No. 14,580

WASTE CONTROL SPECIALISTS, LLC,	§	IN THE DISTRICT COURT
	§	
	§	OF ANDREWS COUNTY, TEXAS
Plaintiff,	§	
	§	
v.	§	
	§	
ENVIROCARE OF TEXAS, INC.,	§	
ENVIROCARE OF UTAH, INC.,	§	
KHOSROW B. SEMNANI,	§	
CHARLES A. JUDD,	§	
FRANK C. THORLEY,	§	
GEORGE W. HELLSTROM,	§	
BILLY W. CLAYTON, and	§	
NANCY M. MOLLEDA,	§	109th JUDICIAL DISTRICT
	§	
Defendants.	§	**JURY TRIAL REQUESTED**

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the Plaintiff WASTE CONTROL SPECIALISTS, LLC (hereinafter referred to as "WCS") and complains of the Defendants Envirocare of Texas, Inc., Envirocare of Utah, Inc. ("Envirocare"), Khosrow B. Semnani, Charles A. Judd, Frank C. Thorley, George W. Hellstrom, Billy W. Clayton, and Nancy M. Molleda in this Original Petition as follows:

8/29

I. PARTIES

1. Plaintiff WCS is a Delaware limited liability company qualified to do business, and is doing business, in the State of Texas as Waste Control Specialists, LLC with its principal place of operation in Andrews County, Texas.

2. Defendant Envirocare of Texas, Inc. is a Texas corporation with its principal place of business in Andrews County, Texas, and may be served with process and a copy of this petition by serving its registered agent, Thomas M. Goff, at 25 West Beauregard, San Angelo, Texas, 76903.

3. Defendant Envirocare of Utah, Inc. is a Utah corporation with its principal places of business in Tooele County and Salt Lake County, Utah, and may be served with process and a copy of this petition by serving its registered agent, Khosrow B. Semnani, at 46 West Broadway, Suite 240, Salt Lake City, Utah, 84101.

4. Defendant Khosrow B. Semnani is the President and sole owner of Envirocare of Utah, Inc., and the President and majority owner of Envirocare of Texas, Inc., and he may be served with process and a copy of this petition either at his residence at 4455 So. Covecrest Drive, Salt Lake City, Utah, 84124, or at his business address at 46 West Broadway, Suite 240, Salt Lake City, Utah, 84101.

5. Defendant Charles A. Judd is the Executive Vice President of Envirocare of Utah, Inc. and the Executive Vice President and minority owner of Envirocare of Texas, Inc., and he may be served with process and a copy of this petition either at

his residence at 10855 Country Creek Drive, South Jordan, Utah, 84095, or at his business address at 46 West Broadway, Suite 240, Salt Lake City, Utah, 84101.

6. Defendant Frank C. Thorley is the Regulatory Affairs Manager of Envirocare of Utah, Inc. and Envirocare of Texas, Inc., and he may be served with process and a copy of this petition at his business address at 46 West Broadway, Suite 240, Salt Lake City, Utah, 84101.

7. Defendant George W. Hellstrom is a Project Manager for Zhagrus Environmental, Inc. (another company wholly owned by Mr. Semnani), but assigned by Mr. Semnani to work on behalf of Envirocare of Utah Inc. and/or Envirocare of Texas, Inc. in its Andrews County, Texas business office, and he may be served with process and a copy of this petition either at his residence at 604 Northwest 15th Street, Andrews, Texas, 79714, or at his business address at 309 South Main Street, Andrews, Texas, 79714.

8. Defendant Billy W. Clayton is a lobbyist working as Capital Consultants, a d/b/a of Springlake Farms, Inc., and he may be served with process and a copy of this petition either at his residence at 1122 Colorado, Suite 1305, Austin, Texas, 78701, or at his business address at 1122 Colorado, Suite 307, Austin, Texas, 78701.

9. Defendant Nancy M. Molleda is a lobbyist and at all times relevant to this Petition worked as an independent contractor for Capital Consultants, and she may be served with process and a copy of this petition at her business address at 1122 Colorado, Suite 307, Austin, Texas, 78701.

II. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action. The claims in issue exceed the minimum jurisdictional limits of this Court.

11. Venue in this Court is proper under Sections 15.002(1), (2) and (3), and Section 15.005 of the Texas Practices and Remedies Code.

III. BACKGROUND

12. WCS is engaged in the business of storing, treating, processing and disposing of hazardous and toxic wastes, and has been preparing to engage in similar activities involving low-level radioactive and mixed wastes at its facility in Andrews County, Texas, located 30 miles west of the town of Andrews, Texas at the New Mexico border.

A. History of WCS' Involvement in Andrews County

13. WCS was established in 1987 (and converted to an LLC in 1995) by Mr. Kenneth N. Bigham, a native Texan with longstanding experience in the hazardous waste business. Mr. Bigham's previous hazardous waste operations in the Houston area had earned him the U.S. Environmental Protection Agency's Environmental Excellence Award in 1991. Mr. Bigham has at all times been WCS' President and Chief Executive Officer.

14. In 1989, Mr. Bigham began a search for a new waste operation well-suited for the disposal of hazardous and toxic wastes. Mr. Bigham and his technical consultants sought a location that was geologically, hydrologically, and otherwise

technically superior for such purposes, and one where local community leaders were both sophisticated in their knowledge of local geological conditions and supportive of a properly constructed hazardous and toxic waste operation. One of the areas that appeared attractive to Mr. Bigham was a location 30 miles west of the town of Andrews, Texas in Andrews County.

15. Mr. Bigham met with local community leaders in Andrews and learned that the community had long sought to diversify its oil-based economy with businesses that could capitalize on the barrenness and local land resources west of the community. Mr. Bigham also learned that, among other things, Andrews County had unsuccessfully sought to become the location for the federal government's high-level nuclear waste repository, for the Pentagon's MX nuclear missile test base site, for the U.S. Department of Energy's Superconducting Supercollider site, and for the State of Texas' low-level radioactive waste interstate compact site. The local community leaders with whom Mr. Bigham met encouraged him to pursue development of a hazardous waste site west of Andrews.

16. In 1992, based on superior geological conditions west of Andrews and the local community support evidenced by his contacts with community leaders, Mr. Bigham concluded his search and purchased for WCS 16,072 acres of land 30 miles west of Andrews (referred to as the "Andrews County facility"). Within that tract, WCS dedicated 1,338 acres for the storage, treatment, and disposal of hazardous and toxic wastes. The remainder of the property was slated for development, through

joint ventures and teaming arrangements with other entities, of hazardous and toxic waste research and technology commercialization facilities -- ancillary businesses anticipated by WCS to maximize the usefulness of the facility and bring desirable jobs to the Andrews community. To date, such arrangements have been executed with Texas A&M University, IEM Sealand, Gulf Coast Hazardous Substance Research Center, and Battelle Memorial Institute, the latter a prominent multi-billion-dollar national research organization.

