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May 18, 1993

POLICY ISSUE
(Notation Vote)

SECY-93-136

For: The Commissioners
From: James M. Taylor
Executive Director for Operations
Subject: UPDATE ON THE RESOLUTION OF THE UTAH LAND OWNERSHIP ISSUE
Purpose:

To request the approval of the Commission for the action the staff is taking to resolve the concerns on Utah's exemption from the land ownership requirement for the Envirocare of Utah low-level waste disposal site in view of the precedent setting implications of the action.

Background:

The State of Utah became an Agreement State on March 29, 1984. The State elected not to include authority for 11e.(2) byproduct material or commercial low-level waste authority. In November 1987, Utah granted S.K. Hart Engineering (Envirocare of Utah) an exemption from the land ownership requirement for its Naturally Occurring Radioactive Material (NORM) disposal facility. On July 17, 1989, Utah requested an amendment to its Agreement to authorize authority for regulating commercial low-level waste (LLW) disposal. The amendment to the Utah Agreement became effective on May 9, 1990.

In September 1990, Envirocare of Utah, Inc. requested the State to amend its license to authorize receipt of LLW for disposal. On March 21, 1991, Utah granted the request authorizing LLW disposal and again issued an exemption from the land ownership requirement. The staff reviewed the State's program in April 1992 and determined that the program is adequate and compatible, subject to satisfactory resolution of significant Category I comments relating to the technical quality of licensing actions for the Envirocare low-level radioactive waste disposal license. The staff transmitted their findings to the State on September 2, 1992. Follow-up questions on the exemption from the land ownership requirement were sent in a letter dated December 24, 1992. The State of Utah responded to these letters by letters dated February 12, and March 17, 1993. A chronology which includes some additional information is presented as Enclosure 1. The above mentioned NRC letters are presented as Enclosure 2. The State of Utah responses are presented in Enclosure 3.

Contact: Dennis Sollenberger, SP
504-2819

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On September 21, 1992, U.S. Ecology, Inc. filed a petition with the Nuclear Regulatory Commission requesting that the Commission terminate the Utah Agreement program for regulating the commercial disposal of low-level radioactive waste. This petition was noticed in the Federal Register on November 13, 1992 (57 FR 53941). The staff actions discussed in this paper will also resolve the issue raised in the U.S. Ecology petition; however, the Director's decision addressing the petition will be prepared after the actions have been completed.

Discussion:

Response to the Program Review Comments - The State of Utah's response to the comments resulting from the April 17, 1992, program review were found to be acceptable, except for the justification of the exemption from the land ownership requirement. The actions committed to in the responses will be reviewed as part of the next review of the program.

Land Ownership Exemption Rationale - The staff, in the December 24, 1992 letter, explained that the government land ownership requirement is based in part on the likelihood that government will outlast private entities, providing long-term control of the site. This is a key issue with respect to both the active and passive institutional period. The Draft Environmental Impact Statement for 10 CFR Part 61 states that the most significant concepts for long-term passive institutional control are those of control of the land by a governmental organization, land-use restrictions in the form of titles or deeds, and multiplicity of records. Although active institutional controls cannot be relied upon for more than 100 years, this does not preclude the importance of passive institutional controls with respect to the continued protection of health and safety of the public, continued control of the site, protection of the inadvertent intruder, and protection of the disposal site integrity. The staff requested the State of Utah to show through its land ownership exemption rationale that the substitute mechanism would provide adequate controls comparable to governmental land ownership, or that the hazard present at the site is significantly less than that contemplated by Part 61 because of the nature of the waste being disposed of, and therefore, the public health and safety will be adequately protected without the land ownership provision.

State of Utah's Rationale for Its Exemption - In response to the staff on the issue of justification for the land ownership exemption, the State of Utah put forth the concept of providing for a degree of State control of a disposal site that would be equivalent to the control provided by the requirement in the regulations for the disposal site to be located on State or Federal land. The objective of the land ownership requirement is to provide for long-term control of use of the land and to prevent disturbance of the site. The State presented as part of its rationale the following existing controls:

- a. Tooele County has zoned the area that the Envirocare site is in as heavy manufacturing-hazardous designation.

- b. Because of the mixed waste licenses held by Envirocare, Envirocare has recorded in the public records of Tooele County an Affidavit which refers to and incorporates the land use restrictions of 40 CFR 264.117(c) which controls post closure activities at the site.
- c. Envirocare is required under license Condition 36 to provide "as built" drawings every six months. Because of Envirocare's construction techniques, each generator's waste is segregated from other waste, and site records to be provided after closure will be detailed.
- d. The transfer of site records is specifically directed by UAC R313-25-33, previously R447-25-33, particularly subparagraph (4).

The State requires that after closure there is a five-year post closure and maintenance period until the site is transferred to the site owner for institutional control. The license Transfer and Termination sections of the State regulations contemplate that the site operator will transfer and or terminate its license and turn over the site to a governmental agency for the control period. Since Envirocare is the site owner and operator, and no governmental agency is/has been authorized to take title to the site, transfer and termination of the Envirocare license would not occur prior to the active institutional control period. Therefore, Envirocare would remain responsible for the site under the license and the institutional control phase would be implemented in that manner.

The State required Envirocare to establish a financial surety in the form of a trust agreement which gives the State exclusive control of the trust fund. The State requires that the financial surety arrangement shall remain in effect until the closure and stabilization program has been completed and the license has been transferred. Until a transfer of the license occurs, the surety arrangement remains in effect and will continue to be reviewed. With the trust fund and the other regulatory and enforcement authorities, the State will be in a position to take whatever action is necessary to protect the public health, safety and property.

The State has also reviewed the use of a restrictive covenant for the Envirocare site. The State and Envirocare entered into an Agreement Establishing Covenants and Restrictions (attachment to March 17, 1993 letter) which identifies the site and the purpose of the licensed operations at the site.

Analysis of the State's Rationale - The staff has analyzed the control of the disposal site for the three time periods that represent the major phases in the life of a low-level waste disposal site (operations, closure, and post-closure observation and maintenance; active institutional control; and passive institutional control periods). This analysis was to determine which mechanisms, if properly constructed, could provide adequate control in lieu of government ownership of the land.

Operations, Closure, and Post-Closure Observation and Maintenance Period - The licensee has title to the land and therefore, is responsible for all

activities on the site. The licensee has provided a Trust Agreement with the State of Utah that provides funds for closure and the post-closure period and the active institutional control period in the event the licensee is financially incapable of closing the site or abandons the site. The license limits the accumulation of undisposed waste to a specific amount that can be disposed of through the use of the trust funds.

