



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

DOCKETED
USNRC

September 14, 1998

'98 SEP 15 P3:23

OFFICE OF THE SECRETARY
RUC
ADJUDICATORY DIVISION

Dr. Thomas B. Cochran, Ph.D.
Director, Nuclear Program
Natural Resources Defense Council
1200 New York Ave., NW
Suite 400
Washington, DC 20005

Dear Dr. Cochran:

I am providing you with the Director's Decision that responds to your 10 CFR 2.206 Petition, filed on December 12, 1997, and supplemented on May 6, 1998.

I have completed my review of the issues raised in your Petition. For reasons explained in the attached Director's Decision, DD-98-09, dated September 14, 1998 (Enclosure 1), your requests have been denied. Although the U.S. Nuclear Regulatory Commission (NRC) had been concerned about the implications raised by the issues identified in your petition, investigations conducted by the NRC staff and the Federal Bureau of Investigation uncovered no evidence supporting the Natural Resources Defense Council's assertions.

As provided by 10 CFR 2.206(c), a copy of this decision will be filed with the Secretary of the Commission, for the Commission's review. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision, unless the Commission, on its own motion, institutes a review of the Decision within that time. In addition, a copy of the notice that is being filed for publication with the Office of the Federal Register is included as Enclosure 2, for your information.

Sincerely,

A handwritten signature in cursive script that reads "Carl J. Paperiello".

Carl J. Paperiello, Director
Office of Nuclear Material Safety
and Safeguards

Enclosures: As stated (2)

cc: W. Sinclair, Director, Division of
Radiation Control, Utah
C. Judd, President, Envirocare of Utah, Inc.

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Dr. Thomas B. Cochran, Ph.D.
 Director, Nuclear Program
 Natural Resources Defense Council
 1200 New York Ave., NW
 Suite 400
 Washington, DC 20005

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OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
 ADJUTANT GENERAL
 OFF

I have completed my review of the issues raised in your Petition. For reasons explained in the attached Director's Decision, DD-98-09, dated September 14, 1998 (Enclosure 1), your requests have been denied. Although the U.S. Nuclear Regulatory Commission (NRC) had been concerned about the implications raised by the issues identified in your petition, investigations conducted by the NRC staff and the Federal Bureau of Investigation uncovered no evidence supporting the Natural Resources Defense Council's assertions.

As provided by 10 CFR 2.206(c), a copy of this decision will be filed with the Secretary of the Commission, for the Commission's review. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision, unless the Commission, on its own motion, institutes a review of the Decision within that time. In addition, a copy of the notice that is being filed for publication with the Office of the Federal Register is also included as Enclosure 2, for your information.

Sincerely,
 [Signed by]
 Carl J. Paperiello, Director
 Office of Nuclear Material Safety
 and Safeguards

Enclosures: As stated (2)

cc: W. Sinclair, Director, Division of
 Radiation Control, Utah
 C. Judd, President, Envirocare of Utah, Inc.

DISTRIBUTION: G970863 (Ref. G970146, G970017, & G980293)

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* SEE PREVIOUS CONCURRENCE

CP/PROOFED/SEPTEMBER 2, 1998

OFC	URB*	URB*	TECH ED*	OI*	OE*	OGC*
NAME	HLeffevre/bg	JHolonich	EKraus	GCaputo	JLieberman	JGoldberg
DATE	08/31/98	08/31/98	08/31/98	09/1/98	08/31/98	08/31/98

OFC	OSP*	DWM*	NMSS*	DEDR	EDO
NAME	RBangart	JGreeves	CPaperiello	HThompson	LJCallan
DATE	08/31/98	09/1/98	09/4/98	09/10/98	09/1/98

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'98 SEP 15 P 3:24

OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
Carl J. Paperiello, Director

OFFICE OF
REGULATORY
ADMINISTRATION

In the Matter of)	
)	
ENVIROCARE OF UTAH, INC.)	Docket No. 40-8989
Salt Lake City, Utah)	License No. SUA-1559
)	
)	(10 CFR § 2.206)

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. INTRODUCTION

On December 12, 1997, and May 6, 1998, Dr. Thomas B. Cochran, Director of Nuclear Programs, Natural Resources Defense Council (NRDC), filed Petitions with the U.S. Nuclear Regulatory Commission (NRC) pursuant to Title 10 of the Code of Federal Regulations, Section 2.206 (10 CFR 2.206). In these Petitions, NRDC requested that NRC take action to immediately suspend all licenses held by Envirocare of Utah, Inc. (Envirocare). Specifically, NRDC requested that NRC take the following actions:

Petition of December 12, 1997

- (1) Conduct an immediate investigation of issues raised in the Petition and immediately suspend Envirocare's NRC license.
- (2) Conduct an investigation of possible criminal violations of section 223 of the Atomic Energy Act of 1954, as amended (the Act).
- (3) Immediately suspend Envirocare's license with the State of Utah, under section 274j(2) of the Act.

(4) Investigate the adequacy of the State of Utah agreement state program to protect whistleblowers.

(5) Contact each current and former Envirocare employee personally, on a confidential basis, to advise them of their rights to inform the NRC of unsafe practices and violations, to inform them of the protections available to them, and to ask them if they have any information which they wish to disclose, on a confidential basis or otherwise.

(6) Order a special independent review of Envirocare's relationships with its employees, along the lines of the review ordered by the NRC for the Millstone site.

NRDC asserts, as basis for the December 12, 1997, request, that Envirocare's employee-related practices and contractual provisions constitute a violation of 42 U.S.C. §5851 (Section 211 ("Employee Protection") of the Energy Reorganization Act of 1974 (ERA)) and the NRC's whistleblower protection regulations under Parts 19 and 40 of Title 10 of the Code of Federal Regulations (i.e., 10 CFR 19.16, 19.20, and 40.7). Specifically, NRDC asserts that current and former Envirocare employees, who have provided to governmental authorities information adverse to Envirocare's interests, fear for their lives and the lives of their families should their identities become known to Envirocare. NRDC also states that certain provisions in Envirocare's standard employment contract prevent its employees from disclosing to the NRC information concerning unsafe practices and violations under the NRC license and threaten them with severe financial penalties in the event of a disclosure. By letter dated January 16, 1998, I acknowledged receipt of NRDC's December 12, 1997, Petition.

Petition of May 6, 1998

(1) Suspend all licenses Envirocare has with the NRC.

(2) Request the State of Utah to suspend all licenses that Envirocare holds with the State of Utah under the purview of the Utah Division of Radiation Control.

(3) The license suspensions indicated in (1) and (2) above are to be enforced until such time as NRC and the State of Utah have completed the actions under (4) and (5) below.

(4) Undertake a program, in cooperation with the State of Utah and the Environmental Protection Agency (EPA), to contact each and every current and past employee on an individual basis and obtain a sworn statement from each, indicating: i) whether they were intimidated by the unlawful Envirocare Employee Agreement; ii) whether they withheld or altered any health, safety, or environmental information in any Envirocare report, or in any written or oral communication with any official of the State of Utah, EPA or NRC; and, iii) whether they failed to report any health, safety, or environmental information to appropriate authorities; and in cases where there was information withheld, altered, or not reported, identify fully what the information was.

(5) Investigate the extent to which such information, revealed under (4) above, has affected existing and past licenses held by Envirocare issued by NRC or the State of Utah, under the purview of the Utah Division of Radiation Control.

In support of NRDC's request in this Petition, NRDC asserted that NRC now has before it new information that it did not have at the time that NRDC's earlier Petition, dated January 8, 1997, requesting enforcement action against Envirocare that was denied by NRC on February 5, 1997. NRDC's Petition dated January 8, 1997, was addressed in DD-97-02, issued February 5, 1997. NRDC stated that this new information consists of NRC's letter of December 8, 1997, to Charles A. Judd, indicating that Envirocare's employee protection policies were in violation of NRC's whistleblower protection regulations.

NRC's letter dated June 9, 1998, acknowledged receipt of the May 6, 1998, Petition and indicated that, because of the similarity of requested actions with those of the December 12, 1997, Petition, the May 6, 1998, Petition would be considered as a supplement to the December 12, 1997, Petition.

As was indicated in the NRC's acknowledgment letters dated January 16, 1998, and June 9, 1998, NRDC's requests for action concerning Envirocare's license with the State of Utah and the Utah Agreement State Programs concern matters that do not fall within the scope of matters ordinarily considered under 10 CFR 2.206. As indicated in the June 9, 1998, acknowledgment letter, these matters were addressed by Richard L. Bangart, Director of the Office of State Programs, in his February 18, 1998, letter to NRDC. Accordingly, this Director's Decision will only address the NRDC requests for action that relate to the license to receive, store, and dispose of certain byproduct material issued to Envirocare by NRC,

pursuant to Section 11e.(2) of the Act.¹ Allegations of possible criminal violations of section 223 of the Act have been referred to the Federal Bureau of Investigation (FBI). Although matters of federal criminal violation clearly fall under the jurisdiction of the FBI, the NRC staff has, in the course of its investigations into NRC-related matters, reviewed and examined documents bearing on these matters. NRC's evaluation of this information, which has been acquired either directly, or examined under condition of confidentiality, will be discussed briefly, to the extent possible, in Section III of this Decision.

II. BACKGROUND

Envirocare operates a radioactive waste disposal facility in Clive, Utah, 128 kilometers (80 miles) west of Salt Lake City in western Tooele County. Radioactive wastes are disposed of by modified shallow land burial techniques. Envirocare submitted its license application to the NRC in November 1989 for commercial disposal of byproduct material, as defined in Section 11e.(2) of the Act (11e.(2) byproduct material). On November 19, 1993, NRC completed its licensing review and issued Envirocare an NRC license to receive, store, and dispose of uranium and thorium byproduct material. Envirocare began receiving 11e.(2) byproduct material in September 1994 and has been in continuous operation since.

To ensure that the facility is operated safely and in compliance with NRC requirements, the staff conducts routine, announced inspections of the site. Areas examined during the

¹ In its Petition of May 6, 1998, NRDC requests the NRC to suspend all licenses Envirocare has with NRC. The only license that has been issued to Envirocare by the NRC is the NRC license to receive, store, and dispose of uranium and thorium byproduct material, issued November 19, 1993, pursuant to Section 11e.(2) of the Act.

inspections include management organization and controls, operations review, radiation protection, radioactive waste management, transportation, construction work, groundwater activities, and environmental monitoring. The NRC has conducted ten inspections of the Envirocare facilities between April 14, 1994, and June 25, 1998, in conjunction with the 11e.(2) byproduct material license and has cited the licensee for ten violations. None of the violations are related to concerns raised in the NRDC Petitions. All violations were categorized in accordance with the guidance in NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy) at a Severity Level IV². The most recent inspection, conducted June 22-25, 1998, resulted in the issuance of two citations. The first violation relates to failure to follow procedures; the second violation results from failure to perform confirmatory ground- water sampling. The results of the June 1998 inspection are documented in Inspection Report 40-8989/98-01 which was issued on July 24, 1998.

In addition to the routine, announced site inspections described above, the staff has, since January 1997, conducted many investigations, interviews, and telephone conversations with numerous individuals into aspects of Envirocare's operations, including matters relating to concerns raised in NRDC's 10 CFR 2.206 Petitions. The staff's investigations included interviews with former Envirocare employees.

² As explained in Section IV. of the Enforcement Policy, violations are normally categorized in terms of four levels of severity (Severity Level I being the most significant). A Severity Level IV violation is defined as a violation of more than minor concern which, if left uncorrected, could lead to a more serious concern.

III. DISCUSSION

NRDC asserts two bases in support of its requested actions: (1) Envirocare's employment contract non-disclosure covenant threatens the financial well being of employees who want to provide information regarding Envirocare operations, and (2) current and former Envirocare employees fear for their lives and lives of their families. NRDC states that it is apparent from sworn affidavits, compiled in the State of Utah Legislative Auditor General Investigation of Envirocare, that current and former employees of Envirocare fear for their lives and for the lives of their families. NRDC further states that Envirocare has required employees to enter into an employment agreement with onerous provisions that impose significant monetary penalties for disclosing safety-related information. NRDC, furthermore, asserts that such threatening practices constitute a violation of Section 211 of the ERA, 10 CFR §§ 19.16, 19.20, and 40.7. The NRC has evaluated these matters and found no basis to take the requested actions.

As an initial matter, NRDC requests that the NRC immediately suspend Envirocare's NRC licenses. The NRC's Enforcement Policy describes the various enforcement sanctions available to the Commission once it determines that a violation of its requirements has occurred. In accordance with the guidance of Section VI.C.2 of the Enforcement Policy, Suspension Orders may be used: (a) to remove a threat to the public health and safety, common defense and security, or the environment; (b) to stop facility construction when (i) further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component or (ii) the licensee's quality assurance program implementation is not adequate to provide confidence that construction activities are being

properly carried out; (c) when the licensee has not responded adequately to other enforcement action; (d) when the licensee interferes with the conduct of an inspection or investigation; or (e) for any reason not mentioned above for which license revocation is legally authorized.

Furthermore, in accordance with the guidance in Section VI.C.3. of the Enforcement Policy, Revocation Orders may be used: (a) when a licensee is unable or unwilling to comply with NRC requirements; (b) when a licensee refuses to correct a violation; (c) when a licensee does not respond to a Notice of Violation where a response was required; d) when a licensee refuses to pay an application fee under the Commission's regulations; or (e) for any other reason for which revocation is authorized under Section 186 of the Act (e.g., any condition that would warrant refusal of a license on an original application). Pursuant to 10 CFR 2.202(a)(5), the Commission may issue an immediately effective order to modify, suspend, or revoke a license if the Commission finds that the public health, safety, or interest so requires or that the violation or conduct causing the violation was willful.

In this case the NRDC has not provided the NRC with substantiated information supporting the existence of circumstances that would provide a basis for immediate suspension of the Envirocare license. Furthermore, neither the investigations conducted by the NRC nor by the FBI have revealed evidence providing a basis for suspension of the license.

Assertion 1

Envirocare's Employment Contract Non-disclosure Covenant Threatens Financial Well Being of Employees Who Want to Provide Information Regarding Envirocare Operations

Prior to the filing of NRDC's Petition dated December 12, 1997, the NRC reviewed Envirocare's Whistleblower Protection Policy; its Environmental Compliance Program; and its Employment Agreement. By letter dated December 8, 1997 (the letter referenced by NRDC in support of its May 6, 1998, Petition), the NRC notified Envirocare that its written company policies were inconsistent with Section 211 of the ERA, 42 U.S.C. §5851, and 10 CFR 40.7. More specifically, the NRC staff found that while Envirocare's Whistleblower Protection Policy and Environmental Compliance Program encouraged employees to report suspected legal violations of state or federal environmental laws and violations of the ERA and the Act, they did not incorporate all of the protections afforded in Section 211 of the ERA and 10 CFR 40.7. Further, the policies established an incorrect standard with respect to the nature of safety hazards that would trigger employees' reports to appropriate governmental authorities. In addition, the NRC notified Envirocare that its Employment Agreement could be interpreted to preclude the disclosure to the NRC or another government agency of data in support of a nuclear safety concern.

As a result of its review, the NRC requested Envirocare to modify its Whistleblower Protection Policy, Environmental Compliance Program, and Employment Agreement to ensure compliance with NRC requirements. By correspondence dated January 21, 1998, Envirocare responded to the NRC's December 8, 1997, letter. Among other things, Envirocare amended its Whistleblower Protection Policy, Environmental Compliance Program, and Employment Agreement in an effort to bring those documents into compliance with NRC requirements. NRC reviewed Envirocare's modifications to its corporate policies and employment agreement and concluded that they satisfied NRC requirements. By letter dated February 9, 1998, the NRC

staff informed Envirocare that it found the modifications acceptable.

Moreover, by letter dated December 31, 1997, the NRC required Envirocare to respond to the allegations raised in the December 12, 1997, Petition. That letter requested Envirocare to indicate whether it intended to enforce its Employment Agreement against current and former employees who have engaged, or do engage, in protected activities cognizable under Section 211 of the ERA and 10 CFR 40.7. It also requested that Envirocare indicate what actions it would take to notify current and former employees that the Employment Agreement will not be applied to protected activities. In its January 21, 1998, response, Envirocare asserted that it has not in the past, nor does it intend to claim or assert in the future, that any current or former employee who has engaged in protected activities is in violation of Envirocare's Employment Agreement. Additionally, Envirocare has made reasonable efforts to notify by letter all current and former employees that the Employment Agreement in effect at the time of their employment does not prevent them from raising nuclear safety concerns or otherwise discourage them from engaging in protected activities.

With respect to asserted violations by Envirocare of Section 211 of the ERA and 10 CFR 40.7 against its employees, the NRC has investigated these and other Envirocare-related matters extensively over a period of approximately 19 months (January 1997 through August 1998). These investigations included: (1) conversations and interviews (both in person and telephonically), (2) acquisition of and evaluation of many documents acquired from several sources during the course of the investigation, and (3) frequent contact with the FBI. The conversations and interviews were conducted with many individuals, including many present and former employees of Envirocare as well as present employees of the State of Utah.

Additionally, NRC's investigations included interviews and meetings with individuals including representatives of the organizations (law firms and the State of Utah, Office of Legislative Research and General Counsel) identified in NRDC's letter of January 21, 1998.³ It was suggested by NRDC that the individuals identified in its January 21, 1998, letter may possess information relating to the asserted violations of NRC's whistleblower regulations by Envirocare. The FBI, although focusing on alleged criminal activities (bribery and extortion) associated with Envirocare's then-President Khosrow Semnani, did, in the course of these investigations, also acquire information bearing on the above NRC-related matters. This information was investigated by the NRC and revealed no evidence that any current or former Envirocare employee has received threats of financial harm or has felt threatened by Envirocare's employment non-disclosure covenant.

Assertion 2

Current and Former Envirocare Employees Fear For Their Lives and Lives of Their Families

Allegations of possible criminal violations of the Act had been referred to the FBI as indicated in my letter of January 16, 1998. Nonetheless, in the course of its various investigations, the NRC staff acquired information bearing on the matter of death threats. The scope of NRC's investigations conducted for Assertion 2 was identical to that conducted for

³ In its acknowledgment letter dated January 16, 1998, the NRC requested the NRDC to provide the NRC the names of "unidentified individuals (and attendant background information) referenced in the Petition," indicating that confidentiality consistent with the NRC allegation program would be provided. The NRDC's letter of January 21, 1998, responded to that request.

Assertion 1 and is described above.

In addition, the Utah Attorney General's Office had initiated a criminal investigation in early 1997 into the matter of the relationship (alleged bribery/extortion) between Mr. Larry F. Anderson, former Director of the Utah Division of Radiation Control and Mr. Khosrow B. Semnani, former President of Envirocare. This alleged bribery/extortion investigation was later assumed by the FBI. The FBI's investigation into this matter has resulted in a July 22, 1998, filing of a Cooperation Agreement between Mr. Semnani and the U.S. Attorney's Office. No information surfaced during the FBI investigation indicating that death threats had been made against either present or former employees by Mr. Semnani or other officers of Envirocare.

Based on the investigations of Envirocare that have been conducted by the NRC and the FBI, there has been no evidence uncovered indicating that any current or former Envirocare employee: (1) has received threats of financial harm or has felt threatened by Envirocare's employment contract non-disclosure covenant, or (2) fears for his/her life or the lives of his/her family as a result of threats received, either directly or indirectly, from any officer of Envirocare.

IV. CONCLUSION

On the basis of the above assessment, I have concluded that no substantial health and safety issues have been raised regarding Envirocare that would require initiation of the action requested by the NRDC. As explained above, the NRDC has not provided any specific information that would provide a basis, for suspension of the Envirocare license. Furthermore, neither the investigations conducted independently by the NRC nor by the FBI have revealed the

existence of circumstances that would warrant immediate suspension of the Envirocare license.

Accordingly, the Petitioner's request for action is denied.

Dated at Rockville, Maryland this 14 day of September 1998.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in cursive script, reading "Carl J. Paperiello".

Carl J. Paperiello, Director
Office of Nuclear Material Safety
and Safeguards



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

September 14, 1998

MEMORANDUM TO: David L. Meyer, Chief
Rules and Directives Branch
Division of Administrative Services
Office of Administration, T 6D-39

FROM: Joseph J. Holonich, Chief
Uranium Recovery Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

SUBJECT: FEDERAL REGISTER NOTICE OF DENIAL OF PETITION FOR
DIRECTOR'S DECISION UNDER 10 CFR 2.206

Attached please find one signed original, five copies, and an electronic version on a floppy diskette of the Federal Register Notice identified below for your transmittal to the Office of the Federal Register for publication.