17. WCS has spent a total of more than $40 million to date in developing the Andrews County facility.

B. <u>WCS' Hazardous and Toxic Waste Permits</u>

18. After completing extensive additional studies of and borings at the site to verify its suitability, in March 1993, WCS submitted to the Texas Natural Resource Conservation Commission ("TNRCC") a comprehensive application (containing approximately 3000 pages) for a Texas permit to store, treat, and dispose of hazardous wastes. In May 1993, WCS submitted a similar application to the U.S. Environmental Protection Agency ("EPA") for a federal permit to store, treat, and dispose of toxic wastes.

19. In August 1994, TNRCC granted WCS the requested Texas permit. In December 1994, EPA granted WCS the requested federal permit. Both permits were obtained in record time for a new commercial hazardous and toxic waste disposal facility -- 17 months and 19 months, respectively. Construction was commenced, and

in January 1997 WCS declared its Andrews County facility open for storage, treatment, and disposal of hazardous and toxic wastes. The first such wastes were brought to the site in February 1997.

C. WCS' Expansion Into Low-Level Radioactive Wastes

20. WCS had originally planned not to expand its waste operation to encompass the storage, treatment, and disposal of low-level radioactive wastes. However, with the open support of local community leaders who had previously sought to promote development in Andrews County of a radioactive waste disposal site, WCS began technical, environmental, and legal studies of possible opportunities relating to storage, treatment, and disposal of low-level radioactive wastes.

21. WCS determined immediately that Texas law precludes issuance by the state of a license to any private entity for the disposal of low-level radioactive wastes from commercial sources such as nuclear power plants, hospitals, and private research facilities. WCS also determined that only the Texas Low-Level Radioactive Waste Authority, a public agency, is presently specifically authorized by Texas law to dispose of such material. However, WCS made the determination that Texas law does allow issuance of a state permit for the storage and treatment of commercial low-level radioactive wastes, as opposed to their disposal. Accordingly, WCS made obtaining such a permit one of its key business development goals. In 1995, WCS commenced additional studies of its Andrews County facility and began preparing an application

for a storage and treatment permit to be submitted to the cognizant regulatory agency, the Texas Department of Health ("TDH").

22. Another opportunity explored by WCS concerned disposal of the federal government's "mixed wastes," which consist of non-commercial low-level radioactive wastes that are also contaminated with hazardous substances. "Mixed wastes" were produced by the U.S. Department of Energy ("DOE") in large quantities at several sites across America in connection with that agency's research, development, and production of nuclear weapons for the Pentagon during the Cold War with the former Soviet Union. The Department of Energy has determined that significant quantities of mixed wastes (and other radioactive wastes) will need to be disposed of in connection with a multi-hundred-billion dollar cleanup of the nation's nuclear weapons complex currently underway, and that a significant quantity of such material will need to be disposed of at locations other than where it currently resides, i.e., "off-site."

23. WCS determined that DOE's "mixed wastes" may not be received by a private waste site for disposal unless disposal authorizations are first obtained for both the low-level radioactive components and the hazardous components of such wastes. However, because WCS had already received its permit for hazardous waste disposal, the company would need simply to obtain authorization for disposal of low-level radioactive wastes in order to also dispose of DOE's "mixed wastes." WCS made the determination that Texas does not have legal jurisdiction over DOE's federally-owned, non-commercial low-level radioactive wastes and that, consequently, their disposal at

the Andrews County facility is not precluded by or regulated under Texas law, so long as DOE maintains contractual authority over the wastes. Accordingly, WCS made obtaining authorization from DOE for disposal of such wastes another key business development goal.

D. Government Authorizations Sought by WCS

24. To fulfill its twin business development goals of (1) obtaining authorization to dispose of the Department of Energy's low-level radioactive and mixed wastes, and (2) obtaining a permit to store and treat all types of low-level radioactive wastes, WCS needed three things, each of which involved obtaining authorizations from the cognizant government agencies.

25. First, from the Texas Natural Resource Conservation Commission ("TNRCC"), WCS needed an amendment to its hazardous waste permit so that the permit would not preclude the receipt of radioactive materials at the Andrews County facility. WCS filed a request for such an amendment with TNRCC in February 1996.

26. Second, from the Texas Department of Health ("TDH"), WCS needed a permit to store and treat low-level radioactive wastes at the Andrews County facility. WCS filed a 500-page permit application with TDH in March 1996.

27. Third, and most significant from a business development perspective, WCS needed authorization from the U.S. Department of Energy ("DOE") to be allowed to compete to receive for disposal DOE's low-level radioactive and mixed

wastes. WCS began discussions with senior DOE officials in this regard in the spring of 1996.

E. WCS' Discussions with the U.S. Department of Energy

28. In its initial discussions with DOE in the spring of 1996, WCS proposed that DOE could self-regulate disposal of DOE's low-level radioactive and mixed wastes at the Andrews County facility, or could delegate that function by means of a contract between DOE and an appropriate oversight body. The oversight body would perform a comprehensive technical review of the Andrews County facility for DOE.

29. WCS suggested to DOE that the most suitable entity for such oversight would be the TNRCC, since TNRCC is the only Texas agency that possesses experience in licensing and regulating commercial low-level radioactive waste disposal in Texas. Moreover, WCS believed that TNRCC would provide an appropriate level of regulatory involvement and policy expertise so as to demonstrate state support for the federally-authorized project. WCS also pointed out that TNRCC was already regulating the Andrews County facility by virtue of WCS' hazardous waste permit, and thus, unnecessary redundancy of oversight would be avoided.

30. WCS proposed that, in any DOE authorization scenario, the company would still be required to compete for DOE waste disposal services through normal competitive procurement processes, i.e., waste would come to the authorized Andrews County facility only if WCS prevailed over its competition in a competitive bidding

situation. Furthermore, WCS proposed to reimburse the federal government for all oversight costs, including those conducted by TNRCC under contract to DOE.

31. In discussions with WCS in the spring and early summer of 1996, DOE senior officials and attorneys stated their strong desire to create competition in the low-level radioactive waste disposal industry and to lower American taxpayers' cost for the government's waste disposal services. They stated that, although a detailed review would be necessary, they were favorably disposed to the WCS plan provided that such plan involved competitive procurement and was acceptable to TNRCC and to the federal Nuclear Regulatory Commission ("NRC"), which has primary legal authority over the State of Texas' regulation of most commercial radioactive substances within the state.