100-Year Active Institutional Control Period - The State has proposed that it is exercising control and can continue to exercise control of the site in such a manner that the land ownership is not necessary to protect the public health and safety from the material that is being disposed of at the site. The State has control of the trust fund that includes the money for the active institutional control period. If the site owner is not capable of conducting the activities required during the active control period the State will carry them out using the money in the trust fund. The State would not need to own the site to carry out these activities.

Passive Institutional Control Period (beyond the 100-year active institutional control period) - The State has proposed the use of deed annotation as a method of informing individuals who may wish to use the site in the future that the land was used for waste disposal and should not be disturbed. The staff found that the mechanism submitted by the State was not specific enough to implement the requisite degree of control. The staff has drafted a proposed "restrictive covenant" that the State of Utah could use that would be acceptable to the staff. This draft covenant has been informally reviewed by the State of Utah and Envirocare of Utah and incorporates comments provided by the State from both the State and Envirocare. The State proposed that the covenant be worded to be an addition to the deed restriction previously submitted by the State.

Staff Conclusion on the State's Proposal - The staff has reviewed the State's proposal as submitted and has concluded that the two key issues are:

- a. The sufficiency of the Trust Agreement in mechanism and amount. The staff previously identified some inconsistencies in the calculation of the necessary surety amount. The State has committed to update the calculations for the surety amount and this will be verified during the next review of their program. The total surety amount may not change significantly but this would eliminate these errors. The Trust Agreement is a standard trust agreement and would not be considered an asset of Envirocare in the event of bankruptcy. This will ensure the continued availability of the fund if such an event were to occur.
- b. The ability to exercise control over the use of the land once the radioactive material has been disposed of. The staff review of the specific mechanisms which the State is using to effect this control has shown that the licensing procedures, regulatory and police powers, and Trust Agreement are adequate, however, the land annotation did not provide sufficient restrictions on the future use of the site. The staff has prepared a proposed "restrictive covenant" for the State's consideration which the staff would find acceptable. The State's

informal review of the staff proposal to use a more specific "restrictive covenant" has concluded that such a covenant is consistent with the property law of the State of Utah and could be added to the existing deed annotation. Although the State of Utah and Envirocare have informally reviewed this restrictive covenant, there may be some additional negotiation necessary before it can be formally signed. At this time, however, there do not appear to be any major legal or policy problems with implementation of such a covenant.

- c. The staff has prepared a letter (Enclosure 4) which would present the staff's conclusion to the State of Utah. The letter states that, with the implementation of the restrictive covenant, the State will have demonstrated equivalent control of the disposal site to that which would be provided by the State or Federal land ownership requirement. The letter also presents the State's commitment to review and update the surety amount for the Trust Agreement.

Policy Issue - The requirement in 10 CFR 61.59(a) regarding land ownership specifies that disposal of radioactive waste received from others may only be permitted on land owned in fee by the Federal or a State government. The State of Utah has issued an exemption from its State or Federal land ownership requirement pursuant to URC-12-125, which provides that the State may grant "such exemptions or exceptions from the requirements of these regulations as it determines are authorized by law and will not result in undue hazard to public health and safety or property." This Utah exemption provision is parallel to 10 CFR 61.6.

The staff is recommending in this paper that the State's rationale for this exemption be found acceptable under the facts as presented by the State of Utah, i.e., the controls proposed by the State would provide an equivalent control to State ownership. However, there is nothing unique to the State of Utah in the cited controls. If the Commission is willing to accept the rationale that exercising the degree of control demonstrated here by the State of Utah is an equivalent to Federal or State land ownership, it is likely that other Agreement States may wish to implement similar exemptions for low-level radioactive waste disposal sites which they regulate, and States which are regulated by the NRC may seek the same exemption under 10 CFR 61.6.

The Commission may wish to monitor whether other States are seeking from the NRC, or other Agreement States are granting, similar exemptions. In that case, the Commission should consider conducting a rulemaking to incorporate into 10 CFR Part 61 a provision that would allow land use controls and other controls to serve as a substitute for Federal or State ownership of a disposal site.

Recommendations:

The staff recommends that the Commission:

Approve:

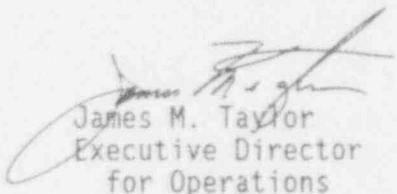
1. The staff's conclusion that, with the execution of the restrictive covenant, the State of Utah has provided an acceptable rationale for the issuance of the exemption from the State or Federal land ownership requirement.

Note:

1. The staff intends to send the letter (Enclosure 4) to Dr. Dianne R. Nielson, Executive Director, Department of Environmental Quality, upon Commission approval of the staff's action.
2. The letter requests the State of Utah to submit the final restrictive covenant upon its implementation.
3. The letter presents the State's commitment to review and update the surety calculations and Trust Agreement to resolve the comments in the attachment to the December 24, 1992 letter.
4. The § 2.206 petition will be addressed separately following the implementation of the restrictive covenant by Envirocare and the State of Utah.

Coordination:

The Office of General Counsel has reviewed this paper and has no legal objection.


James M. Taylor
Executive Director
for Operations

Enclosures:

1. Chronology for Land Issue in Utah
2. NRC Letters to Utah, 9/2/92 and 12/24/92
3. Utah Letters to NRC, 2/12/93 and 3/17/93
4. Draft Letter to Dr. Nielson

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Wednesday, June 2, 1993.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Wednesday, May 26, 1993, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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CHRONOLOGY FOR
UTAH - LAND EXEMPTION FOR ENVIROCARE

- 03/29/84 - Utah becomes an Agreement State. (The State elected not to include authority for 11e.(2) byproduct material and LLW disposal in the Agreement.)
- 11/18/87 - Utah Division of Radiation Control grants exemption to S.K. Hart Engineering (Envirocare of Utah) to permit NORM disposal facility on private land. The exemption is from the requirement "that the Bureau will not approve any materials from other persons for disposal on land not owned by a State or Federal Government." The exemption was granted pursuant to licensee's request.
- 09/23/88 - OGC asked to review materials from Utah on upcoming amendment. OGC states "Exemption for a site limited to NARM and source material LSA with average concentrations below 2 nanocuries per gram "may not be out of order."
- 07/17/89 - Utah requests amendment to Section 274b Agreement to be able to dispose of certain LLW (still did not include 11e.(2) byproduct material).
- 11/14/89 - Envirocare requests license from NRC for disposal of 11e.(2) byproduct material. DOE is legally required to take title to land used for disposal of 11e.(2) material after site is closed. (Request is still under review.)
- 03/05/90 - SECY-90-073 recommends Commission approve amendment to Section 274b agreement for Utah.
- 04/11/90 - Staff responds to Commissioner Curtiss' questions on SECY-90-073.
1. Utah granted exemption to Envirocare for following reasons:
 - Law does not provide for State Ownership.
 - Utah Bureau of Solid and Hazardous Waste Management requirements allow private ownership.
 - Ownership issue does not necessarily relate to protection of public health and safety.
 - State would ultimately be responsible if public health problems occurred.
 - Undisputable surety arrangement would provide for public safety.
 2. Staff concludes that the expected action (i.e., exemption) is acceptable. Exemption is not contrary to Federal law.