- Notice of Finding of No Significant Impact _____
- Notice of Availability of Environmental Report _____

- Notice of Opportunity for Hearing _____

- Notice of Availability of License Amendment Application for: _____

- Notice of Availability of Draft EIS for: _____

- Notice of Availability of Final EIS for: _____

- Notice of Issuance of Facility Operating License or Amendment_____
- Notice of Preparation of Environmental Assessment_____
- Environmental Assessment_____
- Other: Notice of Denial of Petition for Director's Decision Under 10 CFR 2.206.
Byproduct Material License SMC-1559, Envirocare of Utah, Inc.

Docket No. 40-8989
License No. SUA-1559

Attachments: As stated (7)

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UNITED STATES NUCLEAR REGULATORY COMMISSION

'98 SEP 15 P3:24

DOCKET NO. 40-8989

LICENSE NO. SUA-1559

ENVIROCARE OF UTAH, INC.

OFFICE OF SECURITY
RULEMAKING AND
ADJUDICATIONS STAFF

ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has taken action with regard to a Petition for action under 10 CFR 2.206 received from Dr. Thomas B. Cochran, Director of Nuclear Programs, on behalf of the Petitioner, Natural Resources Defense Council (NRDC), dated December 12, 1997, as supplemented May 6, 1998, with regard to Envirocare of Utah, Inc. (Envirocare). Specifically, by letter dated December 12, 1997, the Petitioner requested that NRC (1) conduct an immediate investigation of issues raised in the Petition and immediately suspend Envirocare's NRC license; (2) conduct an investigation of possible criminal violations of section 223 of the Atomic Energy Act of 1954, as amended (the Act); (3) immediately suspend Envirocare's license with the State of Utah, under section 274j(2) of the Act; (4) investigate the adequacy of the State of Utah agreement state program to protect whistleblowers; (5) contact each current and former Envirocare employee personally, on a confidential basis, to advise them of their rights to inform the NRC of unsafe practices and violations, to inform them of the protections available to them, and to ask them if they have any information which they wish to disclose, on a confidential basis or otherwise; and (6) order a special independent review of Envirocare's relationships with its employees, along the lines of the review ordered by the NRC for the Millstone site.

Petitioner asserts, as a basis for the December 12, 1997, request, that Envirocare's employee-related practices and contractual provisions constitute a violation of 42 U.S.C. §5851

(Section 211 ("Employee Protection") of the Energy Reorganization Act of 1974(ERA)) and the NRC's whistleblower protection regulations under Parts 19 and 40 of Title 10 of the Code of Federal Regulations (i.e., 10 CFR 19.16, 19.20, and 40.7). Specifically, Petitioner states that current and former Envirocare employees who have provided to governmental authorities information adverse to Envirocare's interests fear for their lives and the lives of their families should their identities become known to Envirocare. Petitioner also states that certain provisions in Envirocare's standard employment contract prevent its employees from disclosing to the NRC information concerning unsafe practices and violations under the NRC license and threaten them with severe financial penalties in the event of a disclosure. By letter dated January 16, 1998, NRC acknowledged receipt of NRDC's December 12, 1997, Petition.

With respect to the May 6, 1998, Supplement, NRDC requested that (1) NRC suspend all licenses Envirocare has with the NRC; (2) NRC request the State of Utah to suspend all licenses that Envirocare holds with the State of Utah under the purview of the Utah Division of Radiation Control; (3) the license suspensions indicated in (1) and (2) above are to be enforced until such time as NRC and the State of Utah have completed the actions under (4) and (5) below; (4) NRC undertake a program, in cooperation with the State of Utah and the Environmental Protection Agency (EPA), to contact each and every current and past employee on an individual basis and obtain a sworn statement from each, indicating: i) whether they were intimidated by the unlawful Envirocare Employee Agreement; ii) whether they withheld or altered any health, safety, or environmental information in any Envirocare report, or in any written or oral communication with any official of the State of Utah, EPA or NRC; and, iii) whether they failed to report any health, safety, or environmental information to appropriate authorities; and in cases where there was information withheld, altered, or not reported, identify fully what the information was; (5) NRC

investigate the extent to which such information, revealed under (4) above, has affected existing and past licenses held by Envirocare issued by the NRC or the State of Utah, under the purview of the Utah Division of Radiation Control.

In support of Petitioner's May 6, 1998, request, NRDC asserted that NRC now has before it new information that it did not have at the time that NRDC's earlier Petition (dated January 8, 1997) requesting enforcement action against Envirocare was denied by NRC on February 5, 1997. NRDC's Petition dated January 8, 1997, was addressed in Director's Decision (DD-97-02) which was issued on February 5, 1997. Petitioner further stated that this new information consists of NRC's letter of December 8, 1997, to Charles A. Judd, indicating that Envirocare's employee protection policies were in violation of NRC's Whistleblower Protection Regulations.

By letter dated June 9, 1998, NRC acknowledged receipt of the May 6, 1998, Petition and indicated that, because of the similarity of requested actions with those of the December 12, 1997, Petition that the May 6, 1998, Petition is being considered as a Supplement to the December 12, 1997, Petition.

The Director, Office of Nuclear Material Safety and Safeguards, has determined that the requests should be denied for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD-98-09), the complete text of which follows this notice and which is available for public inspection in the Commission's Public Document Room, the Gelman Building, located at 2120 L Street, N.W., Washington D.C. 20555 and is also available on the NRC Electronic Bulletin Board at (800) 952-9676.

A copy of this Decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, this Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 14 day of September 1998.

FOR THE NUCLEAR REGULATORY COMMISSION



Carl J. Paperiello, Director
Office of Nuclear Material Safety
and Safeguards

Natural Resources
Defense Council



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December 12, 1997

OFFICE OF SECRETARY
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ADJUDICATIONS STAFF

Mr. Joseph K. Callan
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

**Petition Pursuant to 10 CFR 2.206 for NRC to Take Appropriate
Enforcement Action to Avert Death Threats and Other Retaliatory
Actions Against Employees of Envirocare of Utah, Inc.**

Dear Mr. Callan:

It is, thankfully, not very often that the Nuclear Regulatory Commission ("NRC") must be asked to step in to protect the lives of whistleblowers and their families. This is such a case.

On January 8, 1997, the Natural Resources Defense Council ("NRDC") filed a petition under 10 CFR § 2.206 requesting enforcement action against Envirocare of Utah, Inc. ("Envirocare"), which is both an NRC licensee and a Utah agreement state licensee. The petition was based on Envirocare's involvement in a corrupt scheme to facilitate agreement state licensing of its Clive, Utah radioactive waste disposal facility.

Specifically, Envirocare admitted, in publicly available court documents, to complicity in a corrupt scheme of apparent bribery or extortion in connection with receiving its approvals to dispose of radioactive wastes under NRC's Agreement State Program. This scheme involved the very highest management levels of both the licensee and the agreement state licensing agency: Khosrow Semnani, the owner and former CEO of Envirocare, and Larry Anderson, the former Director of the Utah Bureau of Radiation Control. As owner and CEO, Semnani paid some \$600,000, including gold coins and a ski resort condo, to Anderson in connection with Anderson's personal facilitation and approval of Envirocare licenses, amendments, exemptions, and other NRC agreement state approvals for disposal of radioactive waste. Even before the \$600,000 scheme became known, the Utah Office of Legislative Auditor General concluded that Anderson's staff, who did not appear to have been involved in the scheme, felt that their role had changed from regulator to facilitator of Envirocare.

The NRC staff reaction to this corrupt scheme, developed in response to a 10 CFR § 2.206 petition filed by NRDC on January 8, 1997, was to cite previous staff reviews which failed to find any serious problem, and to adopt the view that apparent bribery or extortion at the highest management levels is of no immediate safety concern.

NRDC disagrees strongly with this decision. However, it is not the purpose of this new 10 CFR § 2.206 petition to request staff reconsideration. Instead, this petition addresses a separate and grave problem confronting any current or former employee of Envirocare. First, it is apparent from sworn court documents that those who have provided information to governmental authorities adverse to Envirocare's interests fear for their very lives and for the lives of their families. These filings, supported by sworn affidavits, relate to information compiled in a State of Utah Legislative Auditor General investigation of Envirocare and the state's licensing of Envirocare's Clive, Utah disposal facility. These filings include the statement that "[m]any of the requested [state] documents contain the identities of individuals who feared that public disclosure would lead to the *loss of safety or their lives or that of their families* should their identities become known to an officer of Envirocare." [Emphasis added.] [See Exhibit No. 1]

Second, Envirocare has and still is threatening to destroy the financial well-being of any employee who provides any information about operations under its NRC or state license, including radiological safety information, to the NRC or other proper authorities. Envirocare's standard employment contract with its employees [see Exhibit No. 2], which essentially all employees are required to sign, provides that an "[e]mployee shall not at any time, while employed by the Company or thereafter, except as expressly authorized by the Company in writing, disclose to any person or entity or use in any manner whatsoever any confidential or proprietary information of the Company." The operative term "confidential or proprietary information" is then defined broadly to include not only the usual pricing information and other trade secrets (as might be expected), but also "all other information involving or reasonably related to the business or prospective business of the Company," including "operation methods or techniques," "research data," "test results," "environmental monitoring information," and all information specifically (and ominously) referred to as "radiologies." Thus, information about unsafe practices and violations under the NRC license is expressly included in the non-disclosure agreement.

To further strike terror into the hearts (and pocketbooks) of any employee even *thinking* of contacting NRC, the employment contract provides further that "[i]n the event of such a breach [of the foregoing non-disclosure 'covenant'], the Company shall also be entitled to recover from Employee the sum of \$30,000.00 for each breach as liquidated damages," which each employee is required to agree "is a reasonable estimation of the actual damages which the Company would suffer as a result of such breach." This \$30,000.00 is probably as much as, if not more than, most Envirocare employees earn in an entire year, and is clearly calculated to threaten financial ruin to any employee considering disclosure. Moreover, lest it be thought that this extremely onerous non-disclosure provision is just some "boilerplate" not actually intended to be enforced vigorously, Envirocare actually used the provision to threaten a former Envirocare employee during a recent deposition. [See Exhibit No. 3, Tr. pp. 13-17]

We believe these threatening practices and contractual provisions by Envirocare constitute the most outrageous violations of 42 U.S.C. § 5851 and NRC's whistleblower protection regulations (see 10 CFR §§ 19.16, 19.20, and 40.7) ever seen in the nuclear industry.

More than the usual NRC "chilling effects" slap-on-the-wrist letter to Envirocare is required. We request an immediate NRC investigation and suspension of Envirocare's NRC license. Given the obvious willfulness and outrageous nature of the practices and provisions, we also believe that an investigation of criminal violations of section 223 of the Atomic Energy Act is required.

Utah must have known of these Envirocare practices and provisions for some time. In addition, we know that some previous allegations about Envirocare were referred by NRC to the Utah Bureau of Radiation Control, where they were promptly dispositioned under the direction of the very same Larry Anderson who was receiving payments, at the same time, from Envirocare CEO Semnani. It is, therefore, no wonder that one individual, who originally contacted NRC about safety problems at Envirocare and was referred by NRC to the Utah Bureau, refused to provide information to the Utah Bureau, stating that "he doesn't believe he would receive a proper hearing in Utah because Mr. Semnani is 'too powerful.'" [See Exhibit No. 4] This observation appears to have been all too correct.

Accordingly, because of Utah's apparent knowledge of the problem and its lack of effective action to date, and because of the grave and immediate safety problem posed by the practices and provisions described above, we request that NRC order the immediate suspension of the Envirocare state license under section 274j(2) of the Atomic Energy Act, in addition to the enforcement action requested above. At a minimum, NRC must investigate the adequacy of the Utah agreement state program to protect whistleblowers. Under section 274 of the Atomic Energy Act, an agreement state program must be adequate to protect public health and safety and be compatible with NRC's program. This requires adoption and vigorous enforcement of state whistleblower protection provisions which are at least as stringent as those of NRC. Based on the above, the Utah program does not even come close.

Finally, given the unique and outrageous nature of the violations, and their apparent breadth, we believe that special additional remedies are warranted. We request that NRC contact each current and former Envirocare employee personally, on a confidential basis, to advise them of their rights to inform NRC of unsafe practices and violations, to inform them of the protections available to them, and to ask them if they have any information which they wish to disclose, on a confidential basis or otherwise. Moreover, we believe that NRC should order a special independent review of Envirocare's relationships with its employees, along the lines of the one ordered by NRC for the Millstone site.

NRC denied our last 10 CFR § 2.206 petition on Envirocare in part on the ground that NRC staff's paper review of the NRC and Utah Bureau files revealed no specific safety problems. This shows an alarming naiveté regarding how official corruption will necessarily reveal itself in an agency's official files. We now know of another reason why NRC's limited review and inspection efforts to date regarding Envirocare have been so unproductive. Clearly, people are

afraid, even deathly afraid, to talk.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. B. Cochran", with a long horizontal line extending to the right.

Thomas B. Cochran
Director, Nuclear Program

cc: Dr. Carl A. Paperiello, (Director, NMSS, U.S. Nuclear Regulatory Commission)
The Hon. Federico Peña (Secretary, U.S. Department of Energy)
The Hon. John C. Layton (Inspector General, U.S. Department of Energy)
The Hon. Hubert T. Bell (Inspector General, U.S. Nuclear Regulatory Commission)

Did Envirocare Make Death Threats?

by Christopher Smart

As many as six people interviewed as part of a state audit of the Utah Division of Radiation Control said if they disclosed information relating to dump mogul Khosrow Semnani, their lives could be in danger.

According to a memorandum accompanied by a motion to quash evidence filed in 3rd District Court, a number of people, whose identities remain undisclosed, said that they feared for their lives and the lives of family members from "an officer of Envirocare."

Envirocare is the low-level radiation dump that was owned and operated by Khosrow Semnani. Semnani still owns the operation but recently stepped down from his position as company executive after serious questions were raised following a recent scandal.

Larry F. Anderson, former director of the Division of Radiation Control, filed suit last year against Semnani, claiming the dump operator hadn't paid him for services rendered. Semnani then went public, alleging that Anderson extorted \$600,000 from him.

Either way, it was clear to onlookers that Envirocare was not properly regulated during Anderson's tenure at Radiation Control. Anderson retired in 1993.

Long before the suit was filed, insiders felt the relationship between Anderson and Semnani was too cozy. The rumors persisted until the Legislative Auditor General's Office launched an audit at the request of the Legislature.

During the research that went into that audit report, a number of people, perhaps as many as six, told auditors that "an officer of Envirocare" who remains unidentified in court papers, had threatened their lives and the safety of their families if they disclosed information.

The document came to light in a civil suit filed by the Maryland-based Nuclear Fuel Services, Inc. in Utah's 3rd District Court. Nuclear Fuel alleges that Semnani and Anderson kept the Maryland company out of the Utah market.

As part of the suit, attorneys for Nuclear Fuel requested documents from the audit. But the Legislative General Council denied access to six documents:

"The Legislative Auditor General's motion to quash should be granted because the disclosure of these records will jeopardize the lives and safety of the individuals who disclosed information ...," the memorandum states.

"Several of the individuals who spoke with members of the Legislative Auditor General's team did so on the condition that their identities be protected. They claimed to fear physical, violent action against them or their families should the individuals about whom they spoke become aware of their cooperation with the auditor's

request "

Tim Osterstock, state audit supervisor, said the Utah Attorney General's Office was approached with information concerning the threats. The AG's Office instructed him to take the information to the Office of the U.S. Attorney for Utah.

No one in the U.S. Attorneys Office could be reached for comment as of press time. But Reed Richards, chief deputy Utah attorney general, said he had no knowledge of the threats. In March, Attorney General Jan Graham passed the investigation into the relationship between Semnani and Anderson off to federal investigators.

FILED
SALT LAKE COUNTY
JUN 20 2011 2:59
CLERK OF COURT

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Attorneys for Legislative Auditor General

IN THE THIRD DISTRICT COURT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

NUCLEAR FUEL SERVICES, INC., a)
Maryland corporation,)
)
Plaintiff,)
)
v.)
)
KHOSROW B. SEMNANI, an individual)
residing in the State of Utah, LARRY F.)
ANDERSON, an individual residing in)
the State of Nevada, ENVIRONMENTAL CARE OF)
UTAH, INC., a Utah corporation, and)
LAVICKA, INC., a Utah corporation,)
)
Defendants.)

**LEGISLATIVE AUDITOR
GENERAL'S MOTION TO QUASH**

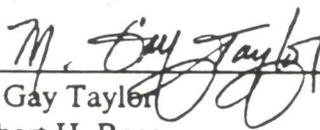
**Civil No. 970901677CV
Judge Sandra Peuler**

Pursuant to Utah R. Civ. P. 45(c)(2)(C) and 45(c)(3)(A) and (B), the Legislative Auditor General objects to plaintiff's Motion to Compel Inspection and Copying of Records from the Legislative Auditor General and moves to quash plaintiff's Motion to Compel. The requested documents are protected documents and cannot be released except pursuant to a court order that

has balanced the competing interests under Utah Code Ann. § 63-2-202(7) (1994). These competing interests favor protection of records that identify confidential informants, that contain trade secrets or protected commercial information, that would jeopardize the lives or safety of the individuals who disclosed the information to the Legislative Auditor General, and that will interfere with the Legislative Auditor General's ability to obtain information from confidential sources to conduct future audits. These reasons favoring protection of the records are set forth in the accompanying memorandum in support of the Motion to Quash.

Dated this 2nd day of June, 1997.

Respectfully submitted,



M. Gay Taylor
Robert H. Rees
Attorneys for Legislative Auditor General

MAILING CERTIFICATE

I hereby certify that on the 2nd day of June, 1997, a true and correct copy of the foregoing Legislative Auditor's Motion to Quash was sent by first class mail, postage prepaid, to the following:

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Attorneys for Legislative Auditor General

IN THE THIRD DISTRICT COURT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

NUCLEAR FUEL SERVICES, INC., a)
Maryland corporation,)
)
Plaintiff,)
)
v.)
)
KHOSROW B. SEMNANI, an individual)
residing in the State of Utah, LARRY F.)
ANDERSON, an individual residing in)
the State of Nevada, ENVIROCARE OF)
UTAH, INC., a Utah corporation,)
LAVICKA, INC., a Utah corporation,)
)
Defendants.)

**MEMORANDUM IN OPPOSITION
TO MOTION TO COMPEL AND IN
SUPPORT OF MOTION TO QUASH**

**Civil No. 970901677CV
Judge Sandra Peuler**

Movant Wayne L. Welsh, the Legislative Auditor General of Utah, by and through
counsel, submits the following memorandum in support of his Motion to Quash filed herewith.
Plaintiff's Motion to Compel should be denied and the subpoena quashed on the grounds that the
records and work papers requested in the subpoena are protected governmental records and

should not be disclosed. The court should not compel the inspection and copying of the records because disclosure will result in revealing the identities of confidential informants who gave information to the auditors on the condition that their identities remain protected, will result in the revealing of trade secrets and commercial information, will reveal the identities of individuals who asked the legislative auditors to protect and keep confidential their names as they feared for their lives and safety, and will impair the ability of the Legislative Auditor General to conduct future audits and otherwise carry out his constitutional duties.

STATEMENT OF FACTS

1. On April 17, 1997, a subpoena duces tecum issued from the Third District Court of Salt Lake County, State of Utah, commanding Wayne Welsh, the Legislative Auditor General, to produce various documents and other items for inspection and for copying on May 7, 1997.

(Attachment A)

2. On April 30, 1997, M. Gay Taylor, counsel for the Office of Legislative Auditor General, sent a letter to plaintiff stating that certain records requested by the plaintiff are protected "because they contain commercial, proprietary information and also disclose the identity of informants who communicated a suspected violation of state or federal law, and the information was disclosed on the condition that the identity of the person be protected from public disclosure." (Attachment B)

3. "All papers generated in a formal audit that relate to informants, trade

secrets/commercial information, and records the disclosure of which would jeopardize the life or safety of an individual are considered protected by the Office of the Legislative Auditor General. Identities of informants are kept protected at all times and in every case.” (Welsh Aff. ¶ 11.) These documents are not sent to the State Archives for storage, nor do they become part of the public records of audits. The Office of Legislative Auditor General’s practice of maintaining protected records is customary and necessary to protect the identity of informants, the integrity of the formal audit, and to prevent interference with the audit process. (Osterstock Aff. ¶ 10; Welsh Aff. ¶ 11.)

4. The records sought by plaintiff contain information obtained by the Legislative Auditor General from individuals who voluntarily disclosed the information on the condition that their identities be protected from public disclosure. (Osterstock Aff. ¶¶ 5, 7; Welsh Aff. ¶ 10.)

5. One record requested by the plaintiff contains private, commercial information classified by the Legislative Auditor as protected. (Osterstock Aff. ¶ 9.)