32. In the spring and early summer of 1996, WCS commenced discussions with senior policy makers and attorneys of the TNRCC along similar lines as those engaged in with DOE. WCS also visited with senior attorneys of NRC to discuss the plan. Neither agency reacted unfavorably to WCS' plan in these initial discussions.

33. In furtherance of WCS' plan, DOE initiated joint weekly telephone conferences with attorneys from TNRCC, NRC and DOE, in which the WCS plan was analyzed and discussed. When, after several weeks, all government attorneys concurred as to the basic legality (though not the ultimate scope) of the WCS plan, DOE proposed in early July 1996 to invite WCS to participate in the joint discussions. DOE and TNRCC attorneys informed WCS that the plan had evolved to where the

parties believed it would be legally feasible for DOE to develop and execute a Memorandum of Agreement with TNRCC by which TNRCC would, under contract to DOE, act as DOE's agent to review and assess WCS' Andrews County facility. DOE would pay TNRCC for the cost of such review and oversight, with DOE's cost ultimately being reimbursed by WCS.

34. In early August 1996, DOE's Ohio Field Office, in furtherance of its cleanup plan for radioactively contaminated soils and other materials at the federal government's Fernald (Ohio) nuclear weapons-related production facility, released a draft Request for Proposals ("RFP") for waste sites to bid on disposal services for DOE-owned mixed and low-level radioactive wastes from the Fernald site, valued in the range of up to $351 million. A final RFP was released in early September 1996. In reliance on WCS' proposed DOE authorization plan, and in an effort to spur competition for waste disposal services, DOE's Fernald office allowed WCS to submit a "contingent bid" response to the RFP, requiring WCS to have secured its disposal authorization within 27 months following any award of a disposal services contract from Fernald. WCS submitted its response to the RFP on September 20, 1996.

IV. FACTUAL ALLEGATIONS

A. Summary of Envirocare's Plan to Derail WCS

35. Unbeknownst to WCS, during the Spring of 1996, Envirocare conceived and implemented a plan to destroy WCS' ability to compete in the low-level radioactive and mixed waste businesses. The plan had several parts, including the

following: (1) using its monopoly and monopoly power in the low-level radioactive and mixed waste disposal markets to prevent or impede WCS from obtaining government authorizations; (2) engaging in improper communications with government officials in violation of Texas lobbying regulations; (3) using unwitting state legislators as a vehicle to attack WCS by drafting letters for the legislators to sign and send to the federal government, without disclosing that the letters were prepared by Envirocare; (4) communicating defamatory and false information about WCS and its project to Texas and federal government officials, business officials, and to the media; and (5) creating a sham disposal operation in Andrews County.

36. These and other acts constitute the basis for WCS' causes of action. The conduct complained of herein is consistent with prior illegal and tortious conduct taken by Envirocare against other potential competitors. Indeed, Envirocare has a common business practice of repeatedly acting to destroy potential competition through illegal and/or tortious means. That common business practice will be further proof of the fact that Envirocare acted in an illegal and tortious manner against WCS.

B. Envirocare's Monopoly and Market Dominance

37. Presently, and at all times relevant to this dispute, defendant Envirocare of Utah, Inc. owns and operates in Tooele County, Utah, the only mixed waste disposal site in the United States that is not owned by and operated for the federal government. The company possesses numerous federal and state licenses, and certain

exemptions from particular state and federal licensing requirements, for the disposal of a variety of hazardous and radioactive wastes.

38. To obtain authorization from the State of Utah to dispose of radioactive wastes, Envirocare secured an exemption from Utah state regulatory requirements stipulating that the disposal of such wastes must be conducted on public land. This exemption was granted to Envirocare by Utah regulatory official Larry F. Anderson, a man who, Envirocare has admitted, was secretly being paid by Envirocare's owner Khosrow Semnani at the time the exemption was granted.

39. Envirocare's Tooele County site is the only disposal facility in the nation for commercial mixed waste. It is also the only private disposal facility in the nation for DOE mixed waste. For the past several years, Envirocare has in fact received for disposal in Utah more than 90 percent of all the mixed wastes that DOE has authorized for disposal off-site. By all relevant definitions, Envirocare has a "monopoly" and "monopoly power" in the private-sector mixed waste disposal market in the United States.

40. Envirocare's Tooele County site is also one of only three privately-operated sites nationwide that are currently authorized in any manner to dispose of low-level radioactive wastes received from elsewhere. Envirocare's site, however, is the only such site that is also privately-owned. Envirocare has a "monopoly" and "monopoly power" in the private sector low-level radioactive waste disposal market in the United States.

41. Envirocare officials knew that if WCS were successful in obtaining the government authorizations it was seeking, WCS would become the only private-sector competitor of Envirocare in the mixed-waste disposal business. Likewise, WCS would become one of only three privately-operated competitors of Envirocare in the low-level radioactive waste disposal business, and the only such competitor whose site for low-level radioactive wastes is also privately-owned. Envirocare officials knew that WCS was seeking authorizations to dispose of a broader range of radioactive waste categories than Envirocare itself possesses, and that WCS therefore had the potential to become at least as profitable in the radioactive waste markets as Envirocare currently is and has been projected to be.

42. To maintain Envirocare's monopoly in the private-sector low-level radioactive and mixed waste disposal markets, representatives and employees of Envirocare regularly monitor activities in the industry, including the emergence of potential new competitors, and use their monopoly power to take actions designed to preclude or impede such potential competitors from entering those markets. To date, no such potential competitor opposed by Envirocare has succeeded in opening a disposal facility to compete against Envirocare in any radioactive waste disposal markets.

43. One such potential competitor, Nuclear Fuel Services, Inc. ("NFS"), has alleged in a pending lawsuit against Envirocare of Utah, Inc. and Khosrow Semnani that, among other things, Mr. Semnani paid bribes and/or kickbacks to a key Utah

regulatory official, Larry F. Anderson, so as to enhance Envirocare's position in the radioactive waste disposal marketplace and prevent the entry of NFS as a competitor. Mr. Semnani has admitted to paying the Utah official approximately $600,000 in cash, gold coins, and real estate while this official had lead regulatory oversight over Envirocare's radioactive waste disposal facility in Utah as well as lead regulatory authority over the prospective permitting of NFS.

