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POLICY ISSUE

December 18, 1990

(NEGATIVE CONSENT)

SECY-90-409

For: The Commissioners

From: James M. Taylor
Executive Director
for Operations

Subject: PROPOSED NOTICE OF RECEIPT OF AN APPLICATION FROM ENVIROCARE OF UTAH, INC., TO DISPOSE OF SECTION 11e.(2) BYPRODUCT MATERIAL

Purpose: To respond to a staff requirements memorandum (SRM), dated October 16, 1990, and to inform the Commission of the staff's intent to publish, in the Federal Register, a Notice of Receipt of an application from Envirocare of Utah, Inc. (Envirocare). Envirocare proposes to accept and dispose of uranium and thorium byproduct material (as defined in Section 11e.(2) of the Atomic Energy Act, as amended) received from other persons, at a site near Clive, Utah. The notice establishes the regulatory framework against which the staff will review this specific application.

Category: This paper covers a significant policy issue on licensing of byproduct materials.

Background: By letter dated November 14, 1989, Envirocare submitted an application to the Nuclear Regulatory Commission (NRC) staff, to dispose of uranium and thorium byproduct material (as defined by Section 11e.(2) of the Atomic Energy Act) received from other persons. Disposal would be conducted at a site that the corporation owns near Clive, Utah.

NOTE: TO BE MADE PUBLICLY AVAILABLE WHEN THE FINAL SRM IS MADE AVAILABLE

CONTACT:
Terry L. Johnson, NMSS
492-3440

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The staff submitted a proposed Notice of Receipt of this application for Commission approval (SECY 90-174). On October 16, 1990, the Commission issued an SRM that stated that a revised notice should be prepared to indicate that the facility will be licensed under the provisions of 10 CFR Part 40.

Discussion:

In response to the SRM, the staff has developed a Notice of Receipt of application that establishes a regulatory framework, based on 10 CFR Part 40, that the staff will apply to review the application.

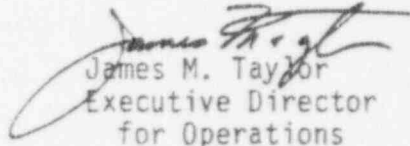
The Notice now states that licensing of the facility will be conducted under the provisions of 10 CFR Part 40 that contain the relevant technical criteria for the disposal of Section 11e.(2) byproduct material. The technical criteria in Part 40 also implement U.S. Environmental Protection Agency (EPA) standards, which include consideration of Resource Conservation and Recovery Act (RCRA) requirements for non-radioactive hazardous materials that may be present in Section 11e.(2) byproduct material waste.

The Notice adopts the use of administrative, procedural, and environmental review requirements for waste disposal specified in 10 CFR Parts 2, 40, and 51. Such requirements will include an opportunity for a hearing under 10 CFR Part 2, Subpart G, and mandatory preparation of an Environmental Impact Statement under 10 CFR Part 51. The proposed notice adopts the technical and financial assurance criteria, for disposal of Section 11e.(2) byproduct material, established in Appendix A of 10 CFR Part 40. Some of the administrative requirements of 10 CFR Part 61, Subpart G, will be adopted as license conditions under 10 CFR Part 40. In addition, the general requirements of Commission regulations contained in 10 CFR Parts 19, 20, and 21 will apply. The staff will review the license application in accordance with the administrative, procedural, and technical requirements contained in the enclosed Notice of Receipt.

Coordination:

The proposed Notice of Receipt has been reviewed by the Office of the General Counsel, which has no legal objection to it. In addition, the proposed notice has been coordinated with the Office of Government and Public Affairs (GPA).

Recommendations: Unless advised to the contrary by the Commission within ten working days from the date of this Paper, the staff plans to publish, in the Federal Register, the Notice of Receipt of the application by Envirocare of Utah, Inc., to dispose of Section 11e.(2) byproduct material.


James M. Taylor
Executive Director
for Operations

Enclosure:
Proposed FR Notice

SECY NOTE: In the absence of instructions to the contrary, SECY will notify the staff on Thursday, January 3, 1991, that the Commission, by negative consent, assents to the action proposed in this paper.

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U. S. NUCLEAR REGULATORY COMMISSION

DOCKET NO. 04008989

ENVIROCARE OF UTAH, INC.

Notice of Receipt of Application for Byproduct Material

Waste Disposal License

Notice of Availability of Applicant's Application

Notice of Regulatory Requirements That Will Apply

in the Review of the Application

and Notice of Opportunity for Hearing

NOTICE OF RECEIPT OF APPLICATION FOR BYPRODUCT MATERIAL WASTE DISPOSAL
LICENSE

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received, by letter dated November 14, 1989, an application and safety analysis report from Envirocare of Utah, Inc., for a license to accept and dispose of uranium and thorium byproduct material (as defined in Section 11e.(2) of the Atomic Energy Act, as amended) received from other persons, at a site near Clive, Utah.