- 05/09/90 - Utah Amended Agreement becomes effective. This amendment authorizes the State of Utah to regulate commercial low-level waste disposal.
- 09/20/90 - Envirocare requests State authorization to receive limited activity LLW for disposal.
- 03/21/91 - Utah approves amendment to NORM license authorizing LLW disposal and land ownership exemption for Envirocare facility (which can receive limited activity LLW for disposal).
- 07/28/92 - Memo from Bangart to Kammerer: Utah has not provided sufficient rationale for exemption.
- 09/02/92 - Letter to Utah: Staff finds Utah's program is adequate to protect public health and safety and compatible pending satisfactory resolution of significant Category I comments relating to the technical quality of licensing actions for the Envirocare LLW disposal license which includes land ownership issue.
- 09/21/92 - US Ecology files § 2.206 petition with NRC.
- 12/24/92 - Letter to Utah: The staff provide additional concerns on the State's rationale for the land exemption. The staff attached to the letter specific comments and issues resulting from its review of the land exemption rationale.
- 02/12/93 - Letter from Utah: This letter responded in part to the Dec. 24, 1992 letter from NRC.
- 03/17/93 - Letter from Utah: This letter responded to the Sept. 2, 1992 letter from NRC and provided additional information of the land exemption.



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

September 2, 1992

Mr. Kenneth Alkema, Executive Director
Department of Environmental Quality
288 North 1460 West
Salt Lake City, UT 84114-4850

Dear Mr. Alkema:

This confirms the discussion Carlton Kammerer, Director, Office of State Programs, and Robert J. Doda, Region IV State Agreements Officer, held with Mr. Larry Anderson, Director, Division of Radiation Control on April 17, 1992, following our routine review of the Utah radiation control program. The following NRC staff members, Joseph Kane, Fred Ross, and Robert Hogg, of NRC's Office of Nuclear Material Safety and Safeguards, also participated in the review during April 13-17, 1992.

As a result of our review of the State's program and the routine exchange of information between the NRC and the State of Utah, the staff is prepared to offer a finding that overall the Utah program for regulation of agreement materials is adequate to protect the public health and safety, and compatible with the Commission's program contingent upon a satisfactory resolution of significant Category I comments relating to the technical quality of licensing actions for the Envirocare low-level radioactive waste (LLRW) disposal license (Enclosure 2, item 2).

A significant portion of this review was devoted to an examination of the State's action with respect to Envirocare's application for authority for land disposal of LLRW under the amended Agreement with NRC. The State's licensing action on the application is the first in the United States under regulations developed specifically for land disposal of LLRW (i.e., Utah's regulations equivalent to 10 CFR Part 61). The State's rationale for its exemption of Envirocare from the site ownership requirement and of the adequacy of the technical bases for the license amendment authorizing land disposal of LLRW under the amended Agreement have been the subject of previous reviews and discussions. As of this late date these issues are not yet fully resolved. In its request to the NRC for an amended Agreement, the State committed to implement a regulatory program for land disposal of LLRW that would be compatible with that of the NRC. Our staff will be in contact with your Office in the near future to bring these issues to a satisfactory closure.

With respect to our review of other parts of the State's Agreement program, we were pleased to find that you have adopted all of the necessary compatibility regulations within the suggested time frame. Uniformity among State regulatory agencies is an important part of the Agreement State program, and we appreciate your efforts in this regard. Two QA/QC manuals for the Envirocare facility, which were developed by the Department, were found to be particularly useful, and the NRC requested copies for reference in other regulatory programs for the disposal of LLRW.

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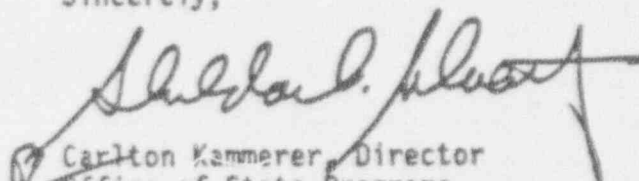
Enclosure 1 contains an explanation of our policies and practices for reviewing Agreement State programs. Please note that on May 28, 1992, the Commission approved amendments to the Commission Policy Statement for review of Agreement State programs and added guidelines and indicators specific to State regulatory programs for land disposal of LLRW. These will be used in future reviews of the Utah program.

Enclosure 2 is a summary of the review findings which were discussed with Mr. Anderson on April 17, 1990. We request specific responses from the State on the comments in Enclosure 2.

In accordance with NRC practice, I am also enclosing a second copy of this letter for placement in the State's Public Document Room or otherwise to be made available for public review.

I appreciate the courtesy and cooperation extended to the NRC staff during the review. I am looking forward to your comments regarding our findings and your staff responses to the Enclosure 2 recommendations.

Sincerely,


Carlton Kammerer, Director
Office of State Programs

Enclosures:
As stated

cc w/encls:
James M. Taylor, Executive Director
for Operations
Robert D. Martin, Regional Administrator
Region IV
Larry Anderson, Director, Division of
Radiation Control
State Liaison Officer
NRC Public Document Room
State Public Document Room

Application of "Guidelines for NRC Review
of Agreement State Radiation Control Programs"

The "Guidelines for NRC Review of Agreement State Radiation Control Programs," were published in the Federal Register on June 4, 1987, as an NRC Policy Statement. The Guidelines provide 29 indicators for evaluating Agreement State program areas. Guidance as to their relative importance to an Agreement State program is provided by categorizing the indicators into 2 categories.

Category I indicators address program functions which directly relate to the State's ability to protect the public health and safety. If significant problems exist in several Category I indicator areas, then the need for improvements may be critical.