C. Envirocare's Attack Against WCS

44. During the spring of 1996, defendants Envirocare of Utah, Inc., Mr. Semnani, Mr. Judd, and Mr. Thorley became aware that WCS was seeking federal and state government authorizations that would, individually and/or in concert, establish WCS as a competitor of Envirocare. At or about this time, they intensified their individual and collective efforts to monitor and, eventually, exercised their monopoly power to impede WCS' attempts to secure such authorizations from TNRCC, TDH, and DOE.

45. On or about April 18, 1996, Envirocare engaged the services of defendant Billy W. Clayton, a Texas-based lobbyist who is the former Speaker of the House of the Texas legislature. With Envirocare's authorization, Mr. Clayton engaged the supplemental lobbying services of defendant Nancy M. Molleda, also a Texas-based lobbyist, who was instructed to work at Mr. Clayton's and/or Envirocare's direction.

46. On May 23, 1996, at Mr. Thorley's direction, Mr. Clayton filed a letter with TDH stating his company's (Capital Consultants') formal opposition to WCS' pending application for a license to store and treat low-level radioactive waste. In the letter, Mr. Clayton failed to inform TDH that the filing was made on behalf of Envirocare. In addition, Mr. Clayton misled TDH by stating in the letter that he was representing more than one client when in fact he was representing only Envirocare.

47. Over the course of the next several months, defendants Semnani, Judd, Thorley, Clayton, and Molleda conspired to develop and implement, and did so develop and implement, strategies calculated to preclude or impede WCS from securing the government authorizations it was seeking and from entering the low-level radioactive and mixed waste disposal markets. These strategies involved the development and dissemination to key Texas and federal government and/or business officials and the media of: (1) false or misleading information concerning the technical and geological adequacy of the WCS site so as to raise "fatal flaw" issues concerning the site's safety; (2) false or misleading information concerning the legality of WCS' proposed plan for securing government authorizations for waste disposal services; (3) false or misleading information concerning the integrity of the company and its principals so as to disparage WCS in the government and business communities; (4) false or misleading information calculated to incite fears among government officials and the regional populace that the State of Texas would become an indiscriminate "dumping ground" for radioactive waste if WCS' authorizations

were granted, thereby prompting the withdrawal of government support for the project; and (5) false or misleading information concerning Envirocare's or the individual defendants' respective motives for bringing their "concerns" about WCS to government officials, disguising the fact that their actions were motivated by Envirocare's anti-competitive objectives.

48. To the extent any of the defendants were or became aware that information they had provided to government officials concerning WCS or the Andrews County facility was false or misleading, they willfully failed to correct such misinformation and have continued to fail to correct such misinformation to this date.

D. Envirocare Misinforms TNRCC of "Fatal Flaws" at the WCS Site

49. On July 10, 1996, Mr. Clayton and Ms. Molleda approached the TNRCC attorneys they knew had lead cognizance over WCS' proposed radioactive waste activities, including TNRCC's negotiations with DOE. Mr. Clayton falsely, or with reckless disregard of the facts, informed the TNRCC attorneys that the WCS site possessed several "fatal flaws" of a technical nature. These included, according to Mr. Clayton, the site's alleged dangerous close proximity to the vast Ogallala groundwater aquifer, the site's alleged inability to withstand the hypothetical 100-year flood, and the supposed proximity of nearby windmills indicating significant quantities of water were present at the site.

50. Mr. Clayton's assertions of "fatal flaws" at the WCS site had immediate adverse consequences on WCS' negotiations with DOE and TNRCC for a federal

radioactive waste disposal authorization. By mid-July 1996, WCS had been invited by DOE to participate in a telephone conference call with officials from DOE, NRC, and TNRCC, at which time DOE's joint approach with TNRCC for effectuation of WCS' authorization plan was to be discussed. Instead, when that call occurred on July 23, 1996, the TNRCC attorneys with whom Mr. Clayton had lobbied aired for the first time "their" concern that the WCS site possessed "fatal flaws" that might preclude acceptance of radioactive materials of any kind. No such concerns had ever been raised by TNRCC officials to WCS, or to DOE or NRC. The expression of such concerns came as a total surprise to DOE, to NRC, and to WCS, and caused DOE to place WCS' entire DOE authorization plan on hold and to question WCS' veracity in making representations to DOE about the technical superiority of, and Texas support for, its site.

51. From late July through mid-September 1996, WCS and its technical and legal representatives labored to address and counter allegations concerning the alleged "fatal flaws" associated with the WCS site. In the meantime, all discussions between WCS and DOE, and between TNRCC and DOE, were terminated. WCS proposed a detailed technical meeting between WCS technicians and attorneys and TNRCC technicians and attorneys. Until WCS protested, TNRCC's legal representatives had intended to invite Mr. Clayton to the meeting. At the meeting, which occurred on July 24, 1996, and in the several weeks thereafter, WCS addressed each of more than a dozen alleged technical flaws that were itemized by TNRCC technical staff, three of

which were characterized by TNRCC attorneys as "fatal." Upon actual review of the supposed technical flaws by TNRCC in consultation with WCS and its representatives, none proved either "fatal" or meritorious, or to be "flaws" at all.

E. Envirocare Enlists Legislators to Create an Illegal "Dumping Ground" Issue

52. Unbeknownst to WCS, within 10 days of the telephone conference call with DOE, NRC, and TNRCC on July 23, 1996, DOE senior officials received letters from Texas State Representatives Glen Maxey and Gary Elkins, each opposing in various significant ways the WCS project. Representative Elkins' letter voiced concerns about Texas becoming a "major dumping ground" and suggested, erroneously, that WCS' proposal was advanced "without regard to Texas law" or to "state sovereignty." The letter stated incorrectly that "Texas law is clear that a private company such as WCS cannot own and operate a radioactive waste disposal facility." The letter also stressed Rep. Elkins' intent to oppose DOE's effectuation of the WCS plan. Representative Maxey's letter likewise erroneously characterized WCS' plan as one advanced "without the need to obtain any approvals from Texas state agencies, or to comply with Texas state law."

53. Unbeknownst to DOE, the letters from Representatives Elkins and Maxey were each written, word-for-word, by Envirocare's Mr. Thorley in mid-July 1996. The signatures of the respective Texas representatives were secured by Mr. Clayton and/or Ms. Molleda. No mention was made in either of the letters of Envirocare. The letters caused DOE to question further the veracity of WCS'

representations that the WCS project was technically sound, consistent with all applicable laws and regulations, and enjoyed Texas political support.

