

REQUEST REPLY BY 1/9/01



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

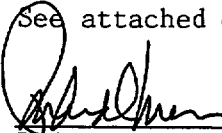
COMSECY-01-0001

January 2, 2001

See attached comments.

MEMORANDUM TO:

Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield

  
Richard A. Meserve 1/10/01

FROM:

William D. Travers   
Executive Director For Operations

SUBJECT:

RESPONSE LETTER TO UTAH ON LAND OWNERSHIP ISSUE

I have attached a proposed letter (Attachment 1) to Mr. William J. Sinclair, Director of the Utah Division of Radiation Control, responding to his request for Commission comments or concerns on an Envirocare of Utah, Inc., petition for exemption to the government land ownership rule for Class B and C waste. Attachment 2 is Mr. Sinclair's incoming request and Attachment 3 provides historical background information on the Envirocare site land ownership exemption previously granted for Class A waste.

The staff's proposed response notes that long-term control and protection is an essential consideration in finding reasonable assurance that the public will be protected from the hazards associated with Class B and C waste. For this reason, NRC's Part 61 requires either State or Federal ownership, which provides one of the multiple barriers to protect the site from disturbance in the future and to protect individuals from potential exposure that would be associated with unauthorized site intrusion.

The staff notes that it did not conduct a detailed technical review, given the absence of a review by Utah staff. It may be possible to provide long-term protection and control in a manner that would obviate the need for actual government ownership. However, based on its limited review of the exemption request, the staff does not believe that the NRC would grant such an exemption for disposal of Class B and C waste in the absence of clear evidence that the level of long-term control and protection afforded by Envirocare's proposal is essentially similar to that which would be provided by government ownership. (The staff's supporting technical rationale is an enclosure to Attachment 1.)

In addition, the staff's proposed response recognizes Utah's legislative proposal to establish a surveillance and maintenance fund, funded by fees assessed on the disposal of Class B and C waste, to fund activities such as environmental monitoring, and fence and sign replacement after the end of the 100 year institutional control period. The proposed legislation would also allow the transfer of ownership of the site to the Federal or State government at the end of the institutional control period. Staff notes it may be appropriate to await the passage of this legislation, and assurance of assumption of government ownership at the end of 100 years, before granting this exemption.

The Utah Radiation Control Board issued a Public Notice announcing a public comment period to commence on November 14, 2000 and to end on December 13, 2000. Due to the large number of requests to speak at a December 1, 2000 public meeting, two additional

Contact: Lloyd Bolling, STP  
415-2327

## **CHAIRMAN MESERVE'S COMMENTS ON COMSECY-01-0001**

I approve the proposed letter with the attached edits. The statement from the ACNW, in Section II.C. of the enclosure, which relates to the procedures that should attend private ownership, does not bear very directly to the issue on which Utah has sought comment and should be deleted.

I also approve most of Commissioner McGaffigan's edits. I would not include the new bullet under Section I.D of the enclosure and the associated edit to statement I.D. In my opinion, the insert does not appear to relate directly to the issue under discussion and it may be seen to undercut the thrust of the letter.

DRAFT

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

Dear Mr. Sinclair:

I am responding to your November 9, 2000 letter, which enclosed a petition filed by Envirocare of Utah, Inc. (Envirocare), for exemption to the governmental land ownership requirement in Utah regulations. You also enclosed a public notice on the process the Radiation Control Board will use in making the rule exemption determination. You indicate you are providing us an early copy of the petition and notice in the event we have comments or concerns with the exemption request. The original notice requested comments by December 13, 2000. We understand that the comment period was extended to January 12, 2001. We offer the following comments.

As an Agreement State, Utah has authority to license a Low-Level Waste (LLW) disposal facility in accordance with its regulations that are compatible with the Nuclear Regulatory Commission's (NRC) 10 CFR Part 61. This authority includes the ability to grant exemptions from specific requirements when public health and safety is adequately protected. As discussed in our April 12, 2000 letter, we believe the previous exemption rationale applicable to Class A waste and naturally occurring radioactive material needs to be thoroughly examined by Utah for applicability to Class B and C waste. The review should include a determination whether the bases for the previous exemption from the land ownership requirements continue to apply to the disposal of Class B and C waste. The supporting technical rationale for our recommendation, which is summarized below, is enclosed.