Category II indicators address program functions which provide essential technical and administrative support for the primary program functions. Good performance in meeting the guidelines for these indicators is essential in order to avoid the development of problems in one or more of the principal program areas, i.e., those that fall under Category I indicators. Category II indicators frequently can be used to identify underlying problems that are causing, or contributing to, difficulties in Category I indicators.

It is the NRC's intention to use these categories in the following manner. In reporting findings to State management, the NRC will indicate the category of each comment made. If no significant Category I comments are provided, this will indicate that the program is adequate to protect the public health and safety and is compatible with the NRC's program. If one or more significant Category I comments are provided, the State will be notified that the program deficiencies may seriously affect the State's ability to protect the public health and safety and that the need of improvement in particular program areas is critical. If, following receipt and evaluation, the State's response appears satisfactory in addressing the significant Category I comments, the staff may offer findings of adequacy and compatibility as appropriate or defer such offering until the State's actions are examined and their effectiveness confirmed in a subsequent review. If additional information is needed to evaluate the State's actions, the staff may request the information through follow-up correspondence or perform a follow-up or special, limited review. NRC staff may hold a special meeting with appropriate State representatives. No significant items will be left unresolved over a prolonged period. The Commission will be informed of the results of the reviews of the individual Agreement State programs and copies of the review correspondence to the States will be placed in the NRC Public Document Room. If the State program does not improve or if additional significant Category I deficiencies have developed, a staff finding that the program is not adequate will be considered and the NRC may institute proceedings to suspend or revoke all or part of the Agreement in accordance with Section 274j of the Act, as amended.

Enclosure 1

SUMMARY OF ASSESSMENTS AND COMMENTS
FOR THE UTAH RADIATION CONTROL PROGRAM
FEBRUARY 9, 1990 TO APRIL 17, 1992

SCOPE OF REVIEW

This program review was conducted in accordance with the Commission's Policy Statement for reviewing Agreement State Programs published in the Federal Register on June 4, 1987, and the internal procedures established by the NRC's State Agreements Program. The State's program was reviewed against the 29 program indicators provided in the Guidelines. The review included inspector accompaniments, discussions with program management and staff, technical evaluation of selected license and compliance files, and the evaluation of the State's responses to an NRC questionnaire that was sent to the State in preparation for the review.

The fifth review meeting with Utah representatives was held during the period of April 13-17, 1992, in Salt Lake City, Utah. The State was represented by Mr. Larry Anderson, Mr. Dane Finerfrock, and Mr. Craig Jones, all from the Utah Division of Radiation Control (DRC). The NRC was represented by Mr. Robert J. Doda, Region IV State Agreements Officer, and Messrs. Joseph Kane, Fred Ross, and Robert Hogg, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards. Mr. Carlton Kammerer, Director of NRC's Office of State Programs, participated in upper level management discussions at the conclusion of the review.

A review of selected backup information in the DRC's license file for the Envirocare facility was conducted during April 13-15, 1992. A review of legislation and regulations, organization, management and administration, and personnel was conducted on April 14-15, 1992. A summary meeting regarding the results of the regulatory program review was held with Mr. Larry Anderson, Director, Division of Radiation Control, Department of Environmental Quality, on April 17, 1992, in Salt Lake City, Utah.

CONCLUSIONS

As a result of our review of the State's program and the routine exchange of information between the NRC and the State of Utah, the staff determined that overall the Utah program for regulation of agreement materials is adequate to protect public health and safety, and compatible with the Commission's program. However, this finding is contingent upon a satisfactory resolution of one significant Category I comment relating to a land ownership exemption (see comment number 2.A. below). The rest of the comments and recommendations developed during the review included only comments of minor significance concerning Category I indicators.

Enclosure 2

Status of Program Related to Previous NRC Findings

The previous NRC program review was concluded on February 9, 1990, and comments and recommendations were sent to the State in a letter dated April 11, 1990. At that time, the program was found to be adequate to protect the public health and safety and compatible with the NRC's program for the regulation of similar materials. Subsequent to the review, on May 9, 1990, the Agreement with Utah was amended to include authority for the State to regulate the disposal of low-level radioactive waste (LLRW). Also, a special review of Utah's LLRW disposal program was conducted during February 19-22, 1991, and a comment letter was sent to the State on April 23, 1991. The comments and recommendations have been satisfactorily closed out, except for several comments relating to the licensing action concluded on March 20, 1992, authorizing full operational status for the Envirocare LLRW disposal site near Clive, Utah.

Current Review Comments

The Utah radiation control program satisfies the Guidelines in 27 of the 29 indicators. The State did not meet the Guidelines in two Category I indicators, Status and Compatibility of Regulations, and Technical Quality of Licensing Actions.

Our comments and recommendations on licensing relate to the State review of the license application, the Safety Evaluation Report (SER), and the operational license amendment issued on March 20, 1992, for the Envirocare disposal site for LLRW near Clive, Utah. The State of Utah concluded, on May 8, 1990, an amended Agreement with the NRC to cover the authority for LLRW disposal. Envirocare had been storing certain LLRW on site (e.g., uranium and thorium wastes from a rare earth facility). Utah has now authorized the disposal of these materials, with the license review process completed and an amendment to the Envirocare license becoming operational on March 20, 1992.

The comment and recommendation on regulations involves the adoption of a regulatory amendment on decommissioning, and in accordance with current NRC policy wherein the amendment is scheduled for early adoption, this comment is of minor significance.

1. Status and Compatibility of Regulations (Category I Indicator)

Comment

The review of the State's radiation control regulations disclosed that one regulatory amendment, which is a matter of compatibility, had not been adopted by the State within a three-year period after adoption by the NRC. This amendment involved a decommissioning rule. In accordance with current NRC practice, if the State has initiated rulemaking on the decommissioning rule, and the rulemaking is on track at the time of the review, then the finding is of minor significance.

Recommendation

We recommend this amendment, and any others approaching the three-year period allowed after NRC adoption, be promulgated as effective State radiation control regulations.

2. Technical Quality of Licensing Actions (Category I Indicator)

A. Comment - Land Ownership Exemption: This is a repeat comment from previous reviews and discussions.

Previously, we discussed the State's exemption of Envirocare from the requirements in R447-25-9 with regard to site ownership. This is an extension of an exemption originally granted to Envirocare which allowed development of a Naturally Occurring Radioactive Material (NORM) disposal site on privately owned property. We recommended that the rationale for extension of the exemption for the disposal of byproduct, source and special nuclear material be documented and include how the performance objectives relating to long-term control, surveillance and maintenance would be met. This should include an analysis of the adequacy of the surety funds to cover such long-term control and discussion of the difference between 30 versus 100 years post-closure requirements. During this review, we obtained a draft of the State's rationale for land ownership exemption, and we recommended that this document be finalized and transmitted as soon as possible to the NRC for assessment.