54. On August 16, 1996, Mr. Semnani also wrote to DOE suggesting that WCS' proposal was contrary to Texas state law. Mr. Semnani's opinions in his letter regarding WCS' DOE proposal and the alleged need for state licenses were based solely on his review of newspaper articles. Mr. Semnani sent copies of his letter to key officials at the TNRCC.

55. In mid-September 1996, Envirocare representatives caused U.S. Senator Robert Bennett, who represents the State of Utah, to write a letter to DOE expressing concern that WCS was seeking to avoid state and federal laws.

F. **Envirocare Creates a Sham Disposal Operation in Andrews**

56. On September 25, 1996, WCS' DOE authorization plan was publicly discussed in an industry-wide radioactive waste forum held in Austin, Texas. This forum was attended by several Envirocare representatives, including Messrs. Judd, Thorley, and Clayton, and Ms. Molleda. The forum was also attended by several TNRCC representatives, including the TNRCC attorneys with cognizance over WCS and its DOE negotiations. At this forum, Envirocare once again questioned the legality of WCS' proposed DOE authorization plan. However, representatives from NRC, DOE, and WCS affirmed that WCS' proposal fit properly within the confines of both federal and state law.

57. Recognizing at or shortly prior to this time that WCS' DOE authorization plan was proceeding, Envirocare's representatives devised an augmented plan of attack against WCS. Immediately after the September 25, 1996 radioactive waste forum in Austin, Messrs. Judd and Thorley convened a meeting with Mr. Clayton and Ms. Molleda. At this meeting, and with the approval of Mr. Semnani, Messrs. Judd and Thorley made the decision to implement their augmented strategy and to create a sham Envirocare radioactive waste disposal operation in Andrews County, accompanied by a sham "license application" to the TNRCC. The intent of this strategy was to create the false public perception that Andrews County, and Texas generally, were about to become an indiscriminate "dumping ground" for the nation's low-level radioactive wastes, the hope being to scuttle support for the WCS project at TNRCC and elsewhere in governmental circles in Texas, and thereby to sabotage WCS' proposed DOE authorization plan.

58. In the ensuing 24-hour period, Mr. Judd prepared a sham radioactive waste disposal "license application" for a shell company named "Envirocare of Texas, Inc." The putative disposal site for this company was to be located in Andrews County, only five miles from the WCS site. The "license application" was submitted by Mr. Judd to TNRCC on September 26, 1996, and a press release was issued by Envirocare the same day falsely stating its intention to develop a substantial disposal site in Andrews County for DOE low-level and mixed radioactive wastes -- precisely

the type of wastes for which WCS was seeking authorization from DOE in collaboration with TNRCC.

59. At the time of filing of Envirocare's "license application," Envirocare knew that: (1) TNRCC had no legal authority whatsoever to issue such a license and, in fact, was specifically precluded by Texas statute from issuing such a license; (2) a hazardous waste permit would also be needed to accommodate DOE mixed wastes, and Envirocare did not possess, and had not applied for, such a permit; and (3) Envirocare's Utah facility had plenty of available capacity to continue to dispose of wastes from DOE.

60. When Mr. Judd filed his "license application," Envirocare of Texas, Inc. was not incorporated in Texas or registered to engage in business in Texas. It was not until November 12, 1996, some six weeks later, that Envirocare of Texas, Inc. filed its articles of incorporation in Texas.

61. When Mr. Judd filed his "license application," neither Envirocare of Texas, Inc. nor Envirocare of Utah, Inc. owned any land in Andrews County. However, the very next day, on September 27, 1996, a plot of land was purchased by Envirocare of Utah, Inc. in Andrews County through the services of an Oregon intermediary. Envirocare of Texas, Inc. owns no land in Texas or anywhere.

62. Envirocare did no studies or analyses of its supposed Andrews County disposal site prior to filing the "license application," and conducted no tests or borings at the site.

63. Mr. Judd's "license application" to TNRCC consisted of only 40 pages, a mere 4 pages of which were specific to the company's supposed Texas activities. The remainder of the application consisted of resumes and copies of documents, or merely tables of contents for documents, that were previously used by Envirocare in the licensing of its Utah-based activities -- even to the point that Mr. Judd forgot to remove references to types of radioactive wastes that the company was not proposing to dispose of at all in Texas. In contrast, previous license applications submitted to regulatory authorities by Envirocare have consisted of thousands of pages of information and analyses, and have taken months or years to prepare. Likewise, WCS' request to DOE for authorization for disposal of the same categories of DOE wastes is approximately 5000 pages in length and involved over a year of study and millions of dollars of expenditures -- all for a site that, in contrast to Envirocare's Texas site, already possesses hazardous and toxic waste permits.

64. Although Envirocare's putative disposal site in Andrews County is only five miles from the WCS' Andrews County facility, the Envirocare "license application" and press release make no mention of the site's proximity to the Ogallala groundwater aquifer, or to any of the other alleged technical flaws Envirocare had asserted to government officials were associated with the WCS site. No such concerns were ever raised by Envirocare's representatives to government officials in connection with its own site in Andrews County.

65. Prior to Envirocare filing its "license application," no Envirocare representative had ever met with a single member of the local community in Andrews County to discuss the proposed disposal site. Upon review of Envirocare's "license application" and discussion in Andrews with Envirocare representatives after the fact, the Andrews Industrial Foundation voted unanimously on October 11, 1996, to deny its support to the Envirocare project. The Andrews Industrial Foundation, part of the area's Chamber of Commerce, has led the community's efforts over more than two decades to attract new business enterprises to the area.

66. In early 1997, Mr. Semnani, Envirocare's chief executive officer and controlling owner, admitted that he had never been to Andrews County, had never travelled to Texas in the conduct of business, and could not name a person living in Andrews County other than his own employees.

67. Messrs. Semnani and Judd are the only listed officers and shareholders of Envirocare of Texas, Inc. Although they are the only registered incorporators for the corporation, in early 1997 Messrs. Judd and Semnani each denied knowing approximately when, or even in what state, the company was incorporated. Envirocare of Texas, Inc. does not own any buildings or any vehicles. It has no annual budget and receives no income.

68. Although in early October 1996 Envirocare established a small office in Andrews operated under the name of Envirocare of Texas, Inc., the company is funded solely by Envirocare of Utah, Inc. and has earned no revenues. Envirocare of

Texas, Inc. has employed less than a single full-time equivalent person, and no person is paid for company services out of Envirocare of Texas, Inc. funds.

