

REQUEST REPLY BY 7/9/01



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

COMSECY-01-0001

January 2, 2001

*Commissioner Merrifield
approves the letter and
enclosure as modified by
the other Commissioners,
subject to the attached
edits.*

MEMORANDUM TO:

Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
✓ Commissioner Merrifield

*Margaret Doane
for*

FROM:

William D. Travers
Executive Director For Operations

William Travers
Jeffery S. Merrifield
1/11/01

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

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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 ^{equivalent} ~~similar~~ to that which would be provided by government ownership, the staff does not believe that NRC would grant a similar exemption request. X

We understand that there is proposed 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

public were served in the long term. Although the government could have oversight of a privately held site, "ownership" of the site by a government would provide greater assurance that persons would not use the site or the land in inappropriate ways that would cause radiation exposures.

D. Insert (see bottom of page)

E.P. Institutional controls, and their lack of reliability in the long term, have received significant attention in the last several years. For example:

- The June 2000 National Academy of Sciences' report, "Long-Term Institutional Management of U.S. Department of Energy Legacy Waste Sites," states that "...there is no convincing evidence that institutional controls and other stewardship measures are reliable over the long-term." Any steps that might lessen the effectiveness of these controls would exacerbate this situation.
- A 1998 report entitled, "Long-Term Stewardship and the Nuclear Weapons Complex: The Challenge Ahead," by the Center for Risk Management, Resources for the Future, stated, "Another, and perhaps more effective, form of institutional control available for federal facilities [more effective than DOE implementing mechanisms that inform any renters or purchasers of DOE land and facilities of the hazards involved] is continued federal government ownership and control. The federal government can restrict the use of land, surface water, and groundwater on land it owns and controls."
- In its February 6, 1995, letter to Chairman Selin, the ACNW expressed the following views regarding private ownership of LLW sites:

"The Advisory Committee on Nuclear Waste (ACNW) has concluded that there are no fundamental reasons why private ownership of low-level waste (LLW) disposal sites should be prohibited but finds that several related issues require deliberate and cautious action by the Commission. The first concerns the assurance of the protection of the health and safety of the public and of the environment (protection function). We recognize that the extent to which assurance of adequacy of the protection function is obtained may be strongly influenced by Agreement State laws and the extent to which the NRC exercises surveillance of the quality of the Agreement State activities. During the recent Commission policy discussions of adequacy and compatibility, the topic of provisions for private ownership of waste disposal sites was not included. We believe that the NRC needs to include explicit statements for pertinent requirements under the heading of adequacy and compatibility if the Commission proceeds with generic approval of private ownership of waste sites. In addition, the NRC should require effective and timely transfer of ownership to another responsible and capable entity, such as the State, when any changes in the private ownership provision for waste sites, including dissolution of the corporate entity, are effected. The measure of adequacy and compatibility of Agreement State operations should include effective and frequent monitoring and evaluation of private entities that are responsible for waste sites."

D. In the context of reviewing assurance for financing and oversight of long-term stewardship, [Insert EXM'S Insert for COMSECY-01-0001]