During the licensing phase, land ownership must be considered and addressed <sup>sub</sup> <sup>so as</sup> <sup>in the context</sup> on the merits of Part 61 regulations (or equivalent Agreement State regulations) to provide defense-in-depth to ensure long-term control and protection. This is provided through a combination of controls: siting, design, waste form, and institutional controls including government land ownership. Under our regulations (10 CFR 61.10 and 61.14), Federal or State land ownership is required at the time the license is issued.

Additional waste form and facility design requirements are placed on Class B and C waste and long-term institutional land control through government ownership takes on added importance. Specifically, Class B and C waste is significantly more hazardous than Class A waste and

ATTACHMENT 1

William J. Sinclair

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requires greater assurance that intruders will not be exposed to the radioactive material that the facility contains. Reliable long-term control and protection is an essential consideration in finding reasonable assurance that the public will be protected from the hazards associated with Class B and C waste. For this reason, NRC rules require an applicant to obtain either State or Federal ownership if this kind of waste is to be licensed for disposal. Also, as reflected in our Part 61 implementing guidance and history of other LLW disposal facilities, government land ownership has been an essential approach to address long-term institutional control. Government ownership would also be consistent with past practices associated with the following sites: Beatty, NV; Sheffield, IL; Maxey Flats, KY; West Valley, NY; and Barnwell, SC.

Although NRC staff has not reviewed this specific exemption request or rationale in detail, ~~in light of the above~~, in the absence of clear evidence that the level of long-term control and protection afforded by Envirocare's proposal is essentially similar to that which would be provided by government ownership, the staff does not believe that NRC would grant a similar exemption request.

We understand that there is proposed <sup>s/t</sup> legislation pending, which is designed to allow for transfer of ownership of the site to the Federal or State government at the end of the 100-year institutional control period. It may be appropriate to await the passage of this legislation, and assurance of assumption of government ownership at the end of 100 years, before granting this exemption.

As noted above, we have not performed an independent detailed de novo review of the exemption request. However, after you complete your review, if there are technical or policy issues where you have questions, or you need further assistance in interpretation of NRC regulations in Part 61 or implementing guidance, please let us know.

Sincerely,

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

Enclosure:  
As stated

## II. On the need to increase public confidence

- A. In a Federal Register notice of August 3, 1994, NRC announced that it was considering amending its regulations to allow private ownership of LLW facilities sites as an alternative to the current requirement for Federal or State ownership. In SECY-95-152, the staff recommended that the Commission not proceed with a rulemaking to allow private land ownership of LLW disposal sites (a recommendation subsequently adopted by the Commission), based on the comments received. In that paper, the staff stated:

"This change [i.e., revising our rules to allow private ownership of LLW sites] could also generate significant public misunderstanding and unwarranted public concern about the potential rollback of other LLW disposal requirements. The Idaho National Engineering Laboratory's National Low-Level Waste Management Program summarized this issue, stating:

✓  
✓  
Y For over three decades the public has been led to believe that all LLW disposal sites would necessarily be owned and controlled by either a Federal or State government. This, we believe, has been an important factor in convincing many proponent groups and State and local LLW advisory groups that LLW can and will be disposed of in a safe manner. To now try and convince these groups that Federal or State ownership of LLW disposal sites is not required, may be difficult and generate a significant credibility problem. Y

- B. Although comments on the Advanced Notice of Proposed Rulemaking for private land ownership of LLW sites were mixed, members of the public were generally opposed to private ownership.
- C. In its letter to Chairman Selin on this topic, the ACNW stated the following regarding public confidence and private land ownership:

"We believe that the procedures used by the NRC that involve open meetings, public and other stakeholder participation, judicial review, and other factors give all interested parties ample opportunity to have their views transmitted and considered. We believe that the importance of transferring accountability for the protection function to a private entity with a likely modest life compared to the hazard life of the waste requires procedures comparable to those used by the NRC. The NRC should ensure that privatization of ownership of LLW disposal sites involves procedures that are at least as open and accessible to stakeholders as those procedures managed according to the policies and regulations of the NRC."

- D. The State of Utah has extended the comment period for the requested exemption from Envirocare from the government land ownership provisions and scheduled two more public meetings in the month of January because of the interest of the public in this action.