6. Six of the records requested contain the identities of certain informants who feared that they may face sanctions or retaliation which could hurt their careers if their identities were to become known, and in some cases, the informants feared for their life and safety and for the lives and safety of their families should the information be brought to the attention of an Envirocare officer. (Osterstock Aff. ¶ 8.) Envirocare of Utah, Inc. is a defendant in this lawsuit.

7. The disclosure of these protected records would impair the ability of the Legislative

Auditor General to obtain protected information in future audits and renders his office "ineffective in carrying out the mandates given it by the Legislature." (Welsh Aff. ¶ 12; Osterstock Aff. ¶ 11.)

ARGUMENT

POINT I. THE REQUESTED DOCUMENTS ARE PROTECTED RECORDS AND CANNOT BE RELEASED EXCEPT PURSUANT TO A COURT ORDER.

The documents which plaintiff seeks from the Legislative Auditor General in this Motion to Compel are protected records under the Government Records Access and Management Act (GRAMA), Utah Code Ann. § 63-2-304 (1996), and the statute creating and directing the Office of The Legislative Auditor General, § 36-12-15(8) (1992), and cannot properly be released to plaintiff absent a specific order as required in Utah Code Ann. § 63-2-202(7) (1994) and Rule 45(c) of the Utah Rules of Civil Procedure.

When an individual requests discovery of records which are classified as protected under GRAMA, the records are privileged from discovery and cannot be disclosed until a court of competent jurisdiction has considered the merits of the request for access to the record, and where appropriate, limited

the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63-2-304(1) and (2), and privacy interests or the public interest in the case of other protected records.

Utah Code Ann. § 63-2-202(7)(a)-(c) (1994). The court is also required to make a determination

that "to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, outweigh the interests favoring restriction of access" Utah Code Ann. § 63-2-202(7)(d) (1992). Additionally, the Utah Rules of Civil Procedure state in Rule 45(c)(3)(A)(iii) that the court, on timely motion, shall quash or modify the subpoena if it "requires disclosure of privileged or other protected matter and no exception or waiver applies," and Rule 45(c)(3)(B)(i) states that the court shall quash or modify the subpoena if it "requires disclosure of a trade secret or other confidential research, development, or confidential information."

These protected documents identify confidential audit sources and private, commercial information that should not be disclosed. Based on the significant public purpose principles for protecting these documents from public disclosure, the interests favoring restriction outweigh the interests favoring access.

POINT II. THE COMPETING INTERESTS FAVOR THE PROTECTION OF RECORDS IDENTIFYING CONFIDENTIAL INFORMANTS.

Plaintiff's Motion to Compel Inspection and Copying of Records from the Legislative Auditor General seeks protected information that was obtained by the Legislative Auditor General on the condition that the identities of the informants not be disclosed. The motion should be denied.

The greatest number of documents requested by plaintiff are records and audit work papers containing the identity of and information from individuals who were willing to disclose

the information only on the condition of anonymity. (Osterstock Aff. ¶ 7.) These documents fall squarely under the category of protected records under GRAMA. The statute governing the Office of Legislative Auditor General explicitly sets forth which records in the possession of the Auditor General shall receive protected status. They include work papers and records which would disclose the identity of persons who communicated about “waste of public funds, property, or manpower, or a violation or suspected violation of a law . . .” on the condition that their identities be protected. Utah Code Ann. § 36-12-15(8)(b) (1992). The documents requested in plaintiff’s Motion to Compel are protected documents containing this type of confidential information and should not be disclosed. Disclosure of the records would reveal the identity of persons who cooperated with the audit on the condition that their identities be and remain protected.

POINT III. THE PRODUCTION OF DOCUMENTS IS IMPROPER BECAUSE THEY ARE PROTECTED RECORDS CONTAINING TRADE SECRETS AND COMMERCIAL INFORMATION.

Plaintiff’s Motion to Compel seeks a protected record which contains trade secrets and other commercial information specifically protected under Utah Code Ann. § 63-2-304(1) and (2) (1996). (Osterstock Aff. ¶ 9.) As a protected record under GRAMA, this court should not order its disclosure. Under Utah Code Ann. § 63-2-202(7) (1994), the court is required to consider, and where appropriate, limit the use and further disclosure of business confidentiality interests in order to protect the privacy interests of the business record. Disclosing this information may

result in a competitive business injury to the informant.

POINT IV. THE DISCLOSURE OF THESE RECORDS WILL JEOPARDIZE THE LIVES AND SAFETY OF THE INDIVIDUALS WHO DISCLOSED THE INFORMATION TO THE LEGISLATIVE AUDITOR GENERAL.

The Legislative Auditor General's Motion to Quash should be granted because the disclosure of these records will jeopardize the lives and safety of the individuals who disclosed information to the Legislative Auditor General. Some informants feared sanctions or retaliation which could hurt their careers. Many of the requested documents contain the identities of individuals who feared that public disclosure would lead to the loss of safety or their lives or that of their families should their identities become known to an officer in Envirocare. (Osterstock Aff. ¶ 8.) Envirocare of Utah, Inc., is a defendant in this litigation, and if the information requested is given to plaintiff, in fairness it should also be given to the other parties in the litigation. But one of the parties has an officer whose real or perceived threat to informants caused them to extract a promise from the Legislative Auditor General's staff not to reveal their names for their own life and safety concerns. Records created or maintained for audit purposes are protected records under GRAMA if their disclosure would jeopardize the life or safety of an individual. Utah Code Ann. §63-2-304(9) (1996). Several of the individuals who spoke with members of the Legislative Auditor General's audit team did so on the condition that their identities be protected. They claimed to fear physical, violent action against them or their families should the individuals about whom they spoke become aware of their cooperation with

the legislative auditor's requests. (Osterstock Aff. ¶ 8.) The disclosure of these records would substantially jeopardize these individuals' lives or safety, which is a substantial interest at stake in this litigation. The court, in weighing these interests in life and safety, should give strong weight to the informants' concerns and grant the Legislative Auditor General's Motion to Quash. Utah Code Ann. § 63-2-202(7)(d) (1994).

POINT V. THE PRODUCTION OF DOCUMENTS IS IMPROPER BECAUSE DISCLOSURE WILL INTERFERE WITH THE LEGISLATIVE AUDITOR GENERAL'S ABILITY TO OBTAIN INFORMATION FROM CONFIDENTIAL SOURCES TO CONDUCT FUTURE AUDITS

The plaintiff's motion to compel disclosure of all drafts, notes, interviews, work papers, and documents relating to A Performance Audit of the Utah Department of Environmental Quality should be denied because it will render ineffective the Legislative Auditor General's ability to carry out his constitutional functions of conducting audits of governmental entities. The Legislative Auditor General's Motion to Quash should be granted because the records sought by plaintiff through its Motion to Compel Inspection and Copying of Records from the Legislative Auditor General are protected records under §63-2-304(8)(b) (1996). This section protects records created or maintained for audit purposes if release of the records "reasonably could be expected to interfere with audits" Release of these records will substantially interfere with the Auditor General's ability to conduct and carry out his statutory duty to perform future audits and obtain protected information from individuals for future audits. (Welsh Aff. ¶ 12; Osterstock Aff. ¶ 11.) The auditors made a commitment to individuals with information

relevant to the audit in question: they pledged not to reveal the names of those who voluntarily provided information. (Osterstock Aff. ¶ 5.) Essential to the audit process and the very integrity of the Office of the Legislative Auditor General is the ability to ensure the confidentiality of work papers and sources. The importance of the legislative audit functions to effective state government cannot be overestimated. As part of the legislative branch of state government, the office is vested with the constitutional authority to conduct audits of “any funds, functions, and accounts in any branch, department, agency or political subdivision of this state” Utah Const. art. VI, § 33. In order to stem corruption and inefficiency in state government or with the use of state funds, the Legislative Auditor General must be able not only to make promises that assure confidentiality, but also to keep these promises in order to obtain information vital to these legislative audits and maintain the integrity of the audit process.

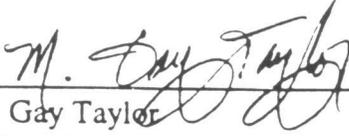
CONCLUSION

The Legislative Auditor General respectfully requests the court to deny plaintiff’s Motion to Compel Inspection and Copying of Records from the Legislative Auditor General on the grounds that the requested documents are properly protected and that a balancing of interests requires that the documents not be disclosed. The Legislative Auditor General’s Motion to Quash should be granted to reinforce the important principle of informant confidentiality, to maintain business confidentiality, to tide the personal fears of retaliation or physical harm to confidential informants, and to avoid negative ramifications to the Office of the Legislative

Auditor General in gathering confidential information in future legislative audits.

In the alternative, the Legislative Auditor General requests the court to hold an in camera review of these protected records and either deny the motion to compel based on this specific review or limit the disclosure of the records to the public as well as to the parties.

DATED this 2nd of June, 1997.



M. Gay Taylor
Robert H. Rees
Attorneys for Legislative Auditor General

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was mailed to the following,
postage prepaid, this 2nd day of June, 1997.

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HASKINS & ASSOCIATES
357 South 200 East, Suite 300
Salt Lake City, UT 84111



EMPLOYMENT AGREEMENT

This Employment Agreement is entered into between Envirocare of Utah, Inc. ("the Company"), and _____ ("Employee").

RECITALS

WHEREAS, the Company is engaged in the radioactive and mixed waste disposal business; and

WHEREAS, the Company desires to employ or continue to employ Employee; and

WHEREAS, Employee desires to become employed or continue to be employed by the Company;

NOW THEREFORE, in consideration of the Company's employment or continued employment of Employee, and the promises and covenants contained herein, the parties agree as follows:

1. **Employment.** The Company hereby employs Employee, and Employee hereby accepts employment with the Company, upon the terms and conditions set forth herein.
2. **Position and Duties.** Employee shall hold the position of _____ with the Company. Employee shall be responsible for performing the duties of that position, as set forth in the current or any revised written job description for the position, or as orally explained to Employee by the Company. Employee also shall be required to perform such additional duties as may be assigned to Employee from time to time by the Company. Employee shall at all times faithfully, industriously, and to the best of Employee's ability, experience, and talents perform all of the duties that may be required of and from Employee pursuant to the express and implied terms hereof.
3. **Exclusive Services.** While employed by the Company, Employee shall devote his or her full business time and efforts to the Company, and shall not directly or indirectly in any manner or in any capacity engage in an outside business endeavor of any kind that would adversely affect the performance of Employee's assigned duties with the Company or would be in competition with, or would be to the detriment of, the Company, without the prior written consent of the Company.

4. At-Will Employment. Employee and the Company acknowledge and agree that this Agreement does not create any obligation on Employee's part to work for the Company for any fixed period of time, or for the Company to employ Employee for any fixed period of time. Employee's employment may be terminated without notice at any time by either Employee or the Company, with or without cause. Termination of Employee's employment hereunder shall not relieve Employee of his or her obligations under the covenant not to disclose confidential information or the covenant not to solicit employees or customers, as set forth in this Agreement.
5. Benefits. Employee shall receive such employee benefits as are provided by the Company to its regular, full-time employees, including medical insurance, vacation leave, paid holidays, sick leave, or any other benefits that are given to other employees having a similar position and tenure with the Company.
6. Bonuses. From time to time, bonuses may be paid by the Company to Employee, in the Company's sole discretion.
7. Adherence to Policies and Procedures. Employee agrees to comply with the policies and procedures of the Company, as set forth in the Company's policy and procedures manuals or in other written memoranda or directives that may be issued by the Company from time to time. Employee acknowledges the receipt of a copy of the Company's current policy and procedures manual.
8. Goodwill. Employee acknowledges that the Company has a good reputation and extensive goodwill with its customers and in the industry. Employee will not do anything to adversely affect the Company's reputation or goodwill nor will Employee attempt to benefit from the Company's reputation or goodwill at any time other than as an employee acting within the scope of his or her employment for the Company.
9. Inventions and Discoveries. Employee acknowledges that the Company is engaged in an ongoing program of research, development, testing, analysis, production and marketing in connection with its business and that Employee will or may be involved in such endeavors. Any invention, discovery, improvement, concept or idea (whether or not patentable or copyrightable) relating to any aspect of the Company's techniques, technology, products, production methods, testing methods, services, research, or development, or any other aspect of the Company's business, made, conceived, developed, or first reduced to practice by Employee (alone or with others) during his or her employment with the Company, is the exclusive property of the Company. Employee agrees to promptly disclose any such invention, discovery, improvement, concept or idea to the Company at the earliest possible time. For the consideration mentioned above, Employee agrees to assign and does hereby assign to the Company all of Employee's right, title and interest in and to all inventions, discoveries, improvements, concepts and ideas and any patent or copyright applications or patents or copyrights granted thereon. It is

agreed that Employee will not assert any right in the inventions, discoveries, improvements, concepts and ideas of the Company.

10. Covenant Not to Disclose Confidential Information. Employee, while employed by the Company, will occupy a position of trust with respect to the confidential or proprietary information which may be originated by or imparted to Employee from time to time in the course of his or her employment. It therefore is agreed that Employee shall not at any time, while employed by the Company or thereafter, except as expressly authorized by the Company in writing, disclose to any person or entity or use in any manner whatsoever any confidential or proprietary information of the Company.

For purposes of this provision, "confidential or proprietary information" shall include, without limitation, all of the Company's trade secrets, technology, engineering or operation methods or techniques, research data, test results, environmental monitoring information, radiologies, analytical results of customers' waste materials, marketing plans, service plans, patents, names of customers or potential customers, customer lists, customer files, vendor lists, vendor files, information obtained from or relating to customers or vendors, government private contracts, pricing information, cost information, bidding information, sales information, financial information and all other information involving or reasonably related to the business or prospective business of the Company, and any tangible article which embodies such confidential or proprietary information.

Upon the request of the Company while Employee is employed by the Company, or upon the termination of Employee's employment, Employee will turn over to the Company all documents, computer disks, papers or other materials in his or her possession or under his or her control which may contain or be derived from confidential information of the Company. It is understood and agreed that Employee shall have no proprietary interest in any work product developed or used by Employee in connection with his or her employment with the Company.

11. Remedies for Breach of the Covenant Not to Disclose Confidential Information. Because a breach of the foregoing covenant not to disclose confidential information will result in irreparable damage to the Company, the amount of which is difficult to measure, the Company, at its election, shall be entitled, in the event of a breach or threatened breach by Employee of the provisions of this covenant, to an injunction enjoining Employee from engaging in such conduct. In the event of such a breach, the Company also shall be entitled to recover from Employee the sum of \$30,000.00 for each such breach as liquidated damages. The parties acknowledge and agree that the amount of such liquidated damages is a reasonable estimation of the actual damages which the Company would suffer as a result of such a breach. Nothing contained herein shall be construed as prohibiting the Company from pursuing, or any court from awarding, any other remedy available to the Company for such breach or threatened breach.

including the recovery of damages, and no action by the Company in pursuing a given remedy shall constitute an election to forego other remedies.

12. Attorneys' Fees and Costs. The parties agree that if any action or suit is brought to enforce the terms of this Agreement, or to obtain injunctive relief, damages or any other relief for any alleged violation of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party his/her costs and expenses incident to such action or suit, including reasonable attorneys' fees, expert witness fees, and court costs.

13. Paragraph Headings. Headings have been inserted herein solely for convenience and reference and shall not be construed to affect the meaning, construction, or effect of this Agreement.

14. Unenforceable Provisions. In the event that any part of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining parts hereof shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included herein.

PENGAD-By/ymr

IN THE DISTRICT COURT OF ANDREWS COUNTY, TEXAS
NORTH JUDICIAL DISTRICT

WASTE CONTROL SPECIALISTS, INC.

Plaintiff,

Civil No. 14,580

ENVIROCARE OF TEXAS, INC.,
ENVIROCARE OF UTAH, INC.,
ANDREW B. SEMNANI, CHARLES A.
WOOD, FRANK C. THORLEY, GEORGE
W. HELSTROM, BILLY W. CLAYTON,
AND NANCY M. MOLEDA,

Defendants.

VIDEOTAPE
DEPOSITION UPON ORAL EXAMINATION

OF

JENNIFER MCKEAN

Taken Pursuant to Notice and the Utah Rules
of Civil Procedure
Wednesday, October 29, 1997, 9:10 a.m.

At the offices of:

Double Tree Hotel
Salt Lake City, Utah

By: Peggy Grover, RMR, Notary Public, License # 801

A P P E A R A N C E S:

For the Plaintiff: Frank W. Mitchell, Esq.
SMITH, MARTIN & MITCHELL
Attorneys at Law
3700 Two Houston Center
Houston, Texas 77018
713-750-0010

John W. Lawrence, Esq.
EGAN & ASSOCIATES, P.C.
Attorneys at Law
2300 N Street, N.W., Suite 600
Washington, D.C. 20037

Also Present: Jeff Compton

For the Defendant: Roy C. Minton, Esq.
Martha S. Dickie, Esq.
MINTON, BURTON, FOSTER & COLLINS
Attorneys at Law
1100 Guadalupe Street
Austin, Texas 78701

Also Present: Frank C. Thorley
Regulatory Affairs Manager
Envirocare of Texas
--oo00oo--
J E N N I F E R M C K E A N

Jennifer McKean Page
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SALT LAKE CITY, WEDNESDAY, OCTOBER 29, 1997, 9:10 A.M.
JENNIFER MCKEAN,

having first been duly and legally sworn,
was examined and testified on her oath as
follows:

EXAMINATION

Q. Mr. Mitchell, could you state your name for
the record, please.

A. Jennifer McKean.

Q. Ms. McKean, I am going to go ahead and attach
this as Exhibit No. 1, which is the subpoena that we had
issued through the court. And spelled M-c-k-e-a-n.
Right?

A. Right.
(Exhibit 1 marked for identification.)

Q. All right. I just want to ask you to look at
Exhibit No. 1 and tell us if that in fact appears to be
the subpoena that was issued to compel your attendance
at this deposition?

A. It appears to be the same one. Mine is
dated but it--

Q. All right.

A. It's the same one.

Q. All right. And I'm going to do this for the
record. I really didn't anticipate you producing any

1 documents, but in the subpoena we asked, and I will just
2 read, you to produce for inspection and copying all
3 documents and all materials in the possession of Ms.
4 Jennifer McKean that refer to, relate to Envirocare of
5 Utah, Inc., or Envirocare of Texas, Inc., or any of
6 company's directors, officers, employees or
7 representatives. Do you have any such documents in your
8 possession?

A. No documents whatsoever. I didn't even take a
pencil with me.

Q. All right. Could you tell me where you live,
your current residence.

A. My residence is 864 East South Lake Drive in
Salt Lake City, 84117.

Q. Okay. And how long have you lived in Salt
Lake City?

A. Seven years.

Q. All right. And where did you live before you
moved to Salt Lake City?

A. Vero Beach, Florida.

Q. All right. If I think this will save a little
out of time if you could just sort of-- Do you have a
college degree?

A. Yes.

Q. What is your college degree in?

A. Accounting.

Q. When did you receive your degree in accounting?

A. 1983-ish, 1984.

Q. Now, I think this will save some time and I just want to get a little background on you. If you just start from when you received your accounting degree and just sort of describe what your employment history has been since then?

A. Well, I-- Let's see. After receiving my degree I worked for several years for what was then called American Hospital Supply Corporation which then turned into Baxter Travenol. And then that company was divested and it spun off into another company with the same group of manufacturers into a company called Tronomed and I worked for Tronomed--

Q. I'm sorry. How do you spell that?

A. T-r-o-n-o-m-e-d. And I worked for Tronomed until 1986. And then I took about six or seven years off to fly commercially, and so then I was a pilot until 19-- full time pilot until 19-- my brain is not working fast this morning-- until about 1992.

Q. All right.

A. And then I worked for about a year for a company called Hudson General.

Q. Hudson General?

A. Hudson General. They're also in the aviation business.

Q. All right.

A. And then I was picked up by Envirocare around 199-- I don't remember. Four? I don't remember. 1994 to 1995 I believe. I am not going to swear to that one. I will have to go back and work on that. I only worked for Envirocare for a little less than a year, probably about ten months.

Q. Okay. Well, I mean maybe it's easier. Do you remember when you left Envirocare?

MS. DICKIE: If it will help--

THE WITNESS: Refresh my memory.

MS. DICKIE: The employment records show 12-4-95.

THE WITNESS: Through September.

MS. DICKIE: To some time in '96.

THE WITNESS: Thank you. September '96.

Q. Mr. Mitchell? All right.

A. End of September of '96.

Q. All right. And then after leaving Envirocare--

A. And now I work for a company called Tool Design and Engineering.

Q. All right. And what sort of job do you have at Tool Design and Engineering?

A. I'm their controller.

Q. All right. Have you completed your CPA, and-- have you become a certified CPA?

A. I completed the examination in 1984 but I never became certified.

Q. All right.

A. Baxter didn't require it.

Q. All right.

MR. MINTON: You never became-- Well, I'll ask you later but are you a certified public accountant?

