

April 12, 2000

Mr. William J. Sinclair, Director
Division of Radiation Control
Department of Environmental Quality
168 North 1950 West
P.O. Box 144850
Salt Lake City, UT 84114-4850

Dear Mr. Sinclair:

This is in response to your December 14, 1999 and February 25, 2000 letters. In your letters, you note that Envirocare of Utah, Inc. (Envirocare) proposes to expand the scope of its activities from a "niche market" facility to a "full service" facility and ask NRC's opinion regarding continuation of the State policy of exempting Envirocare from the requirement for State or Federal land ownership.

We agree with the view expressed in your December 14, 1999 letter that the proposed change in facility operations to accept Class B and C waste provides a good opportunity for the State of Utah to re-examine continuation of the existing land ownership exemption. This re-examination should evaluate continuation of the exemption in the context of the proposed expansion. We also believe it is worthwhile at the same time to revisit the original bases for the exemption to ensure they remain valid and continue to provide adequate long term control. This re-examination should serve to identify whether any changes are needed in the existing mechanisms that have been developed and applied in lieu of government land ownership. A re-examination at this time would provide continued assurance that long term controls, equivalent to those provided by government land ownership, are in place, and would remain in place through the operating lifetime of the facility and following closure.

The NRC staff understands that even though Utah's implementing rule for government land ownership is compatible with Section 61.59 (a), which requires either State or Federal ownership, Utah does not have legislative authority to hold title to land used for disposal of radioactive waste. This lack of legislative authority was part of the basis for granting the original exemption. Thus, as you suggest in your March 6, 2000 letter, Utah staff may wish to consider whether the current statute excluding State land ownership also should be re-examined at this time.

We are prepared to assist you, in accordance with agency procedures and available resources, should you proceed with a review of the land ownership exemption issue. Such assistance would not entail a *de novo* review of any submittal from Envirocare, but assistance in interpretation of NRC regulations in 10 CFR Part 61 and implementing guidance.

Please contact me or Lloyd Bolling of my staff, if you have any questions or require further information.

Sincerely,

/RA/

Paul H. Lohaus, Director
Office of State and Tribal Programs

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