The applicant proposes to dispose of high-volume, low-activity Section 11e.(2) byproduct material received in bulk by rail and truck. The material will be placed in earthen disposal cells in lifts and covered with earth and rock. The applicant proposes to conduct operations on a site where the applicant currently disposes of Naturally Occurring Radioactive Material (NORM) under license from the Utah Department of Health, Bureau of Radiation Control.

The State of Utah has recently been granted an amended agreement, pursuant to Section 274b. of the Atomic Energy Act, to expand its regulatory authority to include the disposal of low-level radioactive waste. The authority does not, however, include authority to regulate the disposal of Section 11e.(2) byproduct material. Regulatory authority for the disposal of Section 11e.(2) byproduct material in the State of Utah remains with the Nuclear Regulatory Commission (NRC).

The disposal of waste considered in this notice would occur in disposal units separate from those used to dispose of other categories of waste.

FOR FURTHER INFORMATION, CONTACT: Terry L. Johnson, Operations Branch
Division of Low-Level Waste Management and Decommissioning
Office of Nuclear Material Safety and Safeguards
U.S Nuclear Regulatory Commission
Washington, D.C. 20555

(301) 492-3440

NOTICE OF AVAILABILITY OF APPLICANT'S APPLICATION

The applicant's application, which describes the natural and proposed design features of the facility, as well as facility operations, is being made available for public inspection at the Commission's Public Document Room at 2120 L Street, N.W., Washington, D.C. 20555.

NOTICE OF THE REGULATORY REQUIREMENTS THAT NRC WILL APPLY IN THE REVIEW OF THE APPLICATION AND IN REACHING A LICENSING DECISION

By this notice, the Commission is establishing the applicability of its regulations to this specific application for the commercial disposal of Section 11e.(2) byproduct material.

- (1) The Commission has determined that 10 CFR Part 40, including Appendix A, shall apply to the review of this application to dispose of Section 11e.(2) byproduct material. The applicant may request an exemption from any requirements in 10 CFR Part 40 that it believes should not apply.
- (2) The NRC staff will prepare an environmental impact statement (EIS) pursuant to the requirements of 10 CFR Part 51. The EIS will be based on the staff evaluation of an environmental report to be prepared by the applicant.

- (3) Certain administrative and record-keeping requirements delineated in 10 CFR Part 61, Subpart G, shall be included in the license. These requirements are given in 10 CFR 61.80 and 61.82.
- (4) The waste manifest requirements contained in 10 CFR 20.311 shall apply. By license condition, the licensee will be allowed to accept waste only if it is accompanied by a manifest prepared according to 10 CFR 20.311. Based on the application, the NRC staff may consider, as part of the licensing process, exemptions from certain specific packaging, classification, and labeling requirements contained in 10 CFR 20.311, for land burial, that may not be germane to Section 11e.(2) byproduct material waste shipped to the facility.
- (5) The general requirements of other Commission regulations: 10 CFR Part 19 - "Notices, Instructions, and Reports to Workers; Inspections"; 10 CFR Part 20 - "Standards for Protection against Radiation"; and 10 CFR Part 21 - "Reporting of Defects and Noncompliance," will apply according to their terms.

NOTICE OF OPPORTUNITY FOR HEARING

The applicant and any person whose interest may be affected by the issuance of this license may file a request for a hearing. A request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days of the

publication of this notice in the Federal Register; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); be served on the applicant (Envirocare of Utah, Inc., 175 South West Temple, Suite 500, Salt Lake City, Utah 84101); and must comply with the requirements set forth in the Commission's regulations, 10 CFR 2.105 and 2.714. The request for hearing shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, including the reasons why the request should be granted, with particular reference to the following factors:

- (1) The nature of the petitioner's right, under the Act, to be made a party to the proceeding;
- (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding; and
- (3) The possible effect, on the petitioner's interest, of any order which may be entered in the proceeding.

The request shall also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

The applicant, any person admitted as a party, or an entity participating under 10 CFR 2.715(e), may move the Commission to reconsider any portion of this notice relating to the applicability of 10 CFR 20.311 and 10 CFR 61.80 and 61.82. The petition must be filed within 60 days after the person or entity is admitted to the proceeding and contain all technical or other arguments to support the petition. The motion will be processed under 10 CFR 2.730.

Dated at Rockville, Maryland, this day of November, 1990

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Chilk
Secretary of the Commission