



ENVIROCARE OF UTAH, INC.

DSI-5

37

THE SAFE ALTERNATIVE



FAX COVER SHEET

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 TO: Sec. of Commission
 COMPANY: NRC
 PHONE: _____
 FAX: 301-415-1672

FROM: Tim Barney
 COMPANY: ENVIROCARE OF UTAH
 PHONE: (801) 532-1330
 FAX: (801) 537-7345

RE: _____

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Message:

Please call if you have any questions.

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ENVIROCARE OF UTAH, INC.*THE SAFE ALTERNATIVE*

December 2, 1996

Mr. John C. Hoyle
Secretary of the Commission
U.S. Nuclear Regulatory Commission
ATTN: Chief of Docketing and Services Branch
Washington, DC 20555-0001

Re: **Comments of Envirocare of Utah, Inc., on NRC Strategic
Assessment Issue Paper DSI-5: Low-Level Waste**

Dear Mr. Hoyle,

I. Introduction

Envirocare of Utah, Inc., appreciates this opportunity to comment on the Nuclear Regulatory Commission's (NRC) Strategic Assessment and Rebaselining Initiative. Envirocare commends NRC for its effort to review where and how its resources should be allocated and focused. It is helpful to the public and regulated industry to have an agency such as NRC that is willing to engage in a critical self-assessment. NRC's review is further enhanced by the Agency's willingness to allow interested stakeholders to review the analysis and provide additional input. The format of the public meetings was also helpful. The facilitation in the meeting we attended in Washington, DC was open and prompted and encouraged discussion on important issues.

The NRC agency provides a valuable service to the public and to entities such as Envirocare who manage radioactive materials. This service should not only protect public health and environment but should be customer oriented to those of us who are regulated. Regulation must be efficient as well as effective.

II. Strategic Assessment and Rebaselining Initiative Process

The process should have involved the public, industry, and the states earlier in the process. Other agencies such as EPA have done some similar policy development activities where a more open process was used initially to provide information to stakeholders and states right from the beginning. It is difficult if not impossible to sell a

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year's worth of work when there has been no initial buy in by those affected. The creation of Strategic Assessment teams made up of the key groups for each area of consideration, including a steering committee of similar make up, would help to repair the situation. The NRC process for conducting and drafting an EIS would have been a good model to follow.

III. DSI-5: Low-Level Waste**A. As A Regulatory Agency, NRC Should Have A Strong Low-Level Program, But Should Neither Promote Nor Hinder Licensing Of Low-Level Disposal Facilities**

Along the lines of the recommendations set forth in the December 29, 1995, letter of the Advisory Committee on Nuclear Waste (ACNW) to NRC, Envirocare supports a strong NRC strong regulatory role in the national low-level waste program, either directly or through the Agreement State Program. As set forth in DSI-5, the ACNW suggested in its December 29, 1995, letter that NRC "evaluate the priority of the LLW program relative to other agency programs and structure the LLW program in accordance with this priority and national needs." DSI-5 at 20. Envirocare agrees, and notes that low-level does not necessarily mean low risk. For example, a huge, uncovered and unlined low-level waste pile with unrestricted public access may present higher actual risk to health and the environment than much higher level forms of radioactive waste that are more carefully regulated.

NRC is a regulatory agency and as such should not promote any particular part of the industry it regulates. The siting and promotion of radioactive low level waste disposal should be left to others. In no way should the NRC become involved with facilitating or promoting the development of low-level or other disposal facilities. The NRC role should be to assist states with licensing as needed and to license facilities in non-Agreement states. This role should include an efficient licensing process. Envirocare recommends that a "Process Review Team" of NRC, States, public interest groups, and other interested groups be used to improve the licensing process.

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B. DSI-5 Should Be Revised To Remove Incorrect Statements Regarding The Legal Authority Of The Northwest Compact Over Envirocare's Utah Facility

DSI-5 incorrectly suggests that Envirocare is subject to the authority of the Northwest Compact. DSI-5 at 18 (Sept. 16, 1996). Envirocare has worked closely with the Northwest Compact over the years and has supported the compact siting process nationwide, but Envirocare's Utah operation is not subject to the legal or regulatory authority of the Northwest Compact, except as Envirocare has consented. The Low-Level Radioactive Waste Policy Act Amendments of 1985, 42 U.S.C. § 2021b et seq. (the Act) defines "Regional Disposal Facility" in Section 2(11) as "a non-Federal low-level radioactive waste disposal facility in operation on January 1, 1985, or subsequently *established and operated under a compact.*" 42 U.S.C. § 2021b(11) (emphasis added).