We received the State's completed rationale for the land ownership exemption on May 28, 1992. The completed rationale is currently being reviewed in this Office; the Office of Nuclear Material Safety and Safeguards, Division of Low-Level Waste Management and Decommissioning; and the Office of General Counsel. Our assessment will be provided to you after we have completed our review.

B. Comment - Completion of Safety Evaluation Report

The State of Utah had required Envirocare to submit additional hydrogeologic site characterization information and conduct additional ground water flow modeling to resolve the deficiencies in the license application related to ground water protection and site performance. The deficiencies were described in a Safety Evaluation Report (SER) prepared by the DRC. An examination was performed of the licensee's submittal on hydrogeologic characterization and ground water flow modeling, and the subsequent DRC staff evaluations of this material. Interviews were conducted with the staff of the Ground Water Protection Section of the Division of Water Quality. All of the issues

raised by the NRC regarding the quality of Envirocare's site hydrogeologic characterization, and the ensuing DRC staff evaluations are satisfactorily addressed. However, the Statement of Basis for the Ground Water Discharge Permit does not show how the site hydrogeologic characterization, ground water flow modeling, and ground water protection program leads to a conclusion that the State equivalent to the 10 CFR Part 61 performance objective covering off-site release of radioactivity is met.

We understand the State concluded that a dose assessment for the groundwater pathway was not necessary considering the effectiveness of the ground water protection program including: (1) the emplacement of low-permeability clay liners and covers; (2) the extensive amount of required ground water monitoring; (3) the exclusion of most of the more mobile radionuclides from disposal; (4) the long ground water travel times for the remaining most mobile radionuclides in the site inventory (e.g., K-40); (5) the very poor water quality at the site; and (6) the lack of credible off-site dose scenarios for ground water and related pathways.

Recommendation

We recommend that the State provide documentation in their SER, Ground Water Discharge Permit Statement of Basis or other such document, how the site meets regulatory standards for the off-site release of radioactivity.

C. Comment - Operating Procedures

The current Envirocare operating procedures, detailing specific directives to the licensee's employees and contractors, are not in the possession of the State at either the site office or the headquarters office. It would be beneficial to the State, as information to aid inspections, to possess current operating procedures at one of the State locations.

Recommendation

NRC recommends that an updated and controlled copy of the disposal operating procedures, including administrative, QA, radiation protection, and laboratory procedures, be provided by the licensee, and maintained at one of the State locations.

D. Comment - Averaging of Waste Concentration

Discussions with the State indicate the State may be required to make policy decisions relative to sampling and concentration averaging on radioactive materials received for demonstration of

compliance with Utah's regulations and license conditions. NRC recognizes the difficulty involved in the determination of concentrations for bulk shipments, and associated sampling procedures and protocols. The State policy on such determinations does not appear to be fully defined.

Recommendation

We recommend that the State formalize their policy on concentration averaging and coordinate this policy with NRC draft guidance which has been coordinated with the Conference of Radiation Control Program Directors, Inc. The State should verify that the licensee's procedure for determining the concentrations of radionuclides in bulk shipments is consistent with State policy. The procedures should cover methods for establishing a conservative assumed density for incoming shipments of unknown density, for waste classification purposes.

E. Comment - Placement of Waste

The construction of the waste embankment in the LLRW cell is proceeding with the placement of waste at several different levels within the cell. The reason for the irregular mounding within the embankment is stated by Envirocare to be directed at isolating wastes from a specific generator. This may be the intended purpose, but any real benefits from this mounding practice is questionable.

The mounding practice now underway results in non-horizontal embankment levels that have irregularly positioned, rising slopes within the embankment that causes compaction of the waste in the slope areas to be more difficult. This condition introduces the potential for future differential settlements that could cause cracking of the cover and the introduction of small amounts of infiltration down to the waste.

During the review, we encouraged the licensee and the DRC to check available references for good embankment construction methods, where the insertion of internal, irregular slopes within an embankment would be shown to be a practice that should be avoided. In those cases where internal slopes cannot be avoided because of site specific conditions, certain measures (e.g., the notching of the existing slopes to permit full compaction of the embankment materials) may need to be taken.

Recommendation

We recommend that DRC request the licensee to make an assessment of good construction practices, and make the necessary changes in the QA/QC Plan and field operations.

F. Comment - Definition of "Lift"

The licensee has not defined the term "lift." Defining this term is considered necessary because of the mounding practice being followed in embankment construction and because of questions that will arise in determining the number of field control tests (e.g., see page 64 of QA/QC Plan) to be completed.

Recommendation

We recommend that DRC request the licensee to define the term "lift" in the QA/QC Plan in terms of surface area of placed embankment material.

G. Comment - Leachate Collection System

The reviewers assessed the merits of a limited and separate leachate collection system, which was installed by the licensee in the NORM portion of LLRW cell. The DRC had not reviewed or approved this system prior to installation. Because of its design and limited extent, it is questionable whether any useful information could be obtained from monitoring of the limited system. In addition, there is a concern for surface water to collect and flow along the perimeter of the monitoring pipe towards the waste, where the pipe penetrates the radon barrier. Also, the licensee should be made aware that all modifications to the design of the cell must be approved by the State, before installation.

Recommendation

We recommend that the State evaluate the installed limited leachate collection system with a view toward requiring the licensee to seal the pipe with bentonite/cement and cutting the pipe off to avoid penetration of the radon barrier layer.

H. Comment - Engineering Inspection During Construction

The review of Mixed Waste Disposal Cell was conducted primarily by the Division of Solid and Hazardous Waste with input from the Division of Radiation Control. Utah now has a Memorandum of Understanding (MOU) between the two Divisions (as suggested by NRC during a September 1991 meeting) that primarily addresses the reconciliation of differences between hazardous/LLRW regulations.

During early inspections related to the mixed waste cell (ground water sampling events and initial cell construction) deviations were found related to design plans. This situation resulted in the Division of Solid and Hazardous Waste requiring Envirocare to

provide funds that permitted the Division to retain a consultant to perform full time inspection activities at the site over a period of several months (to inspect placement and construction of a multiple liner/leachate collection system). In addition, the Division of Solid and Hazardous Waste required Envirocare to retain the assistance of Law Engineering to oversee the installation of geomembranes. The experience gained by the Division of Solid and Hazardous Waste indicates the need for full time inspection during the significant construction activities of the LLRW waste cell. We understand the DRC is actively recruiting for a staff engineer at the present time to provide this oversight at the construction of the LRW cells.