THE WITNESS: No. Baxter required that we pass the examination but they didn't require that we become certified.

Q. Mr. Mitchell? All right. So when you went to work for Envirocare you went to work for Envirocare in what capacity?

A. Ostensibly by name as their controller.

Q. All right. Why do you say ostensibly?

A. Because I am a controller at Tool Design in every sense of the word but at Envirocare the controller position is what other companies would refer to as an accounting manager position. They had-- They may still have but at the time they had a CFO who was acting in

1 the capacity as controller. In my capacity as, quote,
2 controller, I had responsibility for all of the
3 accounting functions, payables, receivables, cash flow,
4 publication of financial statements, but I had, other
5 than that which occurred in the Accounting Department I
6 had almost no managerial capacity whatsoever. So that's
7 why I say ostensibly. Because most of the times in most
8 companies the controller position has controller
9 functions.

10 Q. All right.

11 A. And that didn't happen in Envirocare.

12 Q. All right. Well, you mentioned that there
13 had been-- that there was a CFO. Who would the CFO
14 have been?

15 A. A man by the name of Mr. Larry Shelton.

16 Q. All right. Do you know if he still works for
17 Envirocare?

18 A. I have no clue.

19 Q. All right. Would he have been your immediate
20 supervisor?

21 A. He was.

22 Q. All right. And do you know who was Mr.
23 Shelton's supervisor?

24 A. He reported to Mr. Semani, Khos Semani.

25 Q. All right. Who at that time was the

president of the company?

A. Yes.

Q. All right. Okay. All right. I'm going to back up a little bit because you said sort of a mouthful and I want to make sure I understand. You said that you were responsible for certain accounting functions and I just want to get you to slow down and to get you tell me what accounting functions you were responsible for?

A. Okay. Accounts payable, accounts receivable, payroll, profit planning, cash flow, to whatever extent when necessary, collections, and essentially that was it, and then I would have various and sundry projects to work on but effectively that was it.

Q. All right. And if we were to ask what Mr. Shelton's responsibilities were, could you tell me some of his responsibilities back during that time frame?

A. They shifted about three months after I was hired. Between the time that I was hired and I would say around February of 1996, he spent about 60 to 70 percent of his time with Envirocare things and getting me up to speed in my position. I was fully up to speed probably by March of 1996, and around 1996, around that time, he transitioned his focus away from Envirocare and over to Zhagrus, their remediation section of Semmani's empire, holdings rather.

including Texas and California.

Q. All right.

A. But I was involved in those in absolutely no way whatsoever.

Q. All right. Okay. So the companies that you would have had hands on financial responsibilities for, accounting responsibilities for, would have been Envirocare of Utah. Did you have anything to do with Zhagrus?

A. And Zhagrus.

Q. Zhagrus.

A. At the time Zhagrus was rolling into Envirocare's financials and I published separate financials for both companies and then a consolidated statement for the two every month.

Q. All right. When you say rolling into financials, is that what you mean?

A. Yes. Yes.

Q. Consolidating the data, the two financial statements?

A. Yes. Envirocare was 99.9 percent of it all. At the time that I left Zhagrus was just starting to get on its feet so they had relatively little financial impact on the company. That was starting to change as I left but they were reported separately and then

MR. WINTON: I'm sorry. I heard that name but I'm not sure I'm hearing the same one.

THE WITNESS: Zhagrus. It is Zhagrus.

MR. WINTON: Okay.

THE WITNESS: Zhagrus is the name of a mountain range in Iran and he named his remediation firm Zhagrus. And so Larry moved over with full intention of becoming president of Zhagrus and he moved his operational focus over to Zhagrus almost completely, and by the time I left there in September he had his fingers almost exclusively out of the Envirocare pie to work on Zhagrus.

Q. Mr. Mitchell: Okay. Well, you had referenced Mr. Semmani's holdings and you had mentioned Zhagrus and Envirocare of Utah. What other companies or entities were you aware of when you were working there?

A. There were several but in Salt Lake in addition to that there was-- how would I refer to it? I don't want to call it an engineering company although I was told that that's what it was. Oh, F. K. Hart, and he had some real estate holdings and that's the extent of it in Utah, that's what he had, and then he had--

Q. All right.

A. And then he had his fingers in some other pies in various other parts of the country at the time

consolidated at month end.

Q. When you say reported separately, reported separately to who?

A. Well, operationally Zhagrus reported to Larry. It was a little nebulous when I left there but Larry was trying to extract total control over Zhagrus. I just did the financial reporting and then everything that had to do with Zhagrus operationally reported through to Larry.

Q. All right. And what was your understanding of the purpose of Zhagrus?

A. Remediation.

Q. All right. Remediation of nuclear waste?

A. Yes.

Q. Low-level waste?

A. Uh-huh.

Q. What about the Semmani Foundation? Was that an entity that you were familiar with or had some accounting responsibility for?

A. When I first came to Envirocare, we were getting ready for our fiscal year end, which escapes me now exactly when it was, but I know we were getting ready for it, and it was my responsibility at first to pull together the income and the outgo for Semmani Foundation. I do not have what I would consider by any

stretch of the imagination a strong accounting background in foundation accounting.

THE WITNESS: All right.

A. Or nonprofit accounting, but I was extremely uncomfortable with what I saw based on what I knew. I pulled together the numbers that the CPA firm had requested in behalf of Semnani Foundation. We-- I submitted those numbers to the accountants, they had quite a bit of heartburn with it and at that point I realized that the Semnani Foundation-- And I don't, I have to back up here. I need to-- I need to say that I don't think at the time that, from my understanding that there was anything malicious going on or anything sub-rosa going on. It was just that there were mistakes made and donations made to charitable organizations that may not have qualified. Anyway, I let the CPA know, those names now escapes me, because I know they were looking to get a new firm, that some of these donations were not kosher, and--

MR. MINTON: Excuse me just a minute. This was stuff to do with your employment for Envirocare, Ms. McKean?

THE WITNESS: Yes. Yes and no.

MR. MINTON: Okay. Let me take a moment here to take this a matter of record. I believe that you

1 have a contract with them which includes a confidential information provision. Is that generally correct?

THE WITNESS: That is generally correct.

MR. MINTON: And under that-- under that contract you have promised Envirocare that you will keep certain things, information that you received while you were there, to yourself--

THE WITNESS: Right.

MR. MINTON: And not discuss or give any information to others.

THE WITNESS: During the term of my employment, that's correct.

MR. MINTON: No, it's from the term of your employment or at any time after that.

THE WITNESS: I don't remember how that's worded. I knew it was during the term of my employment.

MR. MITCHELL: Well, let's--

MR. MINTON: Let me get you to take a moment and let her read this, just for the record.

MR. MITCHELL: All right. I'll have a record, fine.

MR. MINTON: Why don't you read this part right in there so I'm being fair with you and we can get all of this out of the way and you can go on.

MR. MITCHELL: Yeah. I would like to see a

copy of it over--

MR. MINTON: We gave you a copy.

MR. MITCHELL: Well, we have an unsigned copy. We have an unsigned copy, we don't have a signed copy.

THE WITNESS: I will be glad to read this but I can't tell you just by looking at the print that this is not the one I signed, this is not-- the one that I signed, I mean I can remember this extremely well because I typed it. That's the print of the one that I signed. This is different so I will be glad to read this for you but I cannot--

MR. MINTON: Read it for yourself.

THE WITNESS: Okay. I will be glad to read it for myself. "Covenant not to disclose confidential information."

MR. MINTON: No, you don't need to read it out loud.

THE WITNESS: Okay.

MR. MINTON: You can just read it so you can understand what it says.

THE WITNESS: Okay. I've read it.

Interesting but this is not the one that I signed.

MR. MINTON: These three. Right? That's right.

THE WITNESS: That's correct. I read that.

MR. MINTON: Okay. And you understand it?

THE WITNESS: I understand that, that's correct.

MR. MINTON: Okay. On the basis that you signed this, executed this, we feel you have an obligation to abide by it.

THE WITNESS: I reiterate, that's not the one I signed.

MR. MINTON: Well, whatever you signed had the same confidentiality agreement that one does.

THE WITNESS: I can't swear to that.

MR. MINTON: Well, I want to be candid, but I don't want to take up your time or all our time. We are all interested in, and I know you are.

THE WITNESS: Okay.

MR. MINTON: To get through with this, but I want to be certain that the record shows that I've been utterly fair in telling you to begin with that this provides for sanctions, you could be sued over it if you give out information which is proprietary and belongs to that corporation. It doesn't make any difference whether it's bad or good, or whether you think it's harmful or not harmful at all. I don't assign to you any malicious intent, certainly not at this time. I only

1 want you to know that if you do that, we may well follow
2 through with what we can from this contract and attempt
3 to seek damages against you. Now, aside from that, I
4 will be making objections throughout this deposition as
5 to proprietary information which the Court will rule on
6 at a later time. That really has very little to do with
7 the agreement that we have between us and you. The
8 difference between the admissibility of what you are
9 saying and your contractual ability to talk about it are
10 two different things. So that when I make those
11 objections, I'm not going to be admonishing you, I'm
12 admonishing you at this time for your sake, and for the
13 sake of the company, that if you discuss these things
14 which we believe to be proprietary, that we believe
15 you're exposing yourself to a lawsuit.

16 THE WITNESS: I--

17 MR. MINTON: Do you understand that?

18 THE WITNESS: I appreciate your concern for
19 my well being. I will once again reiterate that's not
20 the contract that I signed and inasmuch as you don't
21 have the contract that I signed, I am here to tell you I
22 don't remember the wording but that is not the one that
23 I signed. However, now I will defer to your judgment as to--

24 MR. MITCHELL: Well, I'm going-- I need to

1 say, something for the record here. And, to begin with,
2 this attempt to intimidate a witness I find to be a very
3 cynical, very appalling thing to do. This is very
4 similar to what was attempted, I mean, quite frankly, I
5 do not find any legal justification in this at all. If
6 you are going to assert this agreement and threaten this
7 woman with a lawsuit with an agreement that is
8 apparently not the agreement that she signed, that
9 rather than going through all of that, and I point out
10 that there may be whistle blower statutes that are
11 involved that completely protect her, because this is a
12 highly regulated industry, and if you are going to have
13 the position in this case that a woman who has been
14 subpoenaed in a lawsuit that we filed against Texas, and
15 let me point out that one of the reasons that we are
16 taking this woman's deposition is because although we
17 have asked for financial information and have asked for
18 other information in this case, that is obviously
19 relevant for a lot of different reasons, not just for
20 the fact that we are seeking punitive damages. I point
21 out that this defendant has produced zero financial
22 information in this case. I might be sympathetic to what
23 you are talking about in terms of this agreement if: A.
24 You produce the correct agreement, this apparently is
25 not. B. This is not a lawsuit and to assert an

1 employment disclosure agreement when we have filed a
2 lawsuit. I don't think there is any justification for
3 that, and in failing to point out to this woman that she
4 may be completely protected under whistle blower
5 statutes, I think is absurd and if you are going to
6 threaten this witness and unjustifiably intimidate this
7 witness, or attempt to intimidate her, by suggesting
8 that if she testifies in this matter that you are going
9 to sue her or might sue her under the provisions of that
10 agreement I find to be ridiculous. I understand your
11 position and if you continue to maintain that position,
12 even though we have gone to great cost and time to
13 obtain this witness for subpoena, I would prefer to
14 simply take the agreement, attach it as an exhibit to
15 this deposition and go before the judge and find out
16 what the judge's view of this, particularly in light of
17 the fact that no financial information has been
18 produced. That's the end of my record.

19 MR. MINTON: Well, of course, we are only
20 objecting to whatever she answers based on trade secrets
21 and other admissible, admissibility rules under the
22 Texas Rules of Evidence.

23 MR. MITCHELL: I have a problem if that's
24 your total objection--

25 MR. MINTON: That's a totally different

1 thing than what we're talking about here.

2 MR. MITCHELL: I agree. I agree.

3 MR. MINTON: And I understand that you want to
4 do a good job of giving a speech for the record, just
5 like I do, and I don't have any problem with anything
6 that you're saying but all of what we're doing is based
7 on Texas law.

8 MR. MITCHELL: I understand.

9 MR. MINTON: And we're not ashamed of that.

10 MR. MITCHELL: I understand.

11 MR. MINTON: And you do, you're going to go
12 through as you wish. I'm not--

13 MR. MITCHELL: Yeah.

14 MR. MINTON: But I want to make it very clear
15 to the witness exactly what I said. And as I have
16 already told her, and I don't need to tell you with the
17 experience that you have got, there's two different
18 things as to what is admissible in court and what her
19 contractual obligations are as to this company.

20 MR. MITCHELL: You're missing the point. The
21 fact that we filed a lawsuit and the fact that there are
22 whistle blower statutes that protect her render that
23 agreement immaterial.

24 MR. MINTON: You're talking to--

25 MR. MITCHELL: And not enforceable. That's

MR. MINTON: Unfortunately, you're talking to a middle class lawyer and I'm fully aware of where those statutes exist, what the exemptions are, and what the exceptions are not, and it is that second place that I have not the most experience. So good luck to you.

MR. MITCHELL: Well, we will go ahead and ask our questions.

MR. LAWRENCE: I do want a copy of that full document.

MS. DICKIE: Certainly.

MR. MITCHELL: Why don't we just attach it as an exhibit to us-- Why don't we mark it and attach it as an exhibit to the deposition.

MS. DICKIE: That will be great. Just mark the whole thing. It has got her resignation letter and everything.

MR. MINTON: We will mark this as Deposition Exhibit-- you have already got one, don't you?

MR. MITCHELL: Exhibit No. 3.

MR. MINTON: Okay.

[Exhibit 3 marked for identification.]

Q. (Mr. Mitchell) All right. And we have gone through all that and I just want to make sure that you feel comfortable going forward.

A. I have no problems whatsoever.

Q. Okay.

A. I don't work well under intimidation.

Q. All right. And I certainly did not, I mean if you at all felt uncomfortable I was--

A. No. And I'm here to say regarding Semnani Foundation, it is not uncommon at all with foundations to donate money that may or may not be for Internal Revenue Services purposes deductible. It's their money, he can do whatever he wants to with it to a certain extent. But I also know that when Khosrow Semnani hired in 1996 an accountant CPA by the name of Timothy Blackmar, Tim took over full custody of the Foundation and he was intimately involved with not only the Foundation but Khos's personal and other holdings other than Envirocare and so the Semnani Foundation custody went to Tim.

Q. All right.

MR. MINTON: Object as non-responsive, that entire statement.

Q. (Mr. Mitchell) All right.

A. Okay.

Q. Let me back up a little bit and--

MR. MINTON: Let me be sure that we have got--

MR. MITCHELL: Well, I do have a question.

MR. MINTON: I know that, and I'm not interrupting your question. Let me be sure that we have got an agreement. I think that we have an agreement that all objections, it's taken in accordance with the rules which are that all objections are reserved until the time of trial except, except for responsiveness or leading form of the question.

MR. MITCHELL: Oh, sure.

MR. MINTON: And under Rule 507 we have, we believe we have a particular objection which is privilege, and so I specifically have an understanding that I do not need to raise that objection throughout this trial, that that is the same as any other objection.

MR. MITCHELL: I would certainly agree with that.

MR. MINTON: All right.

MR. MITCHELL: I certainly would agree with that.

MR. MINTON: All right. So that.

MR. MITCHELL: And I am familiar with Rule 507 and if it makes you feel comfortable, I will stipulate that other than form and responsiveness, and by form I generally assume--

MR. MINTON: Leading questions.

MR. MITCHELL: Okay. That any other objection to the admissibility or use of this at the time of trial that you may have, you will not have waived it by failing to make the objection at this deposition.

MR. MINTON: Thank you.

MR. MITCHELL: All right. I do have a question for you all, though. This letter was in the middle of this, is--

MS. DICKIE: I think it's--

MR. MITCHELL: Should I separate out this letter?

MR. MINTON: It's certainly all right with us to, but that's the way it is in our files and we weren't-- We just left it like that.

MR. DICKIE: That's the way we received the copy. I don't know whether it goes like that or not, Frank. You can leave it like that.

MR. MITCHELL: Well, I'll go-- If that's the way it was in your files, we'll go ahead and read this.

Q. (Mr. Mitchell) And before I go back and follow up on some questions about this Semnani Foundation, Ms. McKean, I want to go ahead and show you this Exhibit No. 3, which was produced with the suggestion that it was an employment agreement that you signed, and simply ask you if this was in fact the

employment agreement that you signed and if it wasn't tell us why you believe it was not.

A. Because I typed the employment agreement that I signed and the one that I signed came out of a booklet that they put together for employees and there were mistakes in it and I finally signed the copy some months after I was hired there, so I didn't sign it. The one that I signed, the version that I signed, was a 1994 version.

Q. All right.

A. The only one, the only page out of the employment agreement that I signed that is in fact in the package right here is-- are the last two pages. The first pages I have never seen before.

Q. All right.

A. The wording may be similar but this is not the one that I signed.

Q. All right. Just so that we are clear, it is your testimony that if I'm looking at Exhibit No. 2, pages 1, 2, 3, 4 of Exhibit No. 2, you do not believe were part of the employment agreement that you eventually signed?

A. No. That first part there is much, much nicer, much more professionally done than the one that I signed.

But I did not see anything there that struck a cord as being illegal.

Q. Okay.

A. As opposed to non-tax deductible.

Q. All right. Anything else about the Semnani Foundation that made you feel uncomfortable other than that?

A. Very poor record keeping but other than that.

Q. All right. All right. You had indicated earlier in your testimony that you did not have any accounting responsibilities for the Texas part of the company?

A. That's correct.

Q. Did you ever have any discussions with Mr. Shelton or other people at the company about the Texas operation?

A. Numerous.

Q. Just hold on for just a second.

Off the record.

Q. Mr. Mitchell. Tell me what you remember about conversations about the Texas operation?

A. To what extent?

Q. Well, do you remember any comments that were made about my client, WCS?

A. Up until two months prior to my separation

Q. All right. And the only parts of Exhibit No. 2 that would have been part of the agreement that you originally signed would have been the last two pages of the exhibit, one page that has August 1994 in the upper right-hand corner and another page that is called Agreement Addendum A?

A. That's correct.

Q. Okay. Very good. All right. I want to back up a little bit. And you have been telling us about the Semnani Foundation, and had indicated to me that there were some things about what you saw with the Semnani Foundation that made you feel uncomfortable. And can you explain to me what the things were that made you feel uncomfortable about the way it was being operated.

A. When I say uncomfortable, I am talking in terms of Internal Revenue Service regulations and the tax deductibility of them. I did not see any inappropriate donations to individuals, organizations-- Let me back up. I didn't blatant-- I didn't see any blatant-- There were organizations, small outfits in the Salt Lake area. I remember there was one, an organization, they were building a bridge or something for historical preservation, and by tax law that would not have been, according to the foundation law from what I was told, a tax deductible expense for the foundation

from Envirocare I had a fairly social relationship with Larry Shelton.

Q. All right.

A. The comments that were made about Texas and other competitors, I am not sure I could repeat here. They were non-- financially they were non-specific-- they are extremely inflammatory and profane.

Q. Okay.

Q. I am not-- if I relay to you my comments about what Larry said about WCS and other competitors including EC/DC, et cetera, et cetera, everybody is going to be throwing their hands up in the air and going, "Oh, speculation, hearsay," you know, so I don't know what you want me to tell you because it was not nice.

Q. Well, let me ask--

A. And it was not specific.

Q. Well, let me ask you this. Did Mr. Shelton ever tell you that Envirocare was intending to act against WCS in some manner, or prevent their from doing business in some manner, or comments to that extent?

A. Yes.

Q. Describe for me what you remember about those conversations?

A. All right. Now, this is coming from Larry

Shelton.

Q. All right.

A. I have not heard this from Khosrow Semnani.

Q. All right.

A. Larry repeatedly said to me and to everybody within his employ that the fun of business is crushing competitors, anybody can conduct business he says, but--

Q. Did Mr. Shelton ever indicate or suggest that Envirocare if they intended to crush WCS, or prevent WCS from doing business, or words to that effect?

A. All right. I am going way back and I am terrified to tell you what I remember because over the months or over the years since it has been there my memory has coagulated into-- into generalities.

Q. All right.

A. But generally what he would-- what he would iterate is that Khosrow Semnani had some political clout in the various counties or a county in Texas in which licenses were to be obtained and that it would be difficult for licenses to be procured by a competitor if he put his mind to it.

Q. Did he indicate or suggest that that had been done to potential competitors in the past?

MR. MINTON: Object to leading the witness.

