporate the missing or inadequate items (using the December 24, 1992 letter as a guide). The State of Utah has committed to re-evaluate the cost estimates for the trust amount and revise the Trust Agreement to incorporate an updated cost amount. The amount of \$1.2 million is on deposit in the trust fund and is under the control of the State of Utah. The staff has reviewed the December 24, 1992 letter comments and proposed resolutions to these comments are presented below. The State's revision to the calculations and Trust Agreement will be reviewed during the next program review.

This is acceptable to the staff.

RESOLUTION OF COMMENTS IN THE ENCLOSURE TO THE
DECEMBER 24, 1992 LETTER FROM C. KAMMERER TO K. ALKEMA

Comments on the Land Ownership Exemption Rationale

Comment 1: This comment requested a dose assessment for the period beyond the 100 year period.

Resolution: The proposal by the State of Utah to control the site with the use of several mechanisms makes this comment no longer applicable.

Comment 2: This comment requested a description of the control of the land to be implemented in the absence of governmental ownership.

Resolution: The State submitted a deed annotation which the staff did not find adequate. The staff proposed a more detailed "restrictive covenant" which, if found acceptable to the State of Utah and Envirocare, would be acceptable to the staff.

Comment 3: This comment requested additional information on (1) who the licensee will be during the active control period, (2) who the licensee will be if Envirocare abandons the site, and (3) what the licensing procedures will be following site closure.

Resolution: The State of Utah responded to the comment in their letter dated February 12, 1993. (1) Control will be maintained by the State of Utah regardless of who the site owner is. (2) Since Envirocare is the site owner and operator, and no governmental agency is/has been authorized to take title to the site, transfer and termination of the Envirocare license would not occur prior to the active institutional control period. The State will hold Envirocare responsible for the site and the active institutional control period. (3) The Utah regulations for license transfer and termination presumes that the site operator will transfer and/or terminate their license authorization and turn over the site to a government agency for the active institutional control period. As stated above, the State will require Envirocare to remain the licensee until the regulatory requirements have been met. This is acceptable to staff.

Comment 4: The comment requested additional clarification on the various mechanisms the State of Utah identified and their applicability to the abandonment of the site by Envirocare.

Resolution: The State of Utah responded that in addition to the license with Envirocare the State has other mechanisms available for protecting the public health and safety. The mechanisms include the issuance of orders, civil penalties, criminal proceedings, and the State's ability to impound radioactive material. The

State has control of a trust fund established by Envirocare that contains in excess of \$1.2 million which is sufficient money to close the site and provide for the active institutional control period. The State is prepared to use these mechanisms to control the site if Envirocare were to abandon the site. The Utah legislature has not authorized the State to take title to the site nor to take responsibility for the site. With the addition of a specific restriction on the future use of the land, these mechanisms should provide for the control of the waste disposal area for the period of time contemplated in 10 CFR Part 61. This is acceptable to the staff.

Comments on the Trust Agreement and Section 10 of the License Amendment Application

A. These concerns were for the site closure period.

Comment A.1: Section 10 did not contain cost estimates for the transfer of site records to the appropriate municipality, county, county zoning board, State officials, local and Federal agencies.

Resolution: The State is working with the licensee to include the costs of the records transfer in the next annual update to the surety amount.

This is acceptable to the staff.

Comment A.2: Section 10 did not contain any cost estimates or plans regarding the placement of monuments, trench markers or warning signs.

Resolution: The State is working with the licensee to include the costs of the monument and other markers in the next annual update to the surety amount.

This is acceptable to the staff.

Comment A.3: Section 10 stated that the costs for excavation and construction were costs that are based on actual costs charged ... for similar work. Cost estimated should be based on independent regional contractor estimates.

Resolution: The State staff civil engineer compared the cost estimates to the Dodge Book cost estimate for the region and found the estimates used by the licensee to be mid-range values. This was acceptable to the State staff.

This is acceptable to the staff.

Comment A.4: Section 10 did not contain drawings with adequate details to evaluate the dimensions and amounts of materials needed for closure.

Resolution: The State used detailed engineering documents to establish the amounts of materials needed for closure of the site. This explains the differences in Section 10 and the closure cost estimates. The detailed plans are available for NRC review in the State office. The State has requested that the licensee develop a new closure plan to pull the engineering and cost estimate into a coherent document.

This is acceptable to the staff.

B. These concerns were for the post closure active control period.

Comment B.1: The groundwater monitoring plan should be based on site history and stability, and may prove to be either more or less strenuous than what is currently estimated.

Resolution: The State Division of Radiation Control is deferring the groundwater monitoring requirements for the post closure active control period to the State Division of Water Quality which has issued the discharge permit for the entire site operations. This monitoring plan will cover the radiological and nonradiological constituents that are appropriate for the site. The costs for the monitoring plan following its approval will be included in the annual update to the surety amount.

This is acceptable to the staff.

Comment B.2: The post closure funding does not provide for items of routine custodial activities, or repairs, if necessary, such as removing debris, control of vegetation, fence repair or replacement monitoring equipment repair or replacement, or minor repair of disposal unit covers.