Recommendation

We recommend this staff position be filled at the earliest practical time.

I. Comment - Hydraulic Conductivity of Clay Liner

To demonstrate that the clay materials proposed for placement in the cell liner attain the field permeability of $1.0 \times E-7$ cm/sec that is required by Utah's license conditions, the Division of Solid and Hazardous Waste required the running of double-ring infiltrometer tests. The licensee, prior to performing the infiltrometer tests, treated the proposed clay-materials with a deflocculent with the purpose of decreasing the permeability of the clay soil. The NRC reviewers were unable to establish in their discussions with both Envirocare and DRC, what testing and assessment of the long-term stability of the treated clays had been performed.

Recommendation

We recommend that DRC request the licensee to perform an assessment of the long-term stability of the treated clay soils under anticipated waste disposal environmental conditions (e.g., leachate from placed waste), to demonstrate the long-term performance and engineering properties of the clay liner material.

3. Observations and Commitments

- A. The NRC reviewers noted during the review that the Envirocare ground water permit covers the LLRW cell and the uranium mill tailings cell, which is being licensed by the NRC. The reviewers will convey the need for NRC's uranium mill tailings licensing group to coordinate their license review process with the State agencies responsible for the ground water discharge permit.

- B. Two important documents were developed by the State during this licensing action: (1) QA/QC Manual for the LLRW cell, and (2) QA/QC Manual for the mixed waste cell. The NRC believes these two QA/QC Manuals provide valuable information on the development and construction of waste cells containing radioactive materials, which may be of use by the NRC or other Agreement States. The State has agreed to provide NRC with a copy of each manual.
- C. The NRC reviewers agreed to furnish the DRC with a copy of NRC's latest guidance on the averaging of LLRW for disposal.
- D. The DRC agreed to keep the NRC informed of the schedule for formally documenting its safety evaluation of the design and construction of the mixed waste disposal cell.

Summary Discussions with State Representatives

A summary meeting to present the results of the regulatory program review was held with Mr. Larry Anderson, Director, Division of Radiation Control, Department of Environmental Quality, on April 17, 1992. The scope and findings of the review were discussed with Mr. Anderson and other Department staff members. Mr. Anderson was informed of the significance of the one Category I finding regarding the exemption for land ownership. Mr. Anderson said the State would probably proceed directly with some means of finalizing the rationale for the land ownership exemption.

Mr. Anderson also expressed the State's appreciation for past NRC assistance and training for the Utah staff. He said the Department will continue to support the radiation control program, any NRC-sponsored training courses, and cooperative efforts with the NRC and other Agreement State Programs.

A closeout discussion with the RCP technical staff was conducted on April 16, 1992. The State was represented by Mr. Craig Jones, Mr. Dane Finerfrock, and other Division staff. Several general and specific questions were raised by the State representatives. The review findings regarding the Envirocare license and the SER were discussed at some length. A briefing was conducted by NRC representatives on NRC's new formats for the reporting of State incidents and State statistical information to the NRC.



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

December 24, 1992

Mr. Kenneth Alkema, Executive Director
Department of Environmental Quality
288 North 1460 West
Salt Lake City, UT 84114-4850

Dear Mr. Alkema:

This is to inform you of our additional concerns and questions regarding the State's rationale for its exemption of Envirocare from the site ownership requirement. As discussed in my September 2, 1992 letter to you, I indicated that I would contact you so that we may bring this issue to closure. The staff has completed their review of the Land Ownership Exemption document dated May 8, 1992, the final revision of Section 10 of the Envirocare License Amendment Application dated July 15, 1992, and the final Trust Agreement.

In its request to the NRC for an amended Agreement, the State made a commitment to implement a regulatory program for land disposal of low-level radioactive waste (LLRW) that would be adequate to protect public health and safety and compatible with that of the NRC. Historically, LLRW disposal operators have been unprepared for the type and magnitude of maintenance problems that have arisen during and after site closure, and have been unable to cope, even to the point of abandoning the site. These maintenance problems have led to economic and social resource commitments that were not originally anticipated. Sufficient funds were not available to repair the maintenance problems, and there was no one who was clearly responsible for the site that was abandoned. NRC regulations, 10 CFR Part 61, upon which the Utah regulations are based, were designed to avoid the maintenance problems which led to economic resource and responsibility issues, and the economic and responsibility issues themselves.

The requirements for government ownership and for financial surety are an integral part of the LLRW regulatory requirements which specifically attempt to prevent maintenance problems, and economic and responsibility issues, during and after site closure. Requirements for site characterization, waste form and packaging, and site design and operation, are provided in an attempt to avoid the type of maintenance problems which plagued Maxey Flats, et al. The land ownership and financial assurance requirements work with those requirements listed above, to provide assurance of public health and safety once the site is closed. The trust agreement provided by Envirocare is designed to assure protection of the public health and safety, with funding for surveillance, monitoring and funding to provide for third party closure in

12-24-92

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the event that Envirocare "unilaterally withdraws" from site operations. In theory, this is designed to result in a similar situation to that furnished by government ownership, for the period of active institutional control. But as noted in the enclosure, this does not address the lack of clear ownership and any changes necessary with respect to licensing procedures. Also, the trust fund that Utah proposes as a replacement for government land ownership is already required in existing regulations in addition to land ownership, not in place of it.

Furthermore, as the State has noted, the government land ownership requirement is based in part on the likelihood that government will outlast private entities, providing long-term control of a site. This is a key issue with respect to both active and passive institutional controls. In the Draft EIS for 10 CFR Part 61 it states that the most significant concepts for long-term passive institutional control are those of control of the land by a governmental organization, land-use restrictions in the form of titles or deeds, and multiplicity of records. Although active institutional controls cannot be relied upon for more than 100 years, this does not preclude the importance of passive institutional controls with respect to the continued protection of the health and safety of the public, continued control of the site, protection of the inadvertent intruder, and protection of disposal site integrity. The Land Ownership Exemption rationale should show how the substitute mechanism would provide adequate controls comparable to governmental land ownership, or that the hazard present at this site is significantly less than that contemplated by Part 61 because of the nature of the waste being disposed of, and therefore, the public health and safety will be adequately protected without the land ownership provision.

