



Utah!

Where ideas connect

Department of Environmental Quality
Division of Radiation Control

Michael O. Leavitt
Governor

Dianne R. Nielson, Ph.D.
Executive Director

William J. Sinclair
Director

168 North 1950 West
P.O. Box 144850
Salt Lake City, Utah 84114-4850
(801) 536-4250
(801) 533-4097 Fax
(801) 536-4414 T.D.D.
www.deq.utah.gov

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June 6, 2003

Paul Lohaus, Director
Office of State and Tribal Programs
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Lohaus:

The purpose of this correspondence is to affirm the position of the Nuclear Regulatory Commission (NRC) relating to financial mechanisms that are acceptable under 10 CFR 61.62(g) for facilities that dispose of low-level radioactive waste. 10 CFR 61.62(g) states:

"Financial surety arrangements generally acceptable to the Commission include: surety bonds, cash deposits, certificates of deposit, deposits of government securities, escrow accounts, *irrevocable letters or lines of credit* (emphasis added), trust funds, and combinations of the above or such other types of arrangements as may be approved by the Commission. . ."

Utah Radiation Control Rule R313-25-31(7) is essentially equivalent to the federal counterpart. Under NRC Procedure, SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and other Program Elements" dated February 6, 2001, 10 CFR 61.62 is assigned a compatibility category D/H&S. Under definitions of compatibility categories in SA-200, D/H&S are "program elements identified by H&S (Health and Safety) in the Comment column not required for purposes of compatibility, however they do have particular health and safety significance. The State should adopt the essential objectives of such program elements in order to maintain an adequate program. Attachment A provides germane information from SA-200 and copies of the appropriate state and federal rules.

As you may be aware, Envirocare of Utah Inc. currently uses irrevocable letters of credit as the acceptable financial assurance mechanism specified in state and federal rules. In a recent meeting of the Government Operations Interim Committee of the Utah Legislature, there was some question regarding the adequacy of an irrevocable letter of credit in the event of a bankruptcy situation. Although there are differing legal opinions regarding whether this is or is not an issue, the Interim Committee has requested that we contact you to assess any issues that

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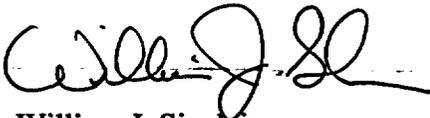
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the NRC would have if the Utah Radiation Control Rules were rewritten to eliminate the possibility of the use of irrevocable letters or lines of credit.

Since this is a D/H&S compatibility issue, we assume that it would be acceptable if the State decided to amend the current Utah Radiation Control Rules to eliminate the possibility of the use of irrevocable letters or lines of credit. By eliminating this possibility for Envirocare to use this financial mechanism to satisfy State rules, Envirocare then would have to use another generally acceptable mechanism specified in 10 CFR 61.62(g) [R313-25-31(7)] to meet the requirements.

We would appreciate a timely response to this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Sinclair". The signature is fluid and cursive, with a long horizontal stroke at the end.

William J. Sinclair
Director

Attachment

cc: Dianne R. Nielson, Ph.D., Executive Director, UDEQ
John Fellows, Utah Legislative Counsel
Fred Nelson, Utah Attorney General's Office

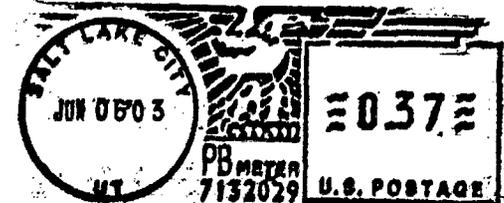


State of Utah

OFFICE OF THE EXECUTIVE DIRECTOR
DEPARTMENT OF ENVIRONMENTAL QUALITY

P.O. Box 144810
Salt Lake City, UT 84114-4810

RETURN SERVICE REQUESTED



Paul Lohaus, Director
Office of State and Tribal Programs
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

OSCID

20555+0001