As explained in the House Report on the Act, this definition applies "neither [to] low-level waste facilities which were in operation prior to [January 1, 1985] but which have terminated commercial operations [i.e., Sheffield, Maxey Flats, and West Valley], *nor to low-level disposal facilities established by a state or private concern but not under the auspices of a compact region . . .*" House Report No. 99-314, Part 1, at 24, *reprinted in* 1985 U.S.C.C.A.N., Leg. Hist. at 2987 (emphasis added).

Envirocare is clearly a facility established by a private concern but not under the auspices of a compact region. Our Utah facility was never established and operated under a compact. Envirocare sought no permission or approval from the Northwest Compact or any other compact in its licensing. The Northwest Compact has recognized this in its Resolution and Order dated May 28, 1992, wherein it states that "[t]he Compact has no authority and assumes no responsibility for the licensing and operation of the Envirocare of Utah, Inc. facility."

Hence, it is incorrect for DSI-5 to suggest that "the Envirocare facility is allowed to import waste from all of the U.S. by the Northwest Compact," DSI-5 at 18, or that "the Northwest Compact permits . . . waste . . . to be disposed of at the Envirocare facility." *Id.* at 9. Despite this clear articulation of the legal status of the low-level and mixed waste operations of the Envirocare facility, which are regulated by the State of Utah in its capacity as an NRC Agreement State and under EPA delegation, Envirocare works closely with the Northwest Compact as a matter of corporate policy and philosophy.

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Envirocare submits information to the Compact regarding the waste it accepts, and Envirocare does not accept commercial low-level waste from Northwest Compact States.

Furthermore, as a matter of corporate policy and philosophy, Envirocare does not accept commercial low-level waste from any compact region without the approval of the originating compact. Envirocare offers this information to NRC so that statements regarding the Envirocare facility being "open to all generators in the country," DSI-5 at 5, are not misconstrued based on our current practices.

C. NRC Should Continue to Discourage Long-Term LLW Storage

As NRC notes, it "has historically favored disposal and discouraged long-term storage as a method of managing LLW." DSI-5 at 2. Envirocare believes NRC should maintain this policy. Long-term storage merely increases long-term handling and disposal costs. It should be discouraged unless life-cycle costs can be shown to be unequivocally less expensive and environmentally preferable. Moreover, long-term storage would not be the most protective of health and the environment due to differences in storage regulatory requirements compared to disposal licensing criteria.

IV. DSI 4: Agreement State Program

From Envirocare's perspective as a regulated entity, a key

NRC role is to assure that there is a consistent application of regulations for the management of radioactive materials throughout the United States. This role provides a level "playing field". NRC's Agreement Program must focus on substance, not just form. The regulatory program of an Agreement State can be perfect on paper, but it is important for NRC, in its biennial Agreement State reviews, to focus on how the state program is applied.

At the same time, states because of their location and specific knowledge must have adequate flexibility within their regulatory framework to implement an effective and efficient program that is not constrained by heavy handed oversight. It would be helpful if NRC clearly defined through joint input from the States, regulated community, and the stakeholders those key parts of the agreement state programs that are "core" functions or requirements that will be more carefully monitored. Licensing of radioactive waste disposal facilities is one of the areas where consistency is important.

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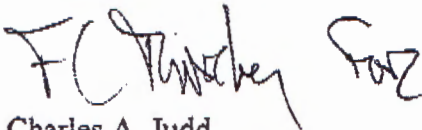
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V. NRC Licensing and Compliance Process

NRC's licensing and compliance programs can be made more efficient and still maintain their effectiveness. Obviously, there is much good to be said about the licensing and compliance that NRC does directly in non-Agreement states. However, as with any process, there are opportunities for improvement. NRC should establish a process for reviewing and identifying opportunities for improving licensing and compliance activities. Emphasis should be on identifying improvement opportunities, changing processes to make the improvements, and establishing performance standards for both cost and time to assure the improvements actually happen.

Again, Envirocare appreciates the opportunity to submit these comments. Please let me know if you have any questions.

Sincerely,



Charles A. Judd
Executive Vice President