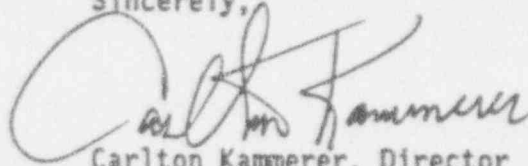
Also, since we issued our review letter, the NRC has received a petition from US Ecology, Inc. for Review and Suspension or Revocation of Utah's Agreement State Program for Failure to Require State or Federal Site Ownership at the Envirocare of Utah, Inc. Low-Level Radioactive Waste Facility filed by letter dated September 21, 1992. This Petition requests the NRC to revoke or suspend Utah's Agreement State status under section 274 of the Atomic Energy Act for failure to require Federal or State land ownership at the Envirocare of Utah, Inc. LLRW disposal facility. As a basis for the US Ecology request, the Petition alleges that (1) under both Utah's Agreement State program and the Federal LLRW regulatory program, LLRW may not be disposed of on privately-owned land unless the State in which the site is located or the Federal Government has formally expressed a willingness to accept title to the facility at site closure; (2) the Envirocare site is located on privately-owned land; and (3) neither Utah nor the U.S. Department of Energy has agreed to or expressed any willingness to accept title to the site. Please note that the receipt of the Petition was published in the Federal Register on November 13, 1992, and I have enclosed a copy for your review and response as appropriate. I will be issuing a determination on the US Ecology request within a reasonable time after receipt of your response and my review of these issues.

DEC 24 1992

In order for me to carry out my responsibilities with respect to this Petition, and to resolve the issues I have raised in the past, I have enclosed additional comments and a request for information, based on our review of information supplied by both the State and the licensee on the issue of land ownership. It is requested that your response be given the highest priority. We realize that responding to the entire letter will take considerable time, however we feel that a quick response to items 2, 3 and 4 could occur within the next 30 days or earlier.

I look forward to your timely responses and please do not hesitate to call me if you have any questions. I can be reached at 301-504-2321.

Sincerely,


Carlton Kammerer, Director
Office of State Programs

Ken: We are willing to meet on the issues raised in this letter. Should you think it would facilitate an early response.

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1. The report on "Evaluation of the Potential Public Health Impacts Associated with Radioactive Waste Disposal at a site near Clive, Utah" developed for the State by Rogers and Associates Engineering Corporation determined the radionuclide concentrations to limit effective whole-body dose equivalents to applicable levels as defined by the regulations. The license does not authorize all radionuclides that were evaluated in the report. Please provide technical analyses, including dose to the public, based on the actual types, quantities, concentrations and half-lives of the radionuclides in the waste to be received under the present license which would support the State's decision that the site is to be left open to unrestricted use following the 100 year active institutional control period. These analyses should support your determination that government ownership is not warranted based on the doses received by the public, including an inadvertent intruder. It would be expected that by using the parameters of the site, and accurate information on the source term, the predicted dose to the public is well below that specified in the regulations.
2. Please provide a description of the control of the land in the absence of governmental control. The description should include what land-use restriction there will be in the forms of legal instruments such as restrictions on titles and deeds and transfer of site records to the appropriate State and county municipalities.
3. The regulations provide that the responsibility for the disposal site is maintained by the licensee for at least five years following closure. Following closure and the period of post-closure observation and maintenance, the license may be transferred to the site owner under conditions specified in R447-25-16 of the Utah Low-Level Radioactive Waste Disposal Rules. Since there is to be no government ownership, it is not clear what the licensing process will be or who the licensee will be following the nominal five year post-closure period. Please indicate 1) who the State expects to be the licensee following the post-closure period; 2) who the State expects to be the licensee should Envirocare abandon the site; and 3) what the licensing procedures will be following the five year post closure period.

In addition, under Section 151(a)(2) of the Nuclear Waste Policy Act (Public Law 97-425), the NRC may be required to review and approve Agreement State financial arrangements for long-term monitoring and maintenance of a specific site before the site operator can be relieved of its licensed responsibility.

4. The Land Ownership Exemption Rationale references existing Utah State laws which could provide the means to control the disposal site. These laws address issuing orders to enforce law and rules, civil penalties, criminal proceedings and the State's ability to impound radioactive material if it poses an imminent threat or danger to the public health. We do not understand the relevance of these provisions to ownership of the site, to the responsibility for the site after 100 year active institutional control period, and the possible abandonment of the site by the present owner. If the State is committing to step in and take over the site, the rationale should specifically state this commitment. Please address this in response to item 3 above.

COMMENTS ON THE FINAL TRUST AGREEMENT AND SECTION 10 OF THE
LICENSE AMENDMENT APPLICATION

The latest closure plan as submitted by the licensee and approved by the State was not available during the review of Section 10. Since the cost estimates are related to the closure plan, many of the issues raised may be resolved with the submission of the approved closure plan. We request that the closure plan also be provided in addition to responding to the issues and questions raised below.

A. In Section 10, the following questions on the cost estimates for site closure were raised:

1. There are no cost estimates or plans for the transfer of site records to the appropriate municipality, county, county zoning board, State officials, local and Federal agencies etc. (10 CFR 61.80(e)). Please submit this information from the licensee. Also identify in addition to the cost of these transfers, who the agencies are in Utah at the present time who will receive these records.
2. There are no cost estimates or plans regarding the placement of monuments, trench markers or warning signs. Please submit this information.
3. Current excavation and construction costs indicate that the estimate provided may underestimate the actual cost of activities, even though Envirocare states that the "costs are based on actual costs charged...for similar work." Cost estimates should be based on independent regional contractor estimates. Comparisons to standard engineering manuals for cost estimating would be useful.
4. Section 10 did not contain drawings with adequate details to evaluate the dimensions and amounts provided for the fencing, excavation, radon barrier, rock barrier, etc. Please submit detailed drawings that will enable the NRC staff to evaluate the dimensions and amounts provided for the fencing, excavation, radon barrier, rock barrier, etc.

B. In the cost estimates for the active institutional control period:

1. Envirocare has planned for four wells to be sampled twice each year for five years, then annually. The environmental monitoring plan should be based on site history and stability, and may prove to be either more

or less strenuous than what is currently estimated. This number of wells appears low in recognition of the larger number of wells required by the State in review of the license application. The NRC staff would have expected the fund arrangement to be calculated using a more conservative estimate of the number of wells requiring monitoring during inspections, and the frequency of those inspections. Please submit the justification by the licensee, and the rationale for acceptance by the State of Utah, for four wells in light of the number of wells required during the operational period of the site and the stated frequency for monitoring.