Q. Mr. Mitchell? Did he ever discuss whether

or not such things had been done to competitors in the past.

MR. MINTON: Same. Object as leading.

Q. Mr. Mitchell? If you recall.

MR. MINTON: You can take your chances on those. Those leading objections always worry me worse in a deposition than anywhere in the world.

MR. MITCHELL: I hear you.

MR. MINTON: I sympathize with you.

THE WITNESS: Would you like to rephrase that?

Q. (Mr. Mitchell) Sure, I'll be happy to.

MR. MINTON: Tell me what you--

Q. (Mr. Mitchell) Did you-- You had indicated to me that if Mr. Semnani wanted to prevent someone from getting a license or if we wanted someone-- you had indicated that he could make it very difficult for potential competitors to get licenses. And my question to you is: Did Mr. Shelton ever discuss what Envirocare had done or not done in connection with other potential competitors other than WCS?

A. That's a two part question. Excuse me. That's a two part question and to both parts of that question the answer is yes.

Q. All right. And what did he say about Envirocare's actions towards prior competitors?

A. Honestly, I need you to be a little more specific in your questions. He said-- he said many things, most specifically relative to Laidlaw/ECDC, but Larry was continually popping off and I frequently struggled to separate fact from fiction with Larry and that's why I hesitate to even bring it up because in the rush of-- in the rush of competitive battle Larry would say sometimes some things that I was not entirely sure were grounded in fact so I hesitate to repeat them here.

Q. All right. Well, let me specifically talk about WCS. Did Mr. Shelton or anyone else at Envirocare, for that matter, ever suggest a particular plan that they were-- or plan of action or act that they intended with respect to my client?

MR. MINTON: I am going to object as leading. When I make these objections, they are just for the record.

THE WITNESS: I understand.

MR. MINTON: And you can just ignore me. I don't mean to be rude to you.

THE WITNESS: That's fine.

MR. MINTON: If I don't make objections--

THE WITNESS: That's fine. No offense taken.

MR. MINTON: --concerning leading or response.

THE WITNESS: I understand.

MR. MINTON: Then I can't make it at trial.

THE WITNESS: I understand your situation.

MR. MINTON: But you go right ahead.

THE WITNESS: WCS was only a factor that was brought to my attention very close to my separation with Envirocare. As a matter of fact, it wasn't until I was fairly heavily interrogated by the F.B.I. some months after my separation from Envirocare, and it wasn't until I met with them that I even knew your name. You were referred to as a company in Texas.

Q. (Mr. Mitchell) All right.

A. And from Larry's point of view it was extremely general and he almost referred to it in a joking manner, you know, as to your hutzpah, you know, of what you wanted to do. So it was extremely general at best, it was totally nonspecific and, again, I left around the time that they were gearing up there so--

Q. All right. Well, did Mr. Shelton or anyone in Envirocare ever describe for you what the purpose of Envirocare's Texas operations were to be?

A. They were twofold and, again, this is coming from Larry Shelton.

Q. All right.

A. One, of course, was to go down and make money.

Q. All right.
A. And the second was to engage in a competitive dueling, which is where Larry indicated that Khos got the most fun out of life, so--

Q. When you say what Larry referred to, were you referring to the earlier comment that what was fun was taunting competitors?

MR. WINTON: That's leading. I object to it.

THE WITNESS: Let me put it this way. On the day that I was hired Larry gave me a book, which I still have. The author's name escapes me, but the name of the book was "Winning Through Intimidation."

Q. All right.

A. It was a silly book but that was his-- their motto.

Q. Why would he have given you that book?

A. He wanted to make sure that we were singing off the same sheet of music effectively.

Q. All right.

A. It's a corporate cultural thing.

Q. All right.

A. Now, I am not-- He also gave about three other copies of that book to other members of my department and I, you know, I don't know why because members of my department, I can be very intimidating but

1 the members of my staff were about the least
2 intimidating people I have ever met and so I don't
3 understand why he did that. But it is kind of like,
4 "Okay, Larry, I catch your point." So--

5 Q. All right. Why did you end up leaving this
6 company, Envirocare?

7 A. I have-- I am not really sure how to word
8 this. I thoroughly enjoyed working for Envirocare. I
9 really liked the business and immediately after I left
10 Envirocare I was offered a similar position with
11 Laidlaw, but the reason why I left Envirocare was
12 because I was continually at odds with Larry Shelton and
13 Envirocare's management style.

14 Q. All right.

15 A. And I cannot work in an environment where
16 there is-- we were effectively screaming at each other
17 all day and I was continually put in positions that I
18 did not want to be put in and I--

19 Q. Can you give me some examples of the
20 Envirocare management style that you disagreed with or
21 philosophically disagreed with, if that's a better way
22 of putting it?

23 A. It is my opinion that Envirocare abuses its
24 employees. The company is almost obscenely profitable
25 and they underpay and overwork their employees, and that

1 is from the salaried managers down to the hourly
2 non-exempts and the hourly exempt employees, and they
3 make promises to their employees which they will not
4 keep regarding rewards and bonuses and company
5 participation, et cetera, et cetera. My biggest
6 problem, of course, was with Larry himself. Larry is a--
7 he participates in the what we call the ABS program, or
8 management by screaming program, and I personally don't
9 take much offense when my boss screams at me. I was in
10 the military long enough to learn how to deal with that,
11 but the continual obscenities and the screaming at my
12 employees in front of other employees and the screaming
13 at me in front of employees, it was unnecessary, it's a
14 testosterone based company in my opinion and I just
15 don't like the way they do business--period--and so and
16 so.

17 Q. All right. One of the things you had
18 referenced was that the company was obscenely
19 profitable. What did you mean by that?

20 A. I am going to let that stay on as it stands.

21 Q. All right. Can you tell us how much money
22 the grossed in the year or ten months that you were
23 there?

24 A. I can but I don't think I should, to be
25 perfectly honest, I really don't think that's

1 necessarily pertinent.

2 Q. Okay.

3 A. To this.

4 Q. All right.

5 A. It wasn't so much their gross, anyway, it was
6 their net.

7 Q. Well, would you give me the same answer if I
8 asked you what their net was?

9 A. I would have to give you the same answer.

10 Q. All right. Were there any and, again, I am
11 talking about the management style, was there anything
12 about the management style that you would have
13 considered to be improper from an accounting standpoint?

14 A. Yes.

15 Q. What can you tell me about those? Can you
16 give me some examples of some accounting, some problems
17 you had with the way they did their accounting?

18 A. Let me just give you one example.

19 Q. All right.

20 A. And the reason I will give you this example
21 is because it's pretty well documented over there and
22 several other employees were privy to this. But there
23 were several occasions when I first started working
24 there, and later I would say, "I'm not doing this any
25 more," one, because it was stupid, and the other because

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I was uncomfortable with it, where I was told that Khos wanted a check for "X" amount of money, generally in five to six digits, and leave the payee blank. And I told them from a bookkeeping point of view, I really need a payee, because I need to know how to charge this particular cash expenditures. And I was told it was none of my business, et cetera, et cetera, and I am looking at the person who gave me this particular order thinking, "You must think I'm particularly dumb because this check will come back from the bank with a payee filled in and I will know who it goes to." Anyway, this occurred about two or three times and the third, about the third time it happened I went in to Larry and I said, "I can't do this anymore. I can't just cut checks anymore with no payee. I mean it's a waste of time," et cetera, et cetera. He says, "I understand what you're saying." So the next time the request would come down Khos would take money out of the company via transactions through his, effectively his owner's equity.

Q. I am not sure I understand.

A. It is a balance sheet issue. If money comes out of the company, it either has to be charged against expense or it has to be taken out of an owner's-- the owner's equity, the--

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Q. Oh, I see.

A. Now, Khos was a 100 percent owner of the company, it's his money, effectively he can do with it as he wishes once the money goes to him, but-- and in that case we would just simply make a check out payable to Smith Barney, or whoever, whatever stock company, or wherever he wanted it to go. But then it was a balance sheet issue and not a P&L issue.

Q. All right. Were you involved in any financial audits of the company when you were there?

A. Yes, I was.

Q. What financial audits were you involved with?

A. Oh, my swan song. And I knew you were going to ask this and I forgot to bring the name of it. The very last month I was there, Khos had ordered on his own an internal audit by a CPA firm out of California, a very competent firm, the name of which now escapes me, a company that specializes in waste, not just radioactive or nuclear, but just waste in general.

Q. All right.

A. And so they were pretty familiar with remediation and anything that has to do with the waste business and he did so, I think, wisely because I think he was concerned about maybe there wouldn't be some Internal Revenue Service exposure and he wanted to make

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sure that ostensibly that he was doing the right thing. He calls in this company to perform an audit and it was a very-- it was a very-- I don't want to say superficial because it is wasn't superficial, but it was a very top heavy type of an audit; in other words, they weren't getting down into the nitty-gritty details and auditing my accounts receivable, my accounts payable. Basically they were taking a look at sales and the way that we dealt with the remediation and inventory, fixed assets, big things, big things.

Q. Whose?

A. And they, we have found a lot, Larry Shelton was gone this entire time during the audit and so the audit completely rested on my shoulders, and I worked intimately with these guys, and my orders were through Khos, "Give these guys whatever they need. Whatever they need, they have got open free reign of the books. Just give them whatever they need."

Q. All right.

A. Fully cooperate, which I did.

Q. Whose?

A. And I worked-- one of the gentlemen was a CPA slash lawyer who is a tax attorney, and the other guy was one of the CPAs, one of the partners of the company. And they found, they found a lot, and made pages and

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pages of recommendations to Khos and Larry, they also made some inappropriate recommendations to Larry which just set him off and this was the end for me. They, without my knowledge or my permission they suggested that Larry pull himself out of Envirocare completely and concentrate on Zhagrus one hundred percent, because they said with his attention split, that neither Envirocare or Zhagrus was getting the attention from him that they needed.

Q. All right.

A. Zhagrus was struggling. And they made the suggestion to him that I take over the financial control of Envirocare. He went through the roof and things got very, very profane and I basically told him to do something which is anatomically impossible and I left.

Q. Okay. Did you have an opportunity to review the final audit that they did?

A. Yes, I did.

Q. Okay. Any other financial audits that you were involved with while you were there?

A. We were continually being audited by every state and federal agency that had any regulatory control over Envirocare. We were continually being audited and generally our audits were coming up very clean, at least from the accounting point of view anyway.

Q. Well, was there, in terms of audits that were done by-- in terms of audits that were done by state and federal entities of the books, are you aware of any information that would not have been provided to those entities that you believe should have been provided?

A. No, I was never told specifically by anybody to withhold information or make it difficult to obtain. My question was, Why these audits were so short? I mean agencies or agents would come in to audit our books and they were there extraordinarily short periods of time. An audit that I would have thought would have taken a day or two days would take fifteen or twenty minutes tops. And which, from a managerial point of view, is lovely for me, I can get back on with life, but I was always very curious about why they didn't take very long. And that can be standard operating procedure, I don't know this business very well, so I don't know what's normal and what's not normal. But that was the only thing that was curious so--

MR. MITCHELL: All right. Can we take a short break?

THE WITNESS: We can.

MR. MITCHELL: We have been going about an hour and I do need to run to my hotel room to make one quick phone call.

[Recess]

EXAMINATION, continued:

Q. Mr. Mitchell, I think I'm now okay for the rest of the day. For everybody whose been there, I think, Ms. McKean, I want to go back and just ask you to tell me one-- what-- and you may not remember any of the specific financial information, but the categories of financial documents that you worked with. For example, did you prepare a package at the end of the month to summarize what had happened for the company during that month?

A. Uh-huh, in detail.

Q. All right. What would have been included in that package, what sort of documents or types of documents?

A. Well, the P&L, the profit and loss statement for both Zhagrus and Envirocare, balance sheet for both companies, statement of cash flow for both companies, and a controller's letter which I attached to the top of each package summarizing, I did variance analysis to explain. We had a budget and so I would provide a variance analysis and then a controller's letter explaining the variances, to whatever extent that were possible, and the impact thereof, and I did that every month.

Q. All right. Did you ever get to the point to where you actually prepared a year end statement that summarized those monthly statements or put all those monthly packages into one large package?

A. I did. I am struggling now to remember when their fiscal year ended, it may have been on a calendar year, I don't remember, but I know I went through a fiscal year end. I don't think so, I think it was at the beginning of the year, I think their fiscal year ends in the spring but I remember I went through one year end, so I put together a full package and then provided the documentation to the CPA firm for the tax purposes because I didn't do taxes.

Q. All right. Were the annual financial statements, would they have been prepared by you or an outside CPA, do you know?

A. They were prepared, they were prepared by me and any, with the exception of any-- sorry. Again, I'm thinking slowly. With the exception of any tax adjustment entries that needed to be made and then the CPA would throw the adjusting entries back at me, and I would throw them and then I would finalize the statements. But 80 percent, 99.9 percent of the statement was completed by me.

Q. Okay. And then would there have been an

outside CPA who prepared tax returns for me-- for them--

A. Yes.

Q. All right.

A. Yes.

Q. And then would those tax returns come back to you for filing?

A. Yes.

Q. All right. Was the system organized through a computer or was it a paper system?

A. No, it was a computer system. They used Great Plains Dynamics.

Q. All right. Is that an operating system?

A. Yes. It's a-- well, let's see. They were Windows, it wasn't a DOS operating, they were Windows based and Dynamics is a system that's pretty much designed for manufacturing, it worked well with this particular business.

Q. All right. Were back up tapes made?

A. Yes.

Q. All right. Other than what-- you had described, you had told us a little bit about that outside accounting firm coming in to do an audit of everything?

A. Uh-huh.

Q. Was that the only time that an outside

...essentially to an audit of all the
...that you know of?

A. During my tenure there, yes, that was the
only one. That was the only outside private firm.

Q. All right. Who would have been responsible
for the original system?

A. Me.

Q. How about--

A. I say that hesitatingly because when I was
just hired there they had just installed the new
computer system and Larry was the one that had chosen
the software package.

Q. All right.

A. And it had just gotten up and running. This
particular software package had just gotten up and
running and then I was primarily responsible for the
operation of the-- of this computer system. And when I
say, "this computer system," we had a woman at the
company who operated-- who worked in the capacity of
Khos's secretary slash--

Q. Management information supervisor?

A. Craig would know what her title was, what
Debbie did there, but she was in charge of the network.
Network administrator is the word I am looking for. She
was the network administrator, but I was in charge of

A. It was a cooperative effort. Debbie did the
purchasing and the coordination of the network stuff and
when PCs had to be purchased she did that but she had no
control or anything to do with the accounting function.

Q. All right. If, for example, I wanted to pull
out the types of financial information that you have
discussed, balance sheets?

A. Uh-huh.

Q. Profit and loss statements, financial
statements, those sorts of things, was the computer
system set up in a such a way that it was easy?

A. Yeah.

Q. To retrieve the information?

A. It was a very user friendly system.

Q. All right. And if, for example, you wanted
to find out financial information about the two
companies, Inagrus and Envirocare, it wouldn't take very
long to retrieve that information?

A. Sub-uh. It was all right there.

Q. All right. As far as-- I think I-- what
would the financial package that you described at the
end of the month, who would you send that to?

A. I would send the copy to Khos and to Larry
and to, for crying out loud, what was the Veep's name?

MS. DICKIE: Charles Judd.

accounting, the accounting software itself, and we
contracted with an outside firm to provide backup
support as necessary but--

Q. Right. And what were her-- you said Debbie.
What was her last name; do you remember?

A. No. Craig would know. I forget Debbie's last
name. She was Khos's personal secretary.

Q. Debbie Forrester or Debbie?

A. No, that's Lisa Forrester. That was
Craig's-- not Craig's--

Q. Debbie Pearsall?

A. Pearsall. Pearsall?

MR. THORLEY: Pearsall, I think that's her
name.

Q. Mr. Mitchell? All right. Who would have
been there-- was there a separate person who was
responsible for maintaining the computers, separate and
apart from her or was she the person?

A. When you saw maintaining the computers, are
you talking--

Q. I mean--

A. Are you talking about the system--

Q. Yes, the system.

A. Or the hardware.

Q. Yes, the system, the system.

THE WITNESS: Thank you. Thank you. Charles
Judd. I would send complete packages to those three
guys and then I would send abbreviated packages to the
respective managers of their departments; in other
words, I would send information that, the P&L
information only that had to do with their operating
capacities and not bottom line information.

Q. All right.

A. Top line information either.

Q. All right. Now, were there also-- You
described sort of an end of the month statements that
you would prepare and that would be available?

A. Uh-huh.

Q. Can you tell me what other accounting records
would have been-- I mean I assume there would have been
payroll records.

A. We used a payroll service, to be perfectly
honest, and so payroll-- but the payroll records fed in
through journal entries into my accounting system but,
yes, obviously all the prerequisite payroll records
were on hand, inventory, inventory control records. I
worked a lot with the engineers on--

Q. Their cost of processing?

A. On basic cost accounting.

Q. All right.

A. Systems. And but most all of those records were kept down into my office.

Q. I mean did they have a set of records that would identify each month how much product had come into their facility for treatment and disposal?

A. Sure. Those records are kept in parallel because there would be an accounting set and then there would be the operational set that, you know, that the customers would sign off on, and the engineers and the operations folks would keep their copies of all the records.

Q. All right. And I assume those documents would also estimate the cost versus the revenue for whatever is coming into the site to be processed and disposed of; would that be fair?

A. In a--

Q. I'm thinking of cost of goods sold--

A. In a very crude way.

Q. But I know it's not cost of goods sold?

A. Yes. It's cost of operations, right.

Q. Cost of operations. All right. And then would you prepare in addition to cost of operation, I mean would there be documents setting out allocation of general overhead? Was that done, do you know?

A. Not exactly. We did not charge the

departments like you would in a manufacturing operation. We would not charge the departments, they were not responsible for their overhead.

Q. Okay.

A. At that time. So it wasn't necessary. I mean I did it internally and to keep, to keep a handle on costs but the managers were not responsible for their share.

Q. All right. So you--

A. Penalized.

Q. So you would for accounting purposes at the end of the month--

A. Right.

Q. --allocate general overhead?

A. Right. They were basically responsible for their direct expenses.

Q. Okay. I see. Was there a step where you reconciled bank accounts?

A. Uh-huh. Uh-huh.

Q. All right. Who was the one who did that?

A. Well, when I first got there, the same person who was reconciling the bank accounts was the same person who was cutting the checks and, consequently, when I was there about two months one of our former employees was arrested for embezzlement and then after

that I took over the-- I took over the responsibility for the reconciliation of the bank accounts.

Q. When you say the same person was cutting the checks and reconciling the bank accounts?

A. Uh-huh.

Q. Who was that person?

A. His name was Lance Davis, I think his last name was.

Q. All right.

A. But there's some question about that because he had some aliases as we would find out.

Q. Okay.

A. That's how I knew him.

Q. All right. When you say embezzlement, you mean embezzlement from the company?

A. Uh-huh.

Q. All right. And do you know if he was just fired or prosecuted, or how that was solved?

A. As a matter of fact, I fired him for incompetence the week prior to my discovering this. See, what I did that the controller, I mean it's not that I'm the world's greatest accountant, or anything, this was just standard operating procedure for a controller, is every month you do a variance analysis and the guy that was there before me wasn't doing

variance allowances, and so the minute you do a variance analysis then you can see, "Hey, I'm ten dollars over, or a hundred, or a thousand, or \$10,000 over in this particular line item." You would see that there were charges going against it, which you investigate, and then you find-- Anyway, I fired him for incompetence and a week later found some handcut checks written to his bank account, I mean there was-- it was a kindergarten embezzlement effort. It was extremely easy to check.

Q. All right.

A. And so he was picked up.

Q. Okay. You just needed somebody to look for it, I guess. What about accounts receivable; how were they maintained?

A. In what way?

Q. Were they maintained in the computer records?

A. Uh-huh.

Q. Was there a general ledger?

A. Yes. There's-- they were all the standard accounting controls. I mean the accounting department was, by the time I left it was very, very well-- very well defined with all the appropriate controls and there was a separate AR system.

Q. All right. Was there just one set of

accounting records or were there multiple were-- there
 different accounting records, if you know?

A. As far as the accounting system, there was
 effectively one set.

Q. All right.

A. Bells and whistles go off. What do you mean,
 effectively? Some of the numbers that had to be
 reported to various federal agencies or state agencies
 came off of my accounting records. Some of the numbers
 would come off of operation records. And this was
 another concern of mine and Larry's. Larry was very
 involved in this, too, because the records did not
 necessarily jibe and so that was a big effort of mine
 toward the end to try to get the engineering slash
 operation records to jibe as far as-- It's difficult in
 this business, if you know this business, and I am sure
 you probably know quite a bit about it by now, when you
 take a big hole and you put stuff in it, the amount of
 stuff that you have put in it comes from receiving
 records off of trucks or off of trains, and it is
 generally measured in cubic feet or cubic yards. Well,
 then you fill up a hole and you say, "Okay. By
 engineering standards this hole will hold "X" number of
 cubic yards or cubic feet and you put stuff in it.
 Well, stuff settles, so you can put more stuff in it.