69. Envirocare's "license application" was filed with the intent that it be rejected. Once it was in fact rejected, Envirocare made no further attempt whatsoever to secure authorization, in accordance with legally available means, for disposal of DOE low-level radioactive and mixed wastes. After Envirocare's "license application" was formally rejected by TNRCC, Envirocare's putative Texas disposal operation for DOE wastes was promptly abandoned by the company, though the company subsequently filed a permit application to the TDH for the treatment and storage of low-level radioactive wastes at Envirocare's Texas site.

70. Envirocare's TNRCC "license application" was in all important respects a "sham" petition, insofar as it deceptively and maliciously implored a state regulatory process for purposes of achieving an anti-competitive result. The sole purpose of Envirocare's petitioning behavior was to injure WCS and to impede, disparage, or prevent WCS from entering the markets for private-sector disposal of low-level radioactive and mixed wastes, over which Envirocare has a monopoly.

71. Shortly after filing its TNRCC "license application," Envirocare moved defendant George W. Hellstrom to Texas to staff the Envirocare of Texas, Inc. local office in Andrews as "Project Manager." This job was a part-time job for Mr. Hellstrom, who continued with his other duties for Envirocare and Mr. Semnani. Mr. Hellstrom knew or should have known that Envirocare's Andrews County disposal

operation was a sham, and that his job in Andrews was to serve as a local facade for such operation, and he did serve in such capacity.

72. Envirocare's filing with the TNRCC was followed in mid-October, 1996, by a barrage of individual meetings or communications between one or more of the defendants, including Mr. Hellstrom, and various representatives of the Texas Governor's Office, the Lieutenant Governor's Office, the Texas House of Representatives' Speakers' Office, the Texas Low-Level Radioactive Waste Authority, officers or members of the Texas House of Representatives, the office of the Chairman of TNRCC, key officials of TDH, Andrews community leaders and citizens, DOE's Ohio Field Office, and media representatives. In these various meetings and communications, Envirocare representatives conveyed false or misleading information concerning the nature of and motives behind Envirocare's TNRCC disposal application, and/or false or misleading information concerning the activities of WCS and/or its principals.

G. <u>Repercussions to WCS of Envirocare's Sham Application</u>

73. Envirocare's sham petition to the TNRCC had an immediate and devastating impact on WCS' attempts to secure authorization from DOE, in collaboration with TNRCC, to compete against Envirocare for disposal services for DOE low-level radioactive and mixed wastes.

74. Immediately following a meeting between Mr. Judd and TNRCC officials on October 15, 1996, TNRCC's Executive Director abruptly canceled his

scheduled trip to Washington to discuss implementation of the WCS proposal with DOE, citing reconsideration by TNRCC of the proposal. This further undermined support for WCS' proposal within DOE.

75. On October 18, 1996, TNRCC's Executive Director wrote a letter to Envirocare that, as Envirocare had expected, summarily rejected Envirocare's Texas "license application," explaining that the agency had no legal authority under Texas law to process it. However, as was desired by Envirocare and its representatives, the TNRCC letter went far beyond what was necessary for the agency to reject simply the Envirocare application; it broadly stated that TNRCC was precluded from participating not only in the licensing but also in any "oversight" of a disposal facility for DOE waste in Texas, whether through a contract or other agreement. Moreover, the letter stated that TNRCC "believes undertaking such activities under any scenario or arrangement would not be in the best interests of the State of Texas and its citizens and natural resources." This letter was issued by TNRCC's Executive Director notwithstanding a lack of concurrence by the agency's legal staff in all conclusions not specifically related to the agency's lack of legal jurisdiction to process Envirocare's "license application."

76. The TNRCC's letter rejecting Envirocare's "license application" was widely interpreted as also abruptly rejecting any possibility of cooperation by TNRCC with DOE or WCS in efforts to secure DOE authorization for WCS. For example, the *Dallas Morning News* ran an article citing the letter as, in the first instance, a blow

to WCS, rather than as a blow to Envirocare. TNRCC's letter also caused DOE to withdraw its support for the WCS project. Although WCS has submitted an alternative proposal that would utilize the services of an alternative oversight body, this proposal, in contrast to WCS' first proposal, has not been acted upon favorably by DOE.

77. Envirocare took no actions following TNRCC's rejection of its "license application" to cause TNRCC to reconsider the application, nor to change Texas laws applicable to the application. Though Envirocare was aware that DOE and NRC attorneys regarded WCS' original DOE proposal to be consistent with applicable law, Envirocare made no effort to secure DOE, as opposed to TNRCC, authorization for its supposed Andrews County disposal site.

78. Based on statements contained in the TNRCC letter to Envirocare of October 18, 1996, WCS was forced to cease its collaborative efforts with DOE to involve TNRCC in oversight of DOE low-level radioactive and mixed wastes at the WCS site.

H. Envirocare's Continued Assault on WCS

79. On November 22, 1996, at the request of Mr. Clayton, Rep. Chisum, Chairman of the Texas House of Representatives Committee on Environmental Regulation, wrote to TNRCC Chairman Barry McBee expressing concern that WCS' efforts to proceed with its Andrews County facility notwithstanding TNRCC's decision to avoid involvement in the project was contrary to law. This letter was drafted in

substantial part by Envirocare's Mr. Thorley, and was solicited through the lobbying services of Mr. Clayton and/or Ms. Molleda.

80. In November 1996, it became clear to WCS that its application at the TDH for permission to store and treat low-level radioactive waste was being stalled, due principally to TDH's insistence that WCS be able to demonstrate a "present disposal option" for any radioactive or mixed wastes being treated or stored on the WCS site in case WCS were to become insolvent or go out of business. For the mixed waste streams that would conceivably be stored or treated on site, the only such available "present disposal option" is that of Envirocare's disposal facility in Utah. Accordingly, in its permit application to TDH, WCS specified use of Envirocare's Utah facility in order to satisfy TDH's financial assurances requirements. However, unbeknownst to WCS, in a private meeting in June 1996 between Mr. Semnani and a key TDH official with oversight of WCS' TDH permit application, Mr. Semnani indicated that he had no obligation to receive WCS' waste in such circumstances, since WCS had no contract with Envirocare for waste disposal.

81. Mr. Semnani's assertion to TDH that Envirocare's doors were not open to WCS had the effect of delaying processing of WCS' permit application at TDH and amounted to an abuse of Envirocare's "essential facility" and monopoly power in the low-level radioactive and mixed waste disposal markets.