2. Funding is provided for annual post-closure inspections, but no funding is provided for items of routine custodial activities, or repairs, if necessary, such as removing debris, control of vegetation, fence repair or replacement of monitoring equipment, or minor repair of disposal unit covers. Please submit the cost estimates from the licensee for items of routine custodial activities, or repairs, if necessary, such as removing debris, control of vegetation, fence repair or replacement of monitoring equipment, or minor repair of disposal unit covers.
 3. No funding is provided for contingencies in Section 10. Although specific costs cannot be calculated for possible future contingencies or activities such as replacement of a large portion of a disposal unit cover, some provision should be made for this type of event. Please submit the information on funding for future contingencies as submitted by the licensee.
- C. The trust fund addresses only the periods of site operation, closure and 100 years after closure. The fund is dissolved after 100 years, and any remaining money returned to Envirocare. This is standard; however, if the surety arrangement is designed to compensate for lack of land-ownership, it seems that some mention of the passive institutional control period should be made. Please submit either the licensee's or the State of Utah's description of the passive institutional control period and the activities envisioned during this time period.
- D. On page 8, Schedule A, paragraph 2 is the "current closure cost estimate" but no dollar amount is listed. (Note that there was a dollar amount of \$233,582.20 listed on the Draft Trust Agreement.) This schedule should be revised to include the dollar amount.

- E. The last sentence of paragraph 10.6.5 reads, "to cover 300,000 cubic yards of contaminated material, 141,808 cubic yards of radon barrier would be necessary." The original numbers in Section 10 submitted with the Draft Trust Agreement were 465,000 CY and 165,000 CY respectively. It is unclear what the relation is between the quantities of contaminated material and radon barrier. The revised July 15, 1992 Section 10 does not appear to be consistent with the previous version with respect to this issue. Please clarify the relation between the quantities of contaminated material and the radon barrier.
- F. In Section 10.6.10, General Cleanup, the second paragraph on page 10-5, states that, "An additional 100 [soil] tests have been included on Table 10.1..." Table 10.1 lists only 50 soil tests, and this is a decrease from the original quantity of 100 in the previous version of Section 10. Please indicate the correct number and have the licensee revise Section 10 for consistency.
- G. On page 10-11, for both item 5, Gamma Radiation Monitoring, and item 6, Radon Monitors, the cost per quarter has dropped significantly from the previous version of Section 10. The cost per quarter for Gamma Radiation Monitoring, has dropped from \$22/qtr to \$1.10/qtr, and for Radon Monitors, it has decreased from \$35/qtr to \$1.10/qtr. Both of these decreases are very large. Please explain the significant decrease in monitoring cost.

Editorial Comments and Arithmetic Errors in the Trust Agreement and Section 10.

Trust Agreement

1. In section 19 on page 6, hypothecated is misspelled.
2. In Schedule B on page 9, there is a math error:
 $\$258,140 + \$972,860 = \$1,231,000$ not $\$1,213,000$.

Section 10

1. The third paragraph on page 10-1 contains the first use of the abbreviation LARW, however, it is not spelled out.
2. The third paragraph in Section 10.0.1 (page 10-2) submitted with the Draft Trust Agreement, had a final sentence which said:

"It is anticipated that the only time contaminated material will be stockpiled loose is when it is dumped out loose under the rollover and when it is stored on the approved storage pad."

It is unclear why this sentence was deleted. It seems to be informative and useful.

3. The surety agreement discussed in Section 10 and cost estimates as a whole had several arithmetic inconsistencies in the draft documents that were not corrected in the final document. These are as follows:

There is quite a bit of confusion regarding quantities A, B, C and D.

- a. On page 10-2, paragraph 3, quantity C is listed as 278,000 cubic yards (CY); however, elsewhere in the document, (pages 10-2, and 10-3), the amount is listed as 283,000 CY. This amount (283,000 CY) is used in all calculations.
- b. At the bottom of page 10-2, quantities A, B, C and D are added. The sum is 300,000 CY. Quantities A, B, C, and D, when summed, equal 330,000.

It should be made clear that quantities A, and B are part of quantity C, and that the equation should be: $C + D \leq 300,000$.

In addition, we suggest that paragraph 3, on pages 10-1 and 10-2 should read, "The total amount of radioactively contaminated material on-site but not covered with sufficient radon barrier and rock erosion barrier (material in temporary embankment, in storage, and not unloaded) must be less than 283,000 cubic yards (quantity C.)"

4. The second paragraph of Section 10.3, page 10-4, references construction drawings for the "the first 465,000 cubic yards." This is the same as in the Section 10 that was submitted with the Draft Trust Agreement, although every other occurrence of "465,000 CY" that appeared in the previous version of Section 10 has been replaced with "300,000." It is not clear whether this "465,000 CY" was left in place intentionally or in error.

5. It is unclear why all of the dimensions in Section 10.5 were changed. It is possible that it is because the limit on contaminated material on site that is not completely covered with radon and rock barrier is 300,000 CY rather than the original 465,000. If so, this indicates that the reference to "465,000 CY" in Section 10.3 is a mistake. See 4 above.
6. At the top of page 10-7, on line 5, there is an asterisk after CY, but there is no corresponding explanatory asterisk.
7. In the fourth line of the first full paragraph on page 10-7, that twenty percent of the total of "material in storage, not unloaded and from the cleanup of the site..." is listed as 6000 CY. However, these numbers add up to 9400 CY.

$[(\text{material in storage}) + (\text{not unloaded}) + (\text{clean-up})] * 20\%$
=

$[25,000 \text{ CY} + 5,000 \text{ CY} + 17,000 \text{ CY}] * 20\% = 9,400 \text{ CY}$

Note that this does not change the \$0.52 end result of the calculations.

8. On page 10-10, the total for Environmental Monitoring/Water Sampling is \$4,216/yr. This number is listed incorrectly as \$4,206, and halved incorrectly as \$2,103 on page 10-12 in Sections D and E. This led to incorrect totals of \$8,206 in Sections D and E (should be \$8,216) and \$6,103 in Section E (should be \$6,108), and throughout Table 10.2.
9. On page 10-10 in Section E, \$8,206 is listed as the cost for the "Second Through Sixth Years," however, in Table 10.2 it is only listed for the second through fifth years. Similarly, in Section E on page 10-10, \$6,103 is listed for the "Seventh Through One-hundredth Years," but in Table 10.2, this amount is listed for years six through one hundred. These discrepancies should be corrected.
10. In item 5, on page 10-11, Gamma