Resolution: The State is working with the licensee to update their cost estimates for the next annual update. Those costs that can be estimated will be included in the next update.

This is acceptable to the staff.

Comment B.3: The post closure cost estimates do not include amounts for contingencies.

Resolution: The State has not specifically addressed unexpected events and planned for them. The NRC regulations do not provide for any specific contingency amounts in its surety arrangement for the active control period. The State does include a generic contingency percentage in its cost estimate and does not plan to include any additional amounts.

This is acceptable to the staff.

Comments C: The trust fund addresses only the periods of site operation, closure and 100 years after closure. The fund dissolves after 100 years, and any remaining money returned to Envirocare. This is standard; however, if the surety arrangement is designed to compensate for the lack of land ownership, it seems that some mention of the passive control period should be made.

Resolution: The State requirement is the same as NRC's. That is, the funds for the active control period will be transferred to the State or Federal government when the license is transferred and any funds remaining will be returned to the licensee. Since the license will not be transferred to the State or Federal government, the money in the trust fund will remain and the State will control the use of these funds. At the end of the active control period (100 years), if the requirements for termination of the license are not met by Envirocare, the license will remain in effect and the State will continue to control the trust fund.

This is acceptable to the staff.

Comments D-G: These comments were minor inconsistencies in the documentation supplied by the licensee and the State.

Resolution: The State has committed to correct the inconsistencies in the annual update to the surety amounts. The State has also informed Envirocare that it should prepare a new closure plan that would clarify the concerns raised.

This is acceptable to the staff.



State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF THE EXECUTIVE DIRECTOR

Michael O. Leavitt
Governor
Dianne R. Nielson, Ph.D.
Executive Director

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P.O. Box 144810
Salt Lake City, Utah 84114-4810
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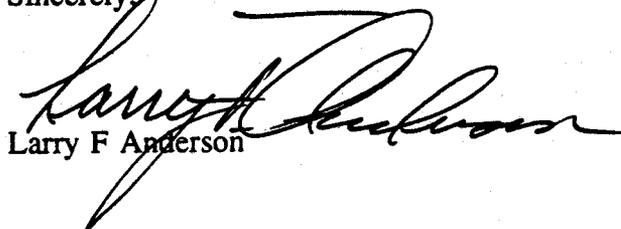
June 30, 1993

Carlton C. Kammerer, Director
Office of State Programs
Nuclear Regulatory Commission
Washington DC 20555

Dear Mr Kammerer:

I have enclosed a Recorded copy of the executed Restrictive Covenants between Envirocare of Utah and the Utah Department of Environmental Quality. This action completes the necessary steps to bring the State of Utah and the Nuclear Regulatory Commission into complete agreement on the land ownership/control issue. I appreciate the support and assistance that the NRC has provided to our program as we have worked and resolved this issue.

Sincerely:



Larry F Anderson

BOOK 353

RECORDED AT REQUEST OF
Thomas B. Bennett

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EN AGREEMENT AB

DONNA S. MCKENBICK
TOOELE COUNTY RECORDER

ESTABLISHING OF RESTRICTIVE COVENANTS, DEPUTY *SM* FEE 18.00

THIS AGREEMENT is made the day and year hereinafter given by and between ENVIROCARE OF UTAH, INC. (hereinafter "Envirocare"), a Utah corporation having its general offices at 46 West Broadway, Suite 240, Salt Lake City, Utah 84101, and UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY (hereinafter the "Department").

RECITALS:

(1) Envirocare is the record owner of the following-described premises located in Tooele County, Utah, to wit:

SEE ATTACHED EXHIBIT A FOR A LEGAL DESCRIPTION AND EXHIBIT B FOR A DIAGRAM OF THE PROPERTY.

(2) Envirocare is in the process of constructing and operating a low-level radioactive waste disposal facility described in Exhibit B for the permanent disposal of radioactive material pursuant to a license granted by the Department under R447-25.

(3) The parties desire to clarify and supplement the Agreement Establishing Covenants and Restrictions recorded March 16, 1993, at Book 348, Pages 104-107.

NOW, THEREFORE, these restrictive covenants are executed by Envirocare to ensure the long-term integrity of the disposal facility for the safety of the people of the State of Utah, to wit:

(1) These covenants shall be in addition to any restrictive covenants currently on record affecting the above-described premises, and recorded at Tooele, Utah, in the Tooele County Records.

(2) No excavation or construction, except as necessary to maintain the integrity of the above-described premises, shall be allowed after the low-level radioactive waste is disposed of and the facility closed.

(3) No uses of the property shall be made which may impair its integrity. Any change in use following closure of the facility shall require the prior written consent of the Department, or its successors or assigns, which shall not be unreasonably withheld.

(4) Envirocare, its successors or assigns, shall erect monuments and markers and shall thereafter continuously maintain, while it has title, these monuments and markers. These monuments and markers are to be approved by the Department to warn of the presence of radioactive material at the site.