1 So there are adjustments that have to be made to the
 2 capacity to the hole. So the numbers that we would be
 3 reporting as far as the amount of waste received or the
 4 amount of waste in, you know, in a cell would vary, and
 5 for some years there there had been no steps taken to
 6 reconcile the-- what accounting said, "This is what we
 7 have got on hand," vis-a-vis what the engineers say,
 8 "This is what we have on hand." And, again there was
 9 no maliciousness, there was no bad stuff going on, it
 10 was just basic incompetence on the part of accounting
 11 department about why this had not been reconciled. And
 12 that, as far as that is concerned, that's why those
 13 differences occurred.

14 Q. All right. Were those-- Basically what you
 15 are telling me is that information reported to what?
 16 Agencies?

17 A. Well, the various agencies, you had to report
 18 your wastes, both in terms of quantity and dollars to
 19 Tooele County, to the State of Utah, and to the various
 20 federal agencies who all wanted to know about how much
 21 waste you are taking in for different reasons, you know.

22 Q. Right.

23 A. Tooele is taking money, the state is taking
 24 money, and then they are trying to regulate it at the
 25 same time, so--

1 Q. All right. I guess what you are telling me is
 2 sometimes the information that was reported to the
 3 agencies in question would come from the engineering
 4 records and sometimes that information would come from
 5 the accounting records?

6 A. Right. Depending on what the agency using the
 7 information wanted to use the information for.

8 Q. All right. And who would make the decision
 9 and we're going to report the information that's in the
 10 operation records versus the accounting records? Who
 11 would make that decision, if anybody made that decision?

12 A. Well, it wasn't haphazard. It would depend.
 13 For example, we had to pay fees to Tooele County based
 14 on cash receipts, which is an unusual way of paying
 15 fees.

16 Q. All right.

17 A. We would pay fees to the State of Utah based
 18 on-- based on our waste streams and based on the
 19 quantity taken in during that particular month, not
 20 based on cash receipts.

21 Q. All right.

22 A. And so it depended, again, if, see, Utah was
 23 interested into it for two reasons: A. They wanted
 24 their money out of it. Those were my reports. B. They
 25 were keeping their hands on the regulation of this, and

1 those would come from engineering reports or operation
 2 reports.

3 Q. Okay.

4 A. So that's how that was defined.

5 Q. All right. Were the differences between the
 6 engineering or operational records and the accounting
 7 records ever reconciled while you were there?

8 A. I was doing that toward the end of my tenure
 9 there.

10 Q. All right.

11 A. And I was working hand-in-hand with the
 12 Director of Operations, a guy by the name of Greg
 13 Copeland, and--

14 Q. All right.

15 A. So Greg and I were working non-stop on trying
 16 to figure out what the differences were.

17 Q. All right. Would you have any information--
 18 and I think the answer will probably be no, but do you
 19 have any information about the personal financial
 20 records of the owner of the company?

21 A. No, those are all done by the accountant I
 22 referred to before, Tim Blackmar.

23 Q. All right. And so those records were kept
 24 separate from the company records?

25 A. Very separate.

Q. All right. And I think just so that I am clear about this, if I had any questions about the financial records, ledgers, financial statements, financial accounting, about Envirocare of Texas operation, that was not something that you had any knowledge of; is that true?

A. The Texas operation?

Q. Yes.

A. That's correct. I had no knowledge of it.

Q. All right. One thing on the comments that you made, the things that you had heard about my client, WCB, did anyone at Envirocare ever say anything to you about comments that someone from my client might have made about Envirocare; in other words, reported to you comments that were attributed to somebody associated with my client that you know of?

A. Not to my recollection.

Q. All right. Who ended up taking over your job when you left, do you know?

A. I'm clueless. I know that it went unfilled for some time but I have no idea.

Q. All right.

MR. MITCHELL: Give me just a moment. She wants to take a break.

MR. MINTON: She said you are going to take a

break. She didn't ask me what I was going to do.

MR. MITCHELL: I'm fixing to pass the witness unless these guys tell me that I've got--

MR. MINTON: I understand.

MR. MITCHELL: Anything else that they want me to-- Let me get Jeff a second.

Q. Mr. Mitchell. You had talked to us a little bit about this month end package that you prepared for Envirocare of Utah and Chagrus. Did you ever prepare a financial-- those types of financial statements for other entities that Mr. Semnani might have owned; for example, if he had an interest in the B. K. Engineering or the Semnani Foundation, or any other company that he owned, were you-- did you ever have access to financial information for those entities? Did you ever prepare financial statements or accounting documents for those entities?

A. The answer is I had some but limited access to some of the information for those entities and I never prepared financial statements for them. They were completely out of the realm of my jurisdiction.

Q. All right. And did you ever have access to the accounting records, the complete accounting records of those entities?

A. No.

Q. All right. Did you know someone named Victor--

A. Romero.

Q. Romero?

A. Uh-huh.

Q. What is your understanding of the role that he played at Envirocare?

A. He had several capacities there in the accounting function. He was terminated-- I was hired to replace him.

Q. Okay.

A. And Larry worked with him for some months and to-- did not get along. Victor worked-- this is hearsay. Okay. This was what was told to me, but I was told that Victor had worked for Khos for some years, for a few years, and had worked first for Envirocare, and then for Khos directly, and then back for Envirocare, and he was just kind of trying to find a niche and Victor was charged with the responsibility of doing everything for Khos. Consequently, nothing got done well and that was the problem-- that's the reason that I-- he was replaced and I was brought in because he, first of all, I don't think that he had a degree. I know he wasn't a CPA, I don't think he had a degree, and his accounting background was almost more of a

bookkeeping.

Q. Okay.

A. Accounting manager type of thing and he had no manufacturing background and that's what I brought to the table. And so he hadn't prepared any financial statements. When I got there, when I was hired at the end of 1995 there had been no financial statement prepared the entire year before. Bless you. So there had been no financial statements and so my charge when I first got there was to publish a whole year's worth of financial statements and so Victor was more intimately involved with Khos personally than I ever was.

Q. Okay.

A. And then Khos, that portion was taken over by Tim.

Q. Where were the main accounting files stored?

A. The current files were kept on the premises there in the building in the Accounting Department which when I left was on the first floor of the Towers building and then prior records were kept in what I would refer to as the morgue or referred to as the crack house in a house that was taken over by Envirocare and they had thrown some of engineers over in that building which is like 3rd West or somewhere around there here in Salt Lake City.

Q. All right.

A. So that's where all the old records were kept.

Q. Now how did you know old checks from customers to clients who were sending waste to Envirocare, did-- I mean how did that work? Did those go to the client-- to the engineers, and then to you or did they come directly to you?

A. No, receivables were handled through the Accounting Department and I'd say that almost exclusively, I can't think of any exceptions, for the first six months I was there, five months I was there, they came via check. A couple of months before I left we instituted a lock box.

Q. All right.

A. And so then the deposits were mailed directly to the lock box.

Q. All right. And then after checks were deposited would they come back to you?

A. Huh?

Q. I mean after you deposited checks from customers or did you deposit checks from customers in the bank?

A. No. We had a-- we had a runner.

Q. All right.

A. We prepared the deposit and then a runner would drive it over to the bank.

Q. And then after-- I assume then at some point after the bank accounts were reconciled that the checks would go off-- Would they go off and be stored at this morgue or what would happen to the cancelled checks?

A. Uh-huh. The current period, current year, were kept on site and then the rest were deposited in the morgue.

Q. All right. Was there any kind of a document retention policy there, and by document retention policy I mean were the accounting records destroyed after a certain period of time or did they just maintain the accounting records?

A. The accounting records were for the most part all there present and accounted for. During the audit prior to when the accountants came in from Los Angeles we had difficulty laying our hands on some really old records, some backup for prior financial-- for prior income tax returns, and I was having a lot of difficulty getting my hands on some of the records. I attributed that to carelessness on Victor's part, but what I did was let my accounting department know that the basic retention policy was seven years for the accounting records per se.

Q. All right.

A. And so that's--

Q. So at least as far as the accounting records were concerned, your policy or the policy in your department would be we need to retain these records for seven years?

A. Right.

Q. All right. Was there any other document retention policy that you are aware of that was operated at the company, we need to destroy records, or memos, or e-mail within a certain period of time?

A. Larry had an industrial strength shredder down in his office but it wasn't-- that was as far as stuff that was going on then but as far as records go, to the best of my knowledge I have no clue what engineering records or operations records were-- what their policies were. All I knew is what affected the Accounting Department per se.

Q. All right. You had indicated there was a time period for which documents were hard to find. Do you remember what time period that would have been for?

A. No, it was sporadic. I know Khos had some concern with his tax returns from the previous three filings and by and large the cause for his concern was due to the incompetence of the CPA firm that had been

retained here in Salt Lake. It was an individual, he was not geared up to handle a company as big as Envirocare and he made a lot of mistakes and so the mistakes on the tax returns would have left Khos in what we refer to-- the Accounting Department-- as sort of a red light kind of a status and he was afraid some of the mistakes were so large that he would have been susceptible to an audit and so that's why he pulled those guys in. So my awareness of records being difficult to get my hands on was the three or four weeks prior to the auditors coming in and taking a look at them and I mean I was just-- I was cussing nonstop because I had difficulty laying my hands on stuff. But, again, I blame that on incompetence more than anything else.

Q. Okay. Fair enough. Were there any non-American or foreign bank accounts that you were aware of?

A. Oh, none for the company. None for the company.

Q. Any that you were aware of for Mr. Sennani?

A. Well, Khos had residences in many places and I know he spent a fair amount of time in England and I remember hearing something very, very vaguely about in England but to my knowledge there were no bank accounts

Q. All right.

A. You were never asked to transfer money into any foreign bank accounts?

A. No, no.

Q. All right. Do you know if-- were the Envirocare offices, were they in the same place that they are today?

A. I can't tell you that because--

Q. That's the building right next to ours?

A. Yes, I know Khos moved his office here some time ago but the offices for Envirocare were located in this building, in the crack house, the building on 3rd West and the Clive operations so--

Q. Okay. Do you know if-- What do you call the complex that's right next to the hotel? Is it the Commercial Towers?

A. Huh-uh. The Commercial sector, there's condominium residences on the top how many ever floors and then the bottom few floors are the commercial.

A. Do you know if those buildings are owned by any of the Semani entities?

A. S. K. Hart owns the-- owned the Commercial sector of a portion of those buildings.

Q. All right.

A. And was integral, of course, they had a

board, and so there was definitely a presence there by S. K. Hart.

Q. Okay. Other than the London residence that you referenced--

A. I don't know, I have to back up. I don't know that that was a residence. I am not sure--

Q. Oh, okay.

A. But that was Khos and I kept my fingers out of his pies, I don't know if that was a residence. I know he has relatives there.

Q. Okay. Well, let me just ask you. Had you heard of residences that he had other than in Salt Lake?

A. Khos had vast real estates holdings.

Q. All right. And why do you say that?

A. Why do I say that? Because he had vast real estate holdings. I don't know what were residences and what was leased property or, et cetera, et cetera. I don't know and I was never particularly interested enough to pursue that. He had relatives that were in England. He-- I know he had property in California and property in Park City, and I just-- but I don't know what was a residence for him and what wasn't other than the one up here.

Q. Do you know the extent of his real estate holdings?

A. No.

MR. MITCHELL: Pass the witness.

MR. MINTON: If we can take about a ten or fifteen minute break. Let's hope that we can get through by twelve or twelve-thirty. Can you go through until we get through, live even if we went to twelve-thirty or one?

THE WITNESS: Yes.

MR. MINTON: Well, sometimes people who don't eat breakfast faint at lunch and I ate breakfast so I don't faint.

MR. MITCHELL: If Roy thinks that we can be done, and I have no reason to doubt him, I think it's best just to go straight on through and we'll finish it up.

MR. MINTON: If that's okay.

THE WITNESS: I would prefer. (Fecess).

EXAMINATION

Q. Mr. Minton. Good morning, Ms. McKean. I am Roy Minton, and we have talked off the record but you and I have not met until today; is that correct?

A. That's correct.

Q. I represent Envirocare and several individuals who were sued by WCS in addition to the

corporation of Envirocare of Utah and Envirocare of Texas, and I want to ask you a few questions about the testimony that you have given on direct. And I will try to break it down into categories as I go along. The first thing that I want to find out from you if I may is who you have talked to about any of the sort of things that you talked about this morning or any other thing about your experiences with Envirocare other than just conversations that you have among friends or such as that. I am talking about talking to the lawyers for the other side, or any investigators, or any law enforcement agencies or such as that. Do you understand?

A. Uh-huh.

Q. Beginning with after you left. Let me back up. Prior to the time that you left there did you have any occasion to talk to any state or federal agency or any investigators or lawyers that so far as you know Envirocare was not aware of those conversations?

A. No, none whatsoever. None whatsoever during my term of employment and since then only two entities. Some months after my termination with Envirocare I got a phone call from an investigator that I would later find out represented WCS and I spoke with him in an extremely cursory fashion and--

Q. What was his name, do you know?

A. I do not remember. I--

Q. Was it Paul Bierly?

A. Yes, it was Paul Bierly.

Q. And you spoke to him in a cursory fashion?

A. Yes, we spoke for 20 minutes in a very general sort of way and what he was looking for I could not give him and at that time I am not sure I would have given it to him anyway because I just wanted to wash my hands of Envirocare but he was looking for something very, very specific. Everything hit the newspapers a few months after I left and Envirocare was on the front page of the newspaper for weeks and weeks and weeks.

Q. About what we call the Anderson situation?

A. It started with the Larry Anderson situation and then, you know, various entities were suing Khos and you would read about that in the paper and so most of the questions that he would-- was asking me was trying to substantiate what I had read in the newspaper so--

Q. Give me an idea of what he was asking you, the subject if you can. I am not holding you to any specific wording, just what you recall.

A. I can't give to you specifics.

Q. I know.

A. In a general sort of way he wanted to know whether or not-- it was more blatant than these

questions. "Has anybody," you know, "talked to you about my-- the company I represent in Texas, what they were planning on doing to us," et cetera, et cetera. And the answer to all this was basically, "No." And he got some general information about how long, well, he confirmed some information. He knew a lot about me and would not divulge from whom or from where he learned this, but he knew how long I had been there, what I did there, where I was before. He knew all this stuff and so basically I was confirming or denying some of the stuff that he had.

Q. Let me ask you this: I am not sure I know what you mean when you say he was more blatant and was saying, "Do you know something about," and I inferred it to be what Envirocare was doing to WCS but perhaps I misunderstand you.

A. Well, when WCS -- When WCS lawyers ask me a question they couch it in terms so that they don't lead. He had no aversion to saying: "Did you know that they were doing this?" Or "Did you know that they were doing that?"

Q. That Envirocare was? I'm sorry.

A. Yes, Envirocare was doing that.

Q. In other words, telling you things about Envirocare's conduct?

A. He-- Yes, he would make these comments and

then ask me to confirm them or deny them. And--

Q. Do you remember what things he was telling

A. No, I can't. Most of it had to do with Larry Anderson and then there was the name of a woman whose name was remotely familiar to me, and did I know her? She was a lobbyist for Envirocare and I knew her by name only. I had no contact with her. And he asked me if I had ever written a check to her and the answer was no. He had asked me if I had ever written a check to Larry Anderson and the answer was no. I mean he was asking those kinds of questions.

Q. All right.

A. And the conversation didn't last particularly long but he particularly knew quite a bit about me already and I mean he wasn't offensive, just doing his job. But, so I had a conversation with him for 20 or 30 minutes some weeks maybe months after I left and then he called me back about a month prior to the subpoena asking me if I would object to being, you know, having being deposed. And I said there are other things that I would rather do. I wouldn't fight it but I wasn't looking forward to it, I would rather they not and I said the reason I would rather not be deposed is because my memory after a year was not particularly clear on

detail and anyway. And I-- And that was over the phone and I never heard from him again so that was twice. However, in about four or five weeks after I briefly spoke with Bierly the F.B.I called me and they called me to their office and I spent--

Q. Do you remember the name of the agent or agents?

A. There were many agents there.

Q. Can you remember any name?

A. No. I have all their cards at home but I don't remember their names right off.

Q. Did they mention anything about Bierly or just four or five weeks after you talked with Bierly they asked you--

A. No, they didn't mention his name at all. What their interest was in a completely different direction than Bierly's interest, so--

Q. All right. They asked you to come to their offices here in Salt Lake?

A. Yes.

Q. And did you do that?

A. Yes, I did.

Q. Do you mind telling me what they talked to you about?

A. Their questioning was very much along the

lines of the questioning here today. They were more interested in what I would consider would be-- or let me back up, in what I might have considered to be improprieties with officials, with state, county or federal officials. They briefed me on a state investigation which was ongoing up until the time that they got involved with it and apparently they told me that the state investigation had been superseded by their investigation and was briefing me along the lines of that.

Q. Was it something different or in addition to what I will refer to as the Anderson investigation?

A. Both.

Q. Both the Anderson and--

A. And they wanted to know about Khos's business dealings, his competitive nature. The time that I was called into the F.B.I it had hit the newspapers that there there death threats attributed to Khos against former employees and they asked me whether or not such death threats had been made against me and the answer was no. He asked me if I had been contacted up to that point by former employees of Envirocare and with the exception of Debbie for a little while after I left, the secretary, the answer was no, and they were more interested again in what I would refer to as political

improprieties.

Q. By political improprieties, I think I know what you mean, but so I am not guessing, do you mind telling me what you think they were talking about in political improprieties?

A. They wanted to know had Khos made payments or given large gifts to federal, state or county officials.

Q. Okay.

A. They wanted to know whether or not he had made threats, death or otherwise, against competitors and that sort of thing.

Q. What did you tell them?

A. Well, regarding the death threats, I have never heard of such a thing.

Q. Right. I'm pleased to hear that since I'm his employee, too.

A. Yes, I don't think it's his modus operandi to threaten you once you have left. I think the best that I can do at this point is say that I have personal strong feelings about things that went on in Envirocare. I have absolutely no proof to that regard except strong feelings and, therefore, I would rather not say.

Q. All right. Now, then, after you talked to the F.B.I., and now has Mr. Bierly not gotten back in touch with you since the telephone call some--

A. No.

Q. Several weeks ago?

A. No, he just asked me about the deposition.

Q. And--

A. He tried. I should say he tried many times but I wasn't returning his phone calls.

Q. Okay. About how many times did he call?

A. He probably called three or four times.

Q. All right. Do you have--

A. An answering machine.

Q. Answering machine, thank you.

A. Yes.

Q. And he would leave messages on it?

A. Uh-huh.

Q. And you just wouldn't return the call?

A. Uh-huh.

Q. Okay. Now, then, so we know that you talked to Master-- I understand that you have talked to Mr. Bierly.

A. Uh-huh.

Q. And that you talked with the officers with the Federal Bureau of Investigation. Have you talked to any of the lawyers or--

A. No.

Q. Any other investigators?

A. That's it.

Q. Is that it?

A. No, I take that back, that's not true. That's not true. I called Washington, Egan, about two weeks ago to find out if there was any way I could weasel out of this today.

Q. And did you talk to Mr. [unclear]?

A. Who did I talk to? Did I talk to you?

MR. LAWRENCE: Yes.

Q. (Mr. Minton) Did they let you weasel?

A. I'm here.

Q. All right. Did Mr. Bierly ever in any way suggest to you that your personal safety might be in danger?

A. No, not directly. He was-- When I first met him, what he had done was, he had driven up to my home when I was out flying one afternoon and my husband was in the front yard and so he goes up to Kelly and he said, "I'm Paul Bierly and I'm an investigator." It was very cloak and daggerish, so when I got home that night Kelly was just blanched. You know, because the guy had come up. And there was a little-- it was a little theatrical. And then when he made contact with me over the telephone, "I really need to talk to you. This is extremely important and I understand that you may be

fearful for your safety." "I'm not fearful for my safety. I fly airplanes." I mean I'm not afraid of Khos Semmani, not from a personal, you know, not from a tissue damage point of view.

Q. Right.

A. So he was a little theatrical but, again, I-- there is nothing there that I have to be afraid of.

Q. Right.

A. That I know of from Khos Semmani.

Q. Was this meeting that he had with your husband after he had called you and talked to you on the telephone for 10 or 15 minutes or before?