V. ADMISSIONS OF WRONGDOING

82. Envirocare and its representatives have already essentially admitted liability in many respects. For example, Mr. Clayton has already conceded that WCS' position on the lack of technical or fatal flaws at the WCS site is correct. Envirocare, despite the defamatory statements that the WCS site has fatal technical flaws, has now publicly admitted that Andrews County, Texas is the most suitable location in the nation for waste disposal. Envirocare's representatives have also admitted that various claims made about the WCS site and its alleged technical or fatal flaws were made without any basis in fact and were made recklessly without any effort to ascertain if the defamatory statements had any basis in fact.

83. Envirocare has also admitted that regulators at the Texas Department of Health have been told that Envirocare would not dispose of waste that WCS would process and store under a TDH permit. This constitutes an admission of a violation of Section 15.05(b) of the Texas Business and Commerce Code.

84. Despite various claims regarding Envirocare's site in Andrews County, the Defendants admit that no geological studies have been performed by Envirocare on that site, that a license from TNRCC to dispose of low-level radioactive waste on that site is not allowable under Texas law, and that no public support exists for Envirocare in Andrews County.

85. These and other admissions not only establish liability but also constitute proof that Envirocare has knowingly refused to correct the statements that it and the

other Defendants have made to government officials. As such, the failure to act on the part of the Defendants is wrongful and tortious behavior that continues to harm WCS.

VI. CAUSES OF ACTION

A. Violations of Texas Free Enterprise and Antitrust Act of 1983

86. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 85 above as if fully set forth herein. In addition, Plaintiff complains as follows.

87. Envirocare possesses a monopoly in the private-sector market for disposal of low-level radioactive wastes, and maintains monopoly power in such market.

88. Envirocare possesses a monopoly in the private-sector market for disposal of mixed wastes, and maintains monopoly power in such market.

89. The Defendants, and each of them, as complained of herein, acted to preclude or impede Plaintiff's efforts to secure government authorizations for storage, treatment, and/or disposal of low-level radioactive wastes and/or mixed wastes with the intent to maintain Envirocare's monopolies in the low-level radioactive and mixed waste disposal markets in violation of Section 15.05(b) of the Texas Business and Commerce Code.

90. Defendants' creation of a sham radioactive waste disposal operation in Andrews County, and its filing of a sham license application for such operation to the

TNRCC, were undertaken solely to impose expense and delay on, or to interfere with, the business activities of the Plaintiff and with the intent to maintain Envirocare's monopolies in the low-level radioactive and mixed waste disposal markets in violation of Section 15.05(b) of the Texas Business and Commerce Code.

91. As the only waste disposal site in the country that may receive and dispose of mixed wastes, Envirocare controls an "essential facility" for any entity that must dispose of mixed waste off-site.

92. To obtain its permit from TDH for the storage and treatment of low-level and mixed radioactive wastes, the Plaintiff must specify Envirocare's Utah disposal site as its present disposal option for mixed waste. The Plaintiff has no ability to practically or reasonably duplicate that essential facility.

93. By denying, or suggesting to TDH officials that Envirocare would deny, use of its essential facility for the disposal of mixed wastes stored at the Plaintiff's Andrews County facility, Envirocare and Mr. Semnani violated Section 15.05(b) of the Texas Business and Commerce Code.

94. As a direct and proximate result of all or any part of the conduct of the Defendants, and each of them, as complained of herein, the Plaintiff has sustained and incurred damages in an amount exceeding $500 million. These damages include, but are not limited to, loss of sales and lost profits reasonably within the contemplation of the Defendants, costs associated with delays in securing governmental authorizations, expenses incurred in mitigating or counteracting damages caused by the unlawful acts

of the Defendants, including additional legal expenses and expenses for the development and submittal of documents to governmental officials, as well as damage to the good name, goodwill and business reputation of WCS.

95. The unlawful conduct of Envirocare and its agents, and each of them, as complained of herein, was willful and flagrant, and therefore, pursuant to Section 15.21(a)(1) of the Texas Business and Commerce Code, the Plaintiff is entitled to threefold damages from the Defendants, jointly and severally.

96. As a result of the willful and flagrant conduct of the Defendants, and each of them, the Plaintiff is entitled to recover its reasonable attorneys' fees and costs pursuant to Section 15.21(a)(1) of the Texas Business and Commerce Code.

B. Libel and Slander

97. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 96 above as if fully set forth herein. In addition, Plaintiff complains as follows.

98. The Defendants, and each of them, publicized defamatory statements of fact in written documents provided to, and in oral communications with, key Texas and federal government officials, business officials, and to the media, concerning matters of significance and importance to Plaintiff's business and the proper conduct of Plaintiff's business.

99. The Defendants, and each of them, knew or recklessly disregarded information that would have demonstrated that such defamatory statements of fact

were false, untrue, and/or misleading, and have willfully and continually failed to correct such statements even after they were shown to be false, untrue, and/or misleading.

100. Such defamatory statements of fact were orally communicated and/or were provided in documents by the Defendants, and by each of them, to government officials, business leaders, and/or to the media for the malicious purpose of defaming Plaintiff, and tended to injure and did so injure Plaintiff's reputation, standing, prestige, good name, goodwill, honesty, and integrity in the waste disposal industry and in the business community in general, and within the specific governmental agencies responsible for authorizing Plaintiff to enter the markets for the treatment, storage, and/or disposal of low-level radioactive and mixed wastes.

101. As a direct and proximate result of the communication by the Defendants, and each of them, of the defamatory statements of fact, the Plaintiff has incurred and will continue to incur damages and lost profits in an amount to be proved at trial, but estimated at no less than $500 million dollars. The Plaintiff's lost profits are and were reasonably within the contemplation of the Defendants. The Plaintiff has also realized pecuniary loss in the form of specific lost sales to be proved at trial. In addition, the Plaintiff has incurred reasonable expenses necessary to counteract the effects of the defamatory statements in an amount to be proved at trial, and expenses associated with the development and submittal of additional documents to government officials in an amount to be proved at trial. The Plaintiff has also incurred the

additional legal costs and expenses associated with bringing an earlier proceeding against the Defendants in the form of Section 187 depositions in an amount to proved at trial, as well as the legal costs and expenses associated with this petition, which are still accruing.

C. **Business Disparagement**

102. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 101 above as if fully set forth herein. In addition, Plaintiff complains as follows.

103. The Defendants, and each of them, made false, untrue and/or misleading statements in oral communications with, and in written documents provided to, key Texas and federal government officials, and to business leaders and the media, concerning important aspects of the Plaintiff's business, which statements were calculated to cast aspersions on the Plaintiff and its principals, to interfere with the Plaintiff's relations with others, and to prevent government officials and business leaders from dealing with the Plaintiff.

104. As a direct and proximate result of the communication by the Defendants, and each of them, of such false, untrue, and/or misleading statements, key government officials and business leaders were in fact disparaged from dealing with the Plaintiff and, as a consequence, the Plaintiff was injured.

105. As a direct and proximate result of the disparagement of the Plaintiff's business by the Defendants, and by each of them, the Plaintiff has realized pecuniary

loss in the form of specific lost sales in an amount to be proved at trial, but estimated to be not less than $175 million dollars. In addition, the Plaintiff has incurred lost profits reasonably within the contemplation of the Defendants and reasonable expenses necessary to counteract the effects of the disparagement in the form of the performance of additional technical and legal analyses in an amount to be proved at trial, and expenses associated with the development and submittal of additional documents to government officials in an amount to be proved at trial. The Plaintiff has also incurred the additional legal costs and expenses associated with bringing an earlier proceeding against the Defendants in the form of Section 187 depositions in an amount to proved at trial, as well as the legal costs and expenses associated with this petition, which are still accruing.

D. Tortious Interference with Prospective Business Relations

106. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 105 above as if fully set forth herein. In addition, Plaintiff complains as follows.

107. The Defendants, and each of them, through the use of improper or illegal means, and by exercise of a superior position to that of the Plaintiff in the relevant marketplace, intentionally interfered with the Plaintiff's business relations with governmental agencies having authority to issue authorizations for the Plaintiff's entry into relevant markets for the storage, treatment, and/or disposal of low-level

radioactive and mixed wastes, and/or to provide the Plaintiff with government contracts of substantial value to the Plaintiff.

108. The Defendants' actions, and those of each of them, as complained of herein, were undertaken with the malicious intent to prevent the Plaintiff from securing government authorizations, and/or government contracts, and those actions were not undertaken in exercise of any individual or collective rights or privileges of the Defendants.

109. As a direct and proximate result of the tortious and malicious interference of the Defendants, and each of them, actual harm was suffered by the Plaintiff, in an amount to be proved and quantified at trial, in the form of lost or delayed government authorizations, and/or lost or delayed government contracts, as well as lost profits reasonably within the contemplation of the Defendants. In addition, the Plaintiff has incurred reasonable expenses necessary to counteract the effects of the tortious interference in the form of the performance of additional technical and legal analyses in an amount to be proved at trial, and expenses associated with the development and submittal of additional documents to government officials in an amount to be proved at trial. The Plaintiff has also incurred the additional legal costs and expenses associated with bringing an earlier proceeding against the Defendants in the form of Section 187 depositions in an amount to proved at trial, as well as the legal costs and expenses associated with this petition, which are still accruing.

VII. PRAYER FOR RELIEF

Based on the facts and law set forth herein, Plaintiff prays for relief as follows:

1. On the first cause of action, for an award of all damages sustained as a result of Defendants' conduct as alleged herein in an amount to be proved at trial but which is estimated at not less than $500 million dollars, which amount, pursuant to statute, should be trebled.

2. On the second cause of action, for an award of all damages sustained as a result of Defendants' conduct as alleged herein in an amount to be proved at trial, but which is estimated at not less than $500 million dollars.

3. On the third cause of action, for an award of all damages sustained as a result of Defendants' conduct as alleged herein in an amount to be proved at trial, but which is estimated at not less than $175 million dollars.

4. On the fourth cause of action, for an award of all damages sustained as a result of Defendants' conduct as alleged herein, in an amount to be proved and quantified at trial.

5. On the second, third, and fourth causes of action, for an award of punitive or exemplary damages in an amount sufficient to punish and deter Defendants, and to deter others from similar wrongful conduct.

6. On the first cause of action, for an award of the Plaintiff's reasonable attorneys' fees and costs.

7. On all causes of action, for pre-judgment and post-judgment interest at the highest legal rate.

8. For such other and further relief as this Court may deem appropriate under the circumstances.

Respectfully submitted,

Dan Sullivan
State Bar No. 19473000
119 N.W. Avenue A
Andrews, Texas 79714
(915) 523-4145 (telephone)
(915) 523-4496 (facsimile)

EGAN & ASSOCIATES, PC
Joseph R. Egan
John W. Lawrence
2300 N Street, N.W.,
Washington, D.C. 20037
(202) 663-9200 (telephone)
(202) 663-9066 (facsimile)

SMITH, MARTIN & MITCHELL, LLP
Frank W. Mitchell
State Bar No. 14209500
3700 Two Houston Center
Houston, Texas 77010
(713) 752-0212 (telephone)
(713) 659-2813 (facsimile)

SPIVEY, GRIGG, KELLY & KINSLEY, PC
Broadus A. Spivey
State Bar No. 18955000
48 East Avenue
Austin, Texas 78701
(512) 474-6061 (telephone)
(512) 474-1605 (facsimile)

Counsel for Plaintiff

May 2, 1997

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Plaintiff's Original Petition has been mailed by me via certified mail, return receipt requested, on this 2nd day of May, 1997, to the following defendants and their last known attorneys of record:

Mr. Thomas M. Goff
Registered Agent for
Envirocare of Texas, Inc.
25 West Beauregard
San Angelo, Texas 76903

Khosrow B. Semnani
Registered Agent for
Envirocare of Utah, Inc.
46 West Broadway, Suite 240
Salt Lake City, Utah 84101

Khosrow B. Semnani
President
Envirocare of Texas, Inc., and
Envirocare of Utah, Inc.
46 West Broadway, Suite 240
Salt Lake City, Utah 84101

Charles A. Judd
Executive Vice President
Envirocare of Texas, Inc., and
Envirocare of Utah, Inc.
46 West Broadway, Suite 240
Salt Lake City, Utah 84101

Frank C. Thorley
Regulatory Affairs Manager
Envirocare of Utah, Inc.
46 West Broadway, Suite 240
Salt Lake City, Utah 84101

George W. Hellstrom
Project Manager
Envirocare of Texas, Inc.
309 South Main Street
Andrews, Texas 79714

Billy W. Clayton
Capital Consultants
1122 Colorado, Suite 307
Austin, Texas 78701

Nancy M. Molleda
Capital Consultants
1122 Colorado, Suite 307
Austin, Texas 78701

Rick D. Davis, Jr.
Barry N. Beck
COTTON, BLEDSOE,
TIGHE & DAWSON
P.O. Box 2776
Midland, Texas 79702

Gary A. Weston
NIELSEN & SENIOR
60 East South Temple
Eagle Gate Plaza & Office Tower
Suite 1100
P.O. Box 11806
Salt Lake City, Utah 84147