(5) Envirocare shall notify the Department of its intent to convey any interest in the property described herein. Such conveyance shall not be made

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the 29 day of June, 1993, personally appeared before me Dianne R. Nielsen, who being by me duly sworn did say that she is the Executive Director of the Department of Environmental Quality and that she did sign the foregoing instrument on behalf of the Utah Department of Environmental Quality and that said Department executed the same.

My Address and Commission
Expiration Date. Are:

Notary Public
MARY CHARLENE LAMP
233 North 1400 West
Salt Lake City, Utah 84116
My Commission Expires
September 5, 1995
State of Utah



Mary Charlene Lamp
NOTARY PUBLIC

EXHIBIT A

TO

AGREEMENT ESTABLISHING OF RESTRICTIVE COVENANTS

Premises located in Tooele County, Utah, described as follows:

Section 32, Township 1 South, Range 11 West, Tooele County, Utah, excepting the following-described property being the Vitro impoundment site:

PROPERTY DESCRIPTION OF VITRO EMBANKMENT

Beginning at a point located 1120.32 feet North 89°56' West, along the section line, and 329.49 feet South from the Northeast corner of Section 32, Township 1 South, Range 11 West, Salt Lake Base and Meridian and running thence North 89°56'32" West 1503.72 feet; thence South 0°03'28" West 2880.50 feet; thence South 89°56'32" East 1503.72 feet; thence North 0°03'28" East 2880.50 feet to the point of beginning.



State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF RADIATION CONTROL

Michael O. Leavitt
Governor

Dianne R. Nielson, Ph.D.
Executive Director

William J. Sinclair
Director

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www.deq.state.ut.us Web

March 6, 2000

Charles Judd, President
Envirocare of Utah, Inc.
46 West Broadway, Suite 116
Salt Lake City, UT 84101

OSP
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Dear Mr. Judd:

This correspondence is in regards to our recent meeting of February 29, 2000 with you and your counsel, Jim Holtkamp and Fred Nelson of the Utah Attorney General's Office and myself regarding the issue of land ownership. As you are aware, Utah Radiation Control rule R313-25-28(1) requires that "disposal of waste received from other persons may be permitted only on land owned in fee by the Federal or a State government." Envirocare received an exemption to the above rule by letter of March 3, 1991 for disposal of Class A low-level radioactive waste. On November 1, 1999, Envirocare submitted a license amendment request to receive Class B and C low-level radioactive waste. This submittal constituted a "new license" as described in the Radiation Control Act. As such, requirements for government land ownership must be met absent the granting of a further exemption if allowed by law.

As we discussed in the meeting, it is our expectation that Envirocare must first explore the possibility of either federal ownership or federal perpetual care of the Envirocare site. The Department of Energy (DOE) has responsibility currently for the 100 acre Vitrified tailings site located within the Envirocare facility as well as the future responsibility of the uranium/thorium mill tailings disposal area. These two areas constitute a significant portion of the existing 640-acre site. Envirocare committed to making a good faith effort to explore this possibility and providing documentation of the outcome of such effort. An offer was also made of State support and input on this issue before DOE.

If this effort is not successful, it was suggested that Envirocare and the Division enter into discussions regarding a framework for state ownership which would need to be presented to the legislature for approval. It was noted that the Division will be reporting to the Legislative Management Committee on a routine basis and that could be a potential forum to gain input on the acceptability of state ownership after the details had been worked out by Envirocare and the Division.

March 1, 2000

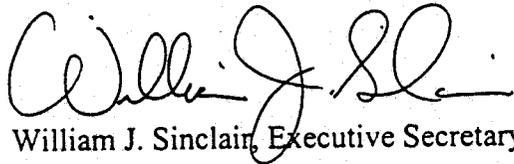
Page 2

If both a federal or state ownership proposal does not appear to be feasible, then Envirocare and the Division should entertain discussion regarding an exemption request to the land ownership rule to be presented to the Utah Radiation Control Board if allowed by law. These discussions could be framed to examine the current requirements and determine if any enhancements are needed. It is important to recognize that this work should commence immediately if the Envirocare proposed time schedule is to be met.

Additionally, the Division has requested an opinion from the Nuclear Regulatory Commission regarding private land ownership in letters of December 14, 1999 and clarifying letter of February 25, 2000. The intent of these letters was to gain early involvement of our oversight Agency to determine if an exemption is permissible on Envirocare's proposal such that upon reaching any final decision on this matter that the NRC is fully aware of the process and how the decision was made.

If you have any questions regarding this correspondence, please do not hesitate to contact me.

UTAH RADIATION CONTROL BOARD



William J. Sinclair, Executive Secretary

cc: Dianne Nielson, Ph.D., Executive Director, UDEQ
Myron Bateman, E.H.S., M.P.A., Health Officer/Department Director, Tooele County Health
Department
Fred Nelson, Utah Attorney General's Office
Kep Alkema, Envirocare of Utah, Inc.
✓ Paul Lohaus, Director, NRC Office of State Programs
Charles Hackney, NRC Region IV
Milt Lammering, EPA Region VIII