A. Oh, no. He was trying to find me.

Q. Okay.

A. And Kelly and I had been married only a few months before and so the name that he had for me wasn't even my married name. The name that he had for me was Chytraus.

Q. Right.

A. And that was the name that he was trying to find me under and so then I'm not really sure. I'll never know or care how he found out that I was a McKean. He found out I was a McKean, he found out where I lived and then he went to go approach Kelly to find out if this Jennifer McKean former Chytraus lived here so

that's the only contact he had with Kelly.

Q. So it was after that that you talked to him on the phone?

A. Yes, it was after that.

Q. Two times?

A. Yes.

Q. And that's it?

A. Yes.

Q. Okay. You talked earlier about this agreement that you signed when I was talking to you about it. Let me have a copy of that there to make sure I know what I'm talking about. I think these are both-- Are these both the same thing?

A. This is the subpoena.

MS. DICKIE: That's it, Roy.

Q. Mr. Minton: This one right here. Okay. Tell me a little more, Mrs. McKean, about the preparation of the document that you signed. You've explained to us that this is not the agreement that you signed, that you signed one that-- it sounded to me as though you had typed it for the most part yourself; is that accurate?

A. No, that's not entirely true. The original employment agreement had been prepared by, my understanding, by Lisa Forrester some years before.

Q. Right.

A. And, you know, she had gotten input and maybe from Craig, I'm not really sure, but-- and it was on-- it was on our computer system, it was on our network. And what she would do is she e-mailed me, I worked me down the copy that I was to sign and it was full of spelling mistakes, and this and that, and that. So what I did was I corrected spelling mistakes, corrected essence mistakes, and then she printed it off and the one-- this is kind of confusing but the original one was-- I was given some, about a month after I was hired I was given a book, a little booklet.

Q. What was the book?

A. It was just a blue paper, like a sheet protector kind of a thing, and inside it talked about what Envirocare was, what they did, you know, the normal propaganda sheets that companies give you, and at the back of it was an old form of the employment agreement. And Larry said, "Don't sign this one because we are in the process of revamping it, there's some things we want to-- some additions and changes we want to make." And so the one that I signed was-- eventually came down from-- to me from Lisa, I signed it, and then it was put in the back of that book that I had.

Q. All right.

A. So, and the print, and the reason that I know this is not it, because this looks very nice, this is not what the one that I signed looked like, it was this. This was what--

Q. And you're pointing to the page that's got a signature on it.

A. Yes.

Q. Right?

A. Yes. Page 5. This was the type of thing that I signed. Now, in essence, this is very similar, and in essence, I mean it talked about-- Khos is very, very concerned about confidentiality.

Q. Right.

A. His personal affairs, he is phenomenally secretive about it, and he is-- he was almost manic about making sure that if you worked for the company that you were not going to divulge any secrets which, of course, is entirely appropriate. And it talked basically about intellectual property, I remember, which I don't see in here right offhand, and I remember there wasn't a section in there about remedies for breach.

Q. Right.

A. But I do remember talking to Larry who told me that, "Yeah, we can put the remedies for breach in here but it wouldn't withstand a court of law," he said.

because, you know, you can put anything in there you want, he said, "It won't necessarily hold up." But it was in there. But this is not, on the face of it, this is not the one that I signed, so, anyway.

Q. All right. I understand. I appreciate your explanation. There's some other things I wanted to be sure that I understood. You talked about, I won't say a procedure, a habit that either Khos had or someone did of taking checks which would be, I would call them generally speaking expense checks. In my law firm we have checks that we call operating that anything that we write on what generally speaking is going to be an expense of operating a business. Do you understand me?

A. Uh-huh.

Q. We make exceptions. People go in there and make a loan to themselves for a hundred dollars, or give their wife money to pay the whatever, and write it all on there, and then they've got to reimburse it, but nonetheless that account is for that. And I got the impression that they were asking you to hand out checks where the payee wasn't listed in the check. Is that correct?

A. No and yes.

Q. Okay, give me-- you tell me.

A. All right. The no portion is that's not how

we operated there. There was a basic check stock for the operating account.

Q. Right.

A. And the-- a hand cut check, which would be ripped off the top of the check stock and typed out, and so there wasn't a separate expense checking account per se.

Q. All right.

A. And the sizes of these checks, the few, these few checks were, by my estimation, everything being relative, they were large.

Q. How much?

A. Somewhere between four and five digits.

Q. Well, let me--

A. And I can't be more specific than that but--

Q. Four digits would be in the thousands, five digits could be up to 99,000.

A. In the tens of thousands. That's--

Q. All right. Do you remember the size-- you say there were about three?

A. I remember there were two checks that I let go that way and the third check I pitched a fit about. I mean at this point I go into Larry's office and I said, "I am not-- I can't do this anymore." And so Larry, he agreed with me and he said, "You shouldn't be put into

this position," and he said "I will handle it." And so then what he did was he took the check up to Khos, there was a conversation to which I was not privy, and he brought it downstairs and he said, "Khos is going to make a withdrawal of equity."

Q. Okay.--

A. And at that point, fine that's all I needed to know.

Q. All right. Let me go back and be sure that I understand what you're saying both as to the inappropriateness that you seem to feel that it was.

A. Uh-huh.

Q. And as to, as you point out, the checks come back?

A. Uh-huh, they come back.

Q. And when those came back did you see who the payee was?

A. Heck, yes.

Q. Who were they made out to?

A. I don't remember. I don't remember. They were made out to-- both times the checks came back made out to individuals whose names I did not recognize at the time and I don't remember at this time.

Q. Okay. Do you remember approximate time frame?

A. Well, they were early on in my hire so I would guess that they would have been somewhere between December and February, December of '95 and February of '96. They were early on.

Q. I'm looking for when it was. Yeah, you started working there December of '95, and you think these were within the first several months, three, or four, or five months?

A. Uh-huh. The first, the first couple of months.

Q. And that they were checks that would have been somewhere in the thousands of dollars?

A. Uh-huh.

Q. Okay. And there were two of them?

A. There were two that I released that way.

Q. Okay.

A. Knowing, of course, that they were going to come back, and I would see-- I mean I had to know where they were going to go.

Q. Right.

A. First of all, I mean how do you-- you know, where on the P&L would you charge an expense?

Q. Right.

A. And--

Q. Tell me what you felt was the

inappropriateness of being that. I'm not quarreling with you at a moment, because you are the CPA--

A. I'm not a CPA.

Q. And I'm a bill condorman.

A. I'm not a CPA.

Q. Well, you're, as you say--

A. Passing an exam does not a CPA make but--

Q. Well, all right--

A. But thank you for--

Q. All right. But-- But I won't tell you what I made in accounting. Tell me, I am not a tax lawyer, I know one when I see one, I guess I can say that, but I do not understand the inappropriateness of that and that's sort of a personal thing with me, because in my billfold I have an operating check that I took from the account and I carry it around with me and if I ever need it, I'm going to fill it out and sign it, and I won't even tell them what it was and when he gets it back he will say that it's that, and he does growl about it. But when I've said, "What is wrong with that?" He just says, "It makes more work for me."

A. All right.

Q. Now, what else is there inappropriate--

A. I have no aversion to work whatsoever, however, one of the checks came back and I was told to

charge it against donations.

Q. Okay.

A. Charitable donations.

Q. Okay.

A. A charitable donation.

Q. A charitable donation?

A. Right.

Q. And you did not-- you did not know how it could be a charitable donation; is that correct?

A. I did not know to whom it went and I had some internal problems with that. First of all, donations in my estimation should have been handled through the Foundation, that's my personal opinion.

Q. Okay. But there's certainly nothing wrong with the corporation making a donation, is there?

A. That's correct, however, as the controller if money goes against something that is charged to a donation and we undergo an audit and they come back and they say, "Hey, this check that's made out to such and such or to so and so for \$5,000 charitable donation, is this a tax deductible expense? If it's proper, yes, it is. If it's not proper, no, it isn't. Now, as a controller what I am there to do is, of course, to protect his assets, so to speak, and to be able to tell the IRS, "I stand behind what I have done here. I made

this charge against donations and I stand behind the fact that it's a donation." I couldn't do it. I could not have sworn.

Q. Okay. I understand that accounting procedure and I respect it. Any other reason that you thought of as being improper?

A. That was sufficient. I did not know if it was a donation.

MR. MINTON: Okay. Two minutes to change. We will just sit here and watch you, to see if you do a good job.

[Off the record.]

Q. (Mr. Minton) Let me talk to you a little bit about your, you call it management by screaming or was that--

A. That's not my management style.

Q. No. Tell me what you said because I wrote it down but I'm not going to go back through--

A. That was Larry's management style. He was a very, very-- how would you say? He has a very emotional individual.

Q. I have been given to understand that. Has Craig ever screamed at you?

A. Craig?

Q. M-hmm.

A. I don't think Craig has ever screamed at anybody in his entire life. No, Craig has never screamed at me.

Q. How about Khos?

MR. MITCHELL: I definitely disagree with that.

THE WITNESS: Now, that I think about it. No, Khos is also not-- Khos is not a screamer. Khos is an intimidator but Khos is not a screamer.

Q. (Mr. Minton) All right. Well, who, I'm not quarreling with you about it, this is truly discovery. I'm trying to find out if I'm going to have to hear this, I would rather hear it and know something about it now rather than for the first time in Andrews, Texas next April. August it is. They wanted April, we got August.

A. Uh-huh.

Q. Give me a little better idea as to who engaged in this screaming at you or at your people, your employees. Who?

A. My situation at Envirocare was that I was developing ulcers from working with Larry Shelton. I mean it was just, I was sleepless for months and I am not-- I am not a weepy, emotional type, and when somebody can drive me to tears, I've gone over the edge.

1 Basically Larry was continually threatening me with my
2 job. "You either do it this way or you find another
3 job." And I go, "Screw you, I'll find another job." And
4 he would never fire me, he continually threatened to
5 fire me. He was continually threatening to fire me but
6 he never did. And he would-- I had an office in the--
7 I had an office that was separate in the accounting
8 office, you know, with a door on it, and he would come
9 in and throw stuff on my desk and the obscenities would
10 flare without the benefit of having a closed door which
11 wouldn't matter too much anyway. But I don't mind being
12 screamed at but it is very demoralizing for my staff
13 when he would come in and call me these-- these
14 interesting names and, you know, he would tell me, you
15 know, "You're an idiot," and he knew I wasn't an idiot.
16 He knows I wasn't incompetent. He knew I had done a
17 good job for him. And he knew, that was the one place
18 where he could get to me, was to tell me I was
19 incompetent but he knew that I wasn't. And, you know,
20 and then he would leave and he would scream, he would
21 dash out and slam the door and, you know, then the rest
22 of my staff would come in and they're all hangdog, "Are
23 you okay?" "Yeah, I'm okay. Everything is fine. Go
24 back to work." But they were terrified of him and--
25 that's not true. The women were. There was-- we had--

1 can't handle this anymore. I don't have to work in an
2 environment like this." And Charles said, "I will talk
3 to him." He said, "You're right. You don't have to work
4 in this kind of environment." Charles went down and
5 talked to Larry, told Larry, "Cool it." And Larry let
6 Charles leave the office and then he exploded. "How dare
7 you go talk to Charles Judd." And I said, "Larry, if
8 things don't change like this, you're going to find
9 yourself another controller." And he goes, "That suits
10 me fine." Well, anyway, he left on a trip, on a
11 business trip for Zhagrus and then the auditors came in
12 and I worked with the auditors. Larry came back and he
13 was very, very unhappy about, I mean at this point there
14 was nothing that I could do to please him. I mean the
15 accounting department was working extremely well, there
16 was no problems in the accounting area. I don't know,
17 I'm speculating. I don't know if it was a threat issue,
18 I don't know whether everything, you know, sometimes, I
19 don't know, maybe I just rubbed him the wrong way, I
20 don't know, but two days before I turned in my final
21 resignation I went up to Khos and I said, "Khos," I
22 said, "This has gone as far as it can go." And I went to
23 go talk to Khos at the suggestion of my peer, Tim
24 Blackmar, who was the accountant working for Khos at the
25 time, and Tim and I-- I think I was the only person in

1 I had a male employee that-- and Larry had screamed at
2 this male employee quite a bit, too, and it was
3 altogether an uncomfortable working situation. Now,
4 when I first started working there it was not that way.
5 We were very tight, we were drinking buddies, et cetera,
6 et cetera. Then he moved over to Zhagrus and then
7 things started happening, pressure started building on
8 him on the business side, and Zhagrus was giving him a
9 lot of trouble, customers were giving him a lot of
10 trouble, compounded by the fact that he was trying to
11 quit smoking, compounded by the fact that he was
12 drinking a lot, compounded by the fact he was having
13 problems at home, and he was working huge, I mean
14 inordinate numbers of hours a day. I would go in on a
15 Saturday or a Sunday and he was there and he was just
16 nonstop working. And so when our-- the breakdown in our
17 relationship started to occur I was attributing this to
18 maybe personal things that were going on and Khos was
19 continually unhappy with him, and he would take that and
20 he would just explode on me and I was okay, that was
21 okay with me for awhile, because he and I were fairly
22 tight, but then about two months prior to my leaving
23 there when he was fully enveloped in the Zhagrus stuff,
24 his temper tantrums were becoming unbearable and a month
25 before I left I went up to Charles Judd and I said, "I

1 the company that Tim got along with, probably too well,
2 but-- No, No, not like that, Craig. But, anyway, Tim
3 told me, "Go talk to Khos. Go talk to Khos. Khos will
4 make it right," you know, "Khos will get you out of the
5 situation with Larry." But, hey, business is business.
6 Larry was his CFO, I was the controller that reported to
7 his CFO. If a decision had to be made, I knew where
8 that decision was going to go and I am a big boy,
9 figuratively speaking, and I was prepared to be-- I was
10 prepared to be let go, because at any-- you know, Larry
11 was threatening me on a daily basis. So I went up to
12 talk to Khos two days before the end and Khos says, "Oh,
13 I can't believe this about Larry. Larry is so even
14 tempered, Larry is so this, and Larry is so wonderful."
15 Q. He sees a different side of him.
16 A. Well, yes, I mean, you know, but-- and he
17 says, "I will talk to him." He says, "I will talk to
18 Larry." He says, "But," and then he added a caveat
19 which I knew was going to come, and was expecting it, he
20 goes, "But I can't armchair quarterback," and that
21 wasn't his words, but he said, "I don't want to armchair
22 quarterback my senior management and if they make this
23 decision, if Larry has made this decision he can't work
24 with you, he can't work with you." And I go, "That's
25 cool with me. That's fine with me." And the next day

Larry exploded at me again for the last time in front of the auditing staff and the auditors told him that his behavior, they told him, "Your Behavior is inappropriate." And Larry said, "I don't care if she works for me." And I went downstairs and packed up my stuff, some of my stuff, and I split and I never went back.

Q. Okay. I think--

A. That was it--

Q. I think I fully understand--

A. It was ugly.

Q. --what you're saying and that was too bad.

A. Yes, it was sad.

Q. Were there any others, you know, you and I sat out here and feel like: Why didn't Khos do more? Why didn't Judd do more, or somebody. I mean--

A. I don't even ask those questions.

Q. I'm the oldest guy in our place, too, and they're probably lots of people that say, "Why doesn't that old man do more." And I should do more. But were there any others in between you and top management that were doing any screaming at you?

A. No, I had continual-- I had a continual personality conflict with Lisa Forrester but she--

Q. I am sorry.

A. Lisa Forrester--

Q. Behind me what her position is. I should know, and I'm sorry.

A. That's a good question. I'm not really sure what her position is. Her title was secretary to Charles Judd.

Q. Okay.

A. But she had worked for Charles for a long time and I don't think that their relationship was sexually intimate but it was extremely intimate and Lisa-- there was an attempted power struggle when I first got there and I don't engage in power struggles. I mean it was just-- And so Lisa and I were continually at odds with each other and she would go to Charles, who would then go to Khos saying, "I can't get along with Jennifer." And so Charles would say, "Why can't you get along with her?" I mean it's like, "I want to do this. Just, you know, I want to do my work. Let me go fly this damn plane and let Lisa go do her thing." But that was it. I had an extremely tight working relationship with Greg Copeland, who is manager of operations, and he was the person that I worked with most of the time outside of my immediate department.

Q. Did you have much to do with Craig Thorley? I know he's sitting here and you hate to start badmouthing

somebody in the room, but feel free.

A. Craig was really tough to work with. No. Craig-- I enjoyed working with Craig. Craig and I had an off the record sort of a comic relationship with each other and I-- Craig wrote my will. I mean, you know, it was that kind of relationship.

Q. Okay.

A. Craig and I did not spend much time engaging spend in verbal jostling.

Q. Is that pretty much insofar as-- and I'm not repeating-- I'm not trying to minimize your unhappiness, Jennifer, Ms. McKean, with your situation there. I just want to be sure that I understand it. And is that pretty much it?

A. As far as what?

Q. So far as the complaints that you had about working for them, why you left, and the people?

A. I enjoyed working with the people there. Khos, one thing that Khos did very well was he, and for the most part he employed well, he didn't pay well but he employed-- employed quality people to work for him.

Q. Right.

A. One of the things I was always astounded at was the quality of the people that he had working for him, that would settle to work for him for the salaries

1 that he paid them. His staff was to a man grossly
2 underpaid with the exception of Charles Judd. And so my
3 unhappiness was for the most part completely wrapped up
4 with Larry. I did, however, and I have to be perfectly
5 honest, I would go home with a lot of heartburn about
6 the way that Envirocare did business as an entity.
7 did not, I do not like the way Envirocare does business.
8 That's personal.

9 Q. What about the way they did business did you
10 not like?

11 A. It is my feeling Khos Semani plays dirty
12 pool.

13 Q. If you are going to say that I have to ask
14 you--

15 A. Okay.

16 Q. What facts that you know of?

17 A. Okay. There are-- There is a continual
18 battle going on with Khos Semani and the owner of ECDC
19 Environmental, Laidlaw Environmental, there were
20 continual lawsuits about money that was royalty money,
21 for lack of a better word that Khos was supposed to have
22 paid for on a contract with Laidlaw and I do not feel
23 that Khos was honorable and I'm using that in a very
24 generic sort of word here but I don't think that he was
25 honorable. The conversations that I heard, the limited

contact that I had with him, and I really had extraordinarily little contact with Khos directly, but he was very, very much taken with the fight, the battle, the competition. For him it wasn't so much a matter of making money, which he did a lot of, but it was the battle. And now, what I am getting ready to tell you now is secondhand information. Most of what Khos said I heard through Larry and Larry, you know, let us know, let the entire staff know, Khos would do whatever is necessary to win.

Q. All right.

A. Period.

Q. What conversations did you have with anybody else, and you described those conversations at the beginning of your testimony today, and I think I understand what you're talking about. Anybody else that gave you that kind of information within the company?

A. There was a lot of conjecture at Envirocare. Management, most of the senior level managers that worked for Khos, they like their jobs and they liked their company, but there was-- and I don't-- I don't want to get into, you know, the melodramatics here, but as I say that there was a reign of terror there. They, the employees, especially the senior management, I know a lot of the guys working for him would like to go

someplace else but had spent so long working in their particular-- in this particular niche that they were afraid that they wouldn't be able to find a job someplace else.

Q. Tell me who you talked to in that area of management that told you that, and if no one, I understand you can still have that understanding about it. Naturally when you say that to me, if I said something like that to you, you would say--

A. Who?

Q. Who told you that?

A. Let me think if they're going to get in trouble if I tell you this.

Q. Well, we've got enough problems without worrying about going back and--

A. And getting-- Greg Copeland, for example, was, he was a tremendously underpaid employee, considering what his responsibilities were in the Operations Department. Some of the design engineers were tremendously unemployed-- and each one of these--

Q. Underpaid, you mean?

A. Well, underpaid, I'm sorry. And the problem was not so much a matter of being underpaid as being continually terrorized and the terror may have been self induced, they may have said, "Oh, you know, Khos is

going to-- Khos is going to yell at me, Khos is going to do this, Khos is going to do that." But it's like every time you turn around you were afraid of Khos and--

Q. Were you afraid of him?

A. Afraid of him? Not like they were because my skills in accounting were more transportable than their's were. I hadn't spent the last 10 years of my career working in--

Q. Right.

A. --waste remediation. So if he fired me tomorrow, you know, who wants to be fired? Who wants to go through that, but if they fired me, I would be employed day after tomorrow.

Q. What I'm really getting at, do you personally, in your dealings with Khos did he leave you with a fear of him or did you feel like you were terrorized by him?

A. Personally or professionally? Personally,

Q. Professionally?

A. Professionally, to a certain degree. To a certain degree I would have to-- I would come downstairs and I would find that my adrenaline is up or my pulse is pounding or then sometimes you wonder, well, I don't know. I've always had good working relationship

with my bosses, so I guess the last time I was subjected to this was when I was a cub weather forecaster in the military and the first time I ever got slammed by a general that I passed in walking that I failed to salute and, yes, I was terrified of him. I didn't think he was going to hit me.

Q. I found generals didn't care, it was some-- second--

A. Little second lieutenant.

Q. Some second lieutenants just go to pieces.

A. Yeah, they care, but--

MR. MITCHELL: Boy, you nailed that.

THE WITNESS: But to that extent, yes, I was terrified. I guess I was terrified of him because at first, at first I was in awe of him. The more I knew about him, I am not impressed by people that have money, and a lot of people are and he has a lot of money, and-- but that didn't terrify me. I just wanted to do a good job for him. But where it became less, for me to balance it out, was somewhere along the line I started to lose respect for him and when I lost respect for him I also wasn't afraid of him anymore.

Q. From any dealings that you had with him personally, did you lose respect for him, if I understand you, and if so, was it as a result of an

...personally?

A. No. It was watching him do business.

Q. And then watching out of business was the way that he dealt with his competitors?

A. And his employees.

Q. Now tell me what you saw him do with his employees other than what you have already told me?

A. I remember there was an incident out at the site out at Clive once. In my capacity as controller we didn't have a personnel manager per se. Lisa was doing a lot of that but Lisa didn't have a hand on Utah employment law and we were constantly-- We were constantly doing things in violation of what Utah employment law. And so I had a lot of background in personnel management and eventually what would happen, like I stuck my fingers in those pies because in a lot of areas personnel management and accounting over-- they cross over. And one day there was a supervisor out at the site who called me up and said that he was being required to work overtime and he couldn't work the overtime, he could not work the overtime, and he had family obligations and he had to get home, there wasn't anybody to watch the kids and he had been threatened, he said by Khos that if he didn't work the overtime he was going to lose his job. And it was that kind of thing.

And then Khos, you know, I would go to Larry with this because I didn't want to go directly to Khos about this and I went to Larry I said, "You know, so and so has got this problem. What do we do about it?" And basically Larry's philosophy through Khos was, or Khos's philosophy through Larry, was that, "Hey, you know, if he doesn't like it, you know, screw him, he can go get another job someplace else. He can go right across the field and he can go work for Laidlaw." Well, he couldn't do that. I mean they just couldn't do that. And the--

Q. Well, this guy that called you, is there an end to that story?

A. Yeah. He eventually wound up quitting.

Q. Okay. He quit?

A. He had to quit.

Q. Because he couldn't do the overtime?

A. Because he couldn't do the overtime.

Q. Okay.

A. And that was just a little thing and there were lots of little things and we had employees that would quit and come back and quit and come back, and-- but the feeling up at the office was one of general demoralization. Everybody walked around checking their 6 all the time, that's a military expression. They're

always--

Q. There at Envirocare?

A. At Envirocare. The managers were always under a feeling of general demoralization.

Q. Okay. Let's just get a few names so I'm sure that I know who you're talking about. And do not worry about there's going to be any problem with them, they're all dead. Who are you talking about as managers that you saw the impression were demoralized?

A. It would be easier for me to tell you which managers were not. I need an employee list because right now I have--

Q. Of the managers there?

A. Yeah, because basically I mean--

Q. Well, Judd?

A. No, not Judd. He--

Q. Okay, was he demoralized?

A. In my feeling?

Q. Yes.

A. A lot.

Q. Okay. Your feeling was that Craig Thorley was demoralized?

A. In my feeling Craig was demoralized quite a bit.

Q. Okay.

A. Not-- Craig wasn't in a continual state of demoralization but, yeah.

Q. Okay. That's very helpful. Give me some names down there, Thorley, Copeland?

A. Greg was extremely demoralized. And the--

MR. MITCHELL: Do you want to take a short break, Roy?

MR. MINTON: Sure.

[Recess].

EXAMINATION, continued:

Q. Mr. Minton, I was going over names with you before we took a break there and I just mentioned Thorley. You said Greg Copeland. Let me ask you about Al Rafati, do you know him?

A. Uh-huh.

Q. Tell me what you think about him. Was he demoralized?

A. Tell me-- Tell me what I think about Al Rafati? Al Rafati--

Q. I mean in the subject that we're talking about here. You said that you felt--

A. No, Al Rafati was not demoralized. He was out of the loop.

Q. Okay. Ken Alkema.

A. Ken Alkema was new when-- Ken Alkema was

hired after I was there and I had no-- was not there for very long when I left.

Q. Did I already mention Vern Andrews?

A. No, you haven't mentioned Vern Andrews.

Q. Vern Andrews.

A. I didn't have very much-- Vern is-- was an older guy, a very placid individual, and I had very little interaction with-- What? What did I do wrong?

Q. No, you didn't do anything.

MR. MITCHELL: This is a Martina Roy deal. Don't pay any attention to it.

THE WITNESS: Oh, okay.

Q. Mr. Minton. You said an older guy. Since he would probably be my son.

A. Relative to Greg Copeland, Vern has been around the block once or twice. Now, Vern and I had very, very, very little interaction. Most of the interactions that I had were with-- And, see, these are the names I am missing right now were-- I have a terrible memory for names.

Q. I understand.

A. Craig, who was the tall sweetheart nerdy guy that had the really weird laugh that taught me all about the atom structure when I first got there, had the office right next to Greg's.

feel that you were grossly underpaid?

A. Grossly.

Q. Okay. Why did you work there then? You are an engaging, attractive, capable, 39-40 year old woman.

A. Thank you, I needed that.

Q. Why would you stay there? You only quit because you had somebody abusing you in a way that nobody would abuse you.

A. Because of promises that Larry had made me. What had happened was, and this was another sense of general demoralization for the company. I was hired in December like a couple of weeks before Christmas. I had been there about a week or so and Khos holds-- he rents a room downstairs here in whatever the name of this used to be before it was the Double Tree and has a company-wide meeting and he is talking about all kinds of new management techniques that's going to increase productivity and it's going to-- I mean all kinds of new compensation packages for not just the managers and the non-exempts but the direct employees as well. "Oh, you're going to get bonuses of ten-- We're not talking small bonuses here, People, we're talking big bonuses. If you make your-- If you make those quotas," however, they were stipulated, "Your compensation will be ten, maybe 25 percent of what your salary was." And

MR. THORLEY: Jay Vance.

THE WITNESS: Thank you, Jay Vance.

Q. Mr. Minton. Jay Vance.

A. Yes.

Q. Jay was terrorized or demoralized?

A. Not terrorized but very demoralized.

Q. Okay. If we gone over what I have got and we have got Vance and Copeland.

A. Yeah.

Q. That's demoralized.

A. Yeah, you know--

Q. And I'm not, believe me, I'm not trying to press you to give me more names on who it is. But I want to get an understanding the best that I can. I'm not quarrelling with you.

A. Even his secretary was, Debbie Pearsall.

Q. Are you talking about whose secretary?

A. Khos's secretary, that's his personal secretary.

Q. Well, I would hope so.

A. Oh, man.

Q. I am just checking you. She has been with me 15 years so I haven't demoralized her to the point-- or maybe she's in the deal you're talking about, she's got too much invested. How about your compensation? Did you

everybody leaves the meeting that day and they're all excited and they're going to be given a portion of their bonus at the end of the year and then another portion of their bonus in mid-year, which would have been April or May, or whatever their fiscal year was over. And so everybody is all excited, they are all puffed up, "We're going to go kick butt," and we all i goals. So I took my staff back and laid out all the goals before them because I had brought in, and, "Okay. You're part of management so you're going to lay out the goals." And we laid out the goals and everybody is looking at their substandard salary packages and going, "Okay. If I can augment with a 10 or 25 per cent bonus, this is a liveable wage." And I was in this, too.

Q. You were being paid what when you started?

A. Thirty-five.

Q. And you were there how long?

A. Altogether I was there nine or ten months.

Q. And what were you making when you left?

A. Forty.

Q. So you went up five thousand dollars in ten months?

A. Yeah, which is approximately fifteen to twenty thousand dollars less than Larry said I would be making but he said the reason--

Q. Did you go to work somewhere else?

A. Yes, I did.

Q. Where did you go to work after that?

A. Fifty-eight.

Q. And where were you working then?

A. Where?

Q. What was the name of that place?

A. Well, that company has-- they have retired and they're long since gone away, but that was a construction company called Mountain American Tile but--

Q. How long were you with them?

A. A very short period of time. I was only there six months and then the owner retired.

Q. And then you went to work where you are now?

A. Where I am.

Q. And what are you being paid now, I hate to be personal?

A. Right now I'm being-- I'm paid forty-eight, so--

Q. Okay.

A. But now I'm working 38 hours a week for 48 grand, too, so I mean it's like a cush job. So, anyway, so I was not working 38 hours a week for Envirocare. So the first time the bonus comes around to be paid and my staff is paid an average of two percent and I'm going--

I went in and said, "Larry, I can't do this. I can't go face my staff and say, "You were promised 10 to 25 percent, you're being paid 2 percent." And he goes, "Jenn," I don't know what to tell you to do. They don't think the Accounting Department is important at Envirocare, it doesn't contribute to the bottom line. He said, "It's a negative." And he said, "And that's the way they see it. So the people that would get paid good bonuses will be Al Rafati and Sue Rice, they get good bonuses." Sue Rice was some sales person there. And the Sales Department got good bonuses and everybody else got screwed. The hourly went through the roof, they just went through the roof.

Q. By hourly, you mean people paid by the hour?

A. Yes, the folks out at Clive.

Q. Okay.

A. And they hit the ceiling, they just-- they were livid. My department was livid and the day that the bonuses were paid, I took my department out for lunch and all I could say is, "I'm sorry. I'm sorry. I mean I am just sorry." I said, "I'm in the same boat that you're in and I don't know why he promised you one thing and delivered another, because we've not only made-- We've made our entire annual goal, what he said were our stipulators, our annual goal, we had made that two

months into the package. So we had far surpassed our expectations and this was the reward we get and all I can say is, "I'm sorry." So I mean that was an extremely demoralizing thing. And what was worse for the Accounting Department is every month after I closed the books I would sit down with the entire accounting staff and I go, "You know, Guys, you bust your butts during close this month and we closed." Normally they were closing the books two to three months after the fact and my goal for my department was to close the books seven working days after the end of each month, which we were making just like that and those guys are in there just busting their butt, and we're getting everything done, and I would go over the financial statements with these guys, because they were contributing to the manufacturing of the accounting statements, they knew how much money we were making. They knew that our profit margins were extraordinary. And then they're sitting there trying to swallow a two percent bonus. So it was not a good situation.

Q. Okay. I think I understand the salaries and those concerns. You have told me who you believe was demoralized there. Is there anything else that you can tell me as to why you left? My basic understanding is to why you left was a terrible relationship with--

A. With Larry.

Q. With Larry?

A. And then the general sense that-- the business itself. I had friends that worked for Laidlaw and I just--

Q. When you left there you wrote a letter and what you said in that letter to--

A. To Larry?

Q. To Charles Dood?

A. Oh, to Charles. I don't remember.

Q. You've read it, have you not?

A. Let me read it again.

Q. Why don't you read it and then let me see it a minute.

A. Uh-huh. That's absolutely true.

Q. What's in there was true?

A. Every word.

Q. Okay.

A. I chose my words extremely carefully.

A. "It has been a pleasure working--"

A. --with.

Q. --with you here at Envirocare. I leave behind the talented and dedicated staff."

A. "In the Accounting Department."

Q. "And it has been an honor to work with them as

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March 27, 1991

NOTE FOR: Carlton Kammerer

FROM: Mike Tokar

SUBJECT: POTENTIAL ALLEGATION CONCERNING ENVIROCARE

I spoke by telephone yesterday to a [REDACTED] who called me to convey some concerns he had about ENVIROCARE, Inc.

[REDACTED] said that "I am very concerned about their (Envirocare) burying source material..."

[REDACTED] had any recourse."

He asked whether he

I responded by saying that I did not know what his legal rights or options were regarding this matter, but that I believed that what he had told me sounded like it might be (in NRC parlance) an "allegation", which NRC had procedures for handling. I suggested that he talk to Carlton Kammerer, who as Director, State Programs, would be in a better position to know what actions the NRC could or should take vis a vis (a) the handling of the potential allegation and (b) responsibilities and interactions with the State of Utah. Inasmuch as (1) the Envirocare facility is in the State of Utah and (2) Utah is an "Agreement State," I presume that Utah would have the ultimate responsibility for dealing with the allegation. On the other hand, it is my understanding that there is some current controversy over the State's handling of the Envirocare application. In any case, I felt that you would be the best source of information concerning what future actions to take, including entering any relevant information into the NRC allegation system.

[REDACTED] sounded very pleased and receptive to my suggestion that he speak to you, and our brief conversation ended on that note.



Mike Tokar

April 9, 1991

Mr. Larry Anderson, Director
Bureau of Radiation Control
State Department of Health
288 North 1460 West
Post Office Box 16690
Salt Lake City, UT 84116-0690

Dear Mr. Anderson:

This is to confirm Joel Lubenau's telephone call to your office on April 9, 1991. On March 26, 1991 NRC staff received a potential allegation concerning the operations at the Envirocare, Inc. site (enclosed). We are forwarding it to you for follow-up, and we request being informed of the results of your inquiries.

Sincerely,

Original signed by:
J. O. Zimmerman

Carlton Kammerer, Director
State Programs
Office of Governmental and Public Affairs

Enclosure:
As stated



State of Utah

DEPARTMENT OF HEALTH
DIVISION OF ENVIRONMENTAL HEALTH

NORMAN H. BANGORER
Governor

SUSANNE DUNBAR, M.D., M.P.H.
Executive Director

KATHLEEN L. ALBERTS
Director

888 North 1400 West
P.O. Box 16680
Salt Lake City, Utah 84116-0680
(801) 538-6121

Utah

May 10, 1991

Carlton Kammerer, Director
State Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Kammerer:

On April 9, 1991, I received a phone call from Joel Lubenau regarding an allegation against Envirocare of Utah by a former employee. Mr. Lubenau correctly forwarded the allegation to the Utah Bureau of Radiation Control since Envirocare was, at the time, authorize to dispose of NORM.

On April 9, 1991, I assigned Dane Finerfrock to investigate the allegation. On that day, he contacted the alleger. A copy of this telephone record conversation is enclosed.

Additionally, on May 6, 1991, Mr. Finerfrock again contacted the alleger to close out the investigation. A copy of that telephone conversation record is also enclosed.

The Utah Bureau of Radiation Control considers this matter closed. We would appreciate this information be communicated to appropriate staff in State Programs and the Low-Level Waste Programs.

Sincerely,

Larry F. Anderson, Director
Bureau of Radiation Control

Enclosures

91 MAY 20 AM 10:53

GRA/SLIP

TELEPHONE OR VERBAL CONVERSATION RECORD	DATE 4/9/91
	TIME 15:10 <input type="checkbox"/> A.M. <input checked="" type="checkbox"/> P.M.

INCOMING CALL OUTGOING CALL VISIT

PERSON CALLING Dana Finerfrock	OFFICE/ADDRESS Radiation Control	PHONE NUMBER 538-6734	EXTENSION
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PERSON CALLED [REDACTED]	OFFICE/ADDRESS N/A	PHONE NUMBER [REDACTED]	EXTENSION
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CONVERSATION

SUBJECT
ALLEGATION CONCERNING ENVIROCORE LICENSE # UT 2300249

SUMMARY

I spoke to [REDACTED] about his call to Mike Tokar, NRC; the NRC had referred his call to Larry Anderson, I was calling on behalf of the Utah Bureau of Radiation Control.

[REDACTED]. The reasons given were:

- (1) Difference of opinion with his management on "sales issues" and
- (2) His assertions to management that "they just don't know what they are doing."

Beyond those two comments, [REDACTED] would not provide more specific information

[REDACTED] stated that he doesn't believe he would receive a proper hearing in Utah because Mr. Semani is "too powerful." I assured him I would investigate the situation carefully and completely. Again, [REDACTED] would not provide specific information regarding the allegation(s). I mentioned that there might be a way in which the NRC could conduct the investigation if we asked, but I was not certain of this. [REDACTED] told me he would phone back after he decided on a course of action.

REFERRED TO:	<input type="checkbox"/> ADVISE ME OF ACTION TAKEN.
ACTION REQUESTED <i>N/A</i>	
ACTION TAKEN	
	INITIALS <i>DF</i>
	DATE 4/9/91
	INITIALS
	DATE

TELEPHONE OR VERBAL CONVERSATION RECORD		DATE	5/6/91
		TIME	09:00 <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.
<input type="checkbox"/> INCOMING CALL	<input checked="" type="checkbox"/> OUTGOING CALL	<input type="checkbox"/> VISIT	
PERSON CALLING	OFFICE/ADDRESS	PHONE NUMBER	EXTENSION
D Finerfrock	ERC		
PERSON CALLED	OFFICE/ADDRESS	PHONE NUMBER	EXTENSION
[REDACTED]	n/a	[REDACTED]	[REDACTED]
CONVERSATION			
SUBJECT			
Allegations Concerning Envirocare UT 2300249			
SUMMARY			

I called [REDACTED] to inform him that I needed to close the inquiry into his allegations against Envirocare. [REDACTED] stated he wanted to "drop the matter" and "forget about it!" He further stated "that he didn't have enough to go on." I again offered our services or the NRC's but there was no interest. I told him that this matter was closed.

[Signature]



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

JUL 09 1991

MEMORANDUM FOR: Robert L. O'Connell
NMSS Allegation Coordinator
Division of Industrial and
Medical Nuclear Safety, NMSS

FROM: Richard L. Bangart, Director
Division of Low-Level Waste Management
and Decommissioning, NMSS

SUBJECT: STATUS OF ALLEGATION REGARDING ENVIROCARE FACILITY IN
AGREEMENT STATE OF UTAH BURYING SOURCE MATERIAL
-- ALLEGATION NUMBER - NMSS-91-A-0001

My staff has made every effort to track the above cited allegation since the initial telephone call by an individual on March 27, 1991, who expressed concern about the disposal of source material at the Envirocare facility at Clive, Utah. As discussed below, I do not believe that the Division of Low-Level Waste Management and Decommissioning (LLWD), however, should make a determination as to whether the allegation is closed.

The Envirocare facility is licensed by the State of Utah pursuant to Sec. 274b. of the Atomic Energy Act of 1954, as amended. The cognizant Nuclear Regulatory Commission (NRC) organization for Agreement State Sec. 274b. issues is State Programs (SP) within the Office of Governmental and Public Affairs.

On March 26, 1991, Dr. Tokar, Section Leader within LLWD, received a telephone call in which the individual expressed concern about Envirocare burying source material. Dr. Tokar wrote a note, dated March 27, 1991, to Mr. Carlton Kammerer, Director, SP, concerning this potential allegation. Dr. Tokar stated in his note that he believed Mr. Kammerer would be the best source of information concerning what future actions are to be taken, including entering any relevant information into the NRC allegation system.

On April 5, 1991, I sent a note to Mr. John Surmeier, Chief, Uranium Recovery Branch, LLWD, requesting that he track the Envirocare allegation by working with SP. This he did. On June 5, 1991, Mr. Surmeier provided me with a memorandum that transmitted correspondence from the State of Utah to SP that indicated the Utah Bureau of Radiation Control considered the matter closed after two telephone conversations with the individual.

Subsequent to the June 5, 1991, memorandum to me, Mr. Surmeier met with you to ascertain whether SP had entered the individual's concern into the NRC allegation system. He also provided you with the June 5, 1991, memorandum. Based on your review, the allegation concerning the Envirocare facility in the Agreement State of Utah was entered into the NRC allegation system.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20545

JUL 12 1991

MEMORANDUM FOR: Vandy L. Miller, Assistant Director
for Agreement State Programs, SP

FROM: Robert L. O'Connell
Allegation Coordinator, NMSS

SUBJECT: ALLEGATION RE: ENVIROCARE

You recently informed us of the status of an allegation forwarded to your office by NMSS concerning Envirocare, a licensee of the State of Utah. You referred the allegation to the state and received a report from the state indicating that after two unsuccessful attempts to obtain further information from the alleged, the state had closed the matter. As discussed in the enclosed memorandum dated July 9, 1991, from Dick Bangart, NMSS is not in possession of sufficient facts at this point to determine whether all concerns have been dealt with and the matter closed from NRC's standpoint. Therefore, pursuant to my conversation today with Lloyd Bolling of your staff, NMSS is referring the allegation to SP for further coordination with the state and for determination of whether any additional action is needed or whether the allegation should be closed.

Robert L. O'Connell
Robert L. O'Connell
Allegation Coordinator, NMSS

Enclosure: As stated