

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

October 16, 1990

MEMORANDUM FOR: James M. Taylor, Executive Director
for operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: SECY-90-174 - PROPOSED NOTICE OF RECEIPT
OF AN APPLICATION FROM ENVIROCARE OF
UTAH, INC. TO DISPOSE OF 11E(2) BYPRODUCT
MATERIAL

This is to advise you that the Commission (with all Commissioners agreeing) has disapproved the staff's proposed notice. The Commission believes that the facility should be licensed under the provisions of 10 CFR Part 40. If the staff believes that the basic requirements of 10 CFR Part 40 need to be supplemented with guidance drawn from other sections of our regulations (e.g. 10 CFR Parts 2, 20, 51, or 61), the staff should; (1) identify the relevant provisions in these other parts that are necessary here; and (2) determine whether such provisions will be used simply for the sake of providing guidance to the applicant or, alternatively, need to be imposed on the applicant in a binding fashion. This Commission position on licensing this site under Part 40 does not mean that orders cannot be used to impose additional requirements. Where additional requirements beyond 10 CFR 40 need to be imposed the staff should consider imposing such requirements through license conditions. In the event that additional binding mechanisms are needed, staff can also consider the use of orders. The Commission would like to be advised of staff's plans for imposing these additional requirements.

In revising the notice, the staff should clarify the Commission's intent to implement other provisions pursuant to existing requirements that are appropriate for the type of disposal facility

SECY NOTE: This SRM, the subject SECY paper, and the vote sheets of Commissioners Rogers and Curtiss will be

made publicly available upon publication of the
Federal Register Notice.

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proposed by Envirocare. For example, existing requirements in 10 CFR 2.105(a)(2) provide opportunity for a hearing; 40.31(f), 51.20(a)(14), and 51.60(b)(6) provide for the applicant's preparation of an environmental report and NRC's propagation of an environmental impact statement; and 40.41(c) and (e) provide for establishing license conditions, which could include constraints on characterization of the waste and its proper management during transportation, receipt, processing, and disposal.

The revised notice should indicate the Commission's decision to license the site under 10 CFR Part 40, and that, as a consequence, the requirements of 10 CFR Part 40 apply unless an exemption is granted or one of the exemption provisions explicitly included in Appendix A is exercised. The notice could be revised to encourage the applicant to request and justify specific exemptions from those requirements in Part 40 that it believes should not be relevant or applicable to the proposed facility.

The notice should be revised as noted above and returned for Commission review (negative consent).

(EDO) (SECY Suspense: 11/30/90)

cc: Chairman Carr
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
OGC
ASLAP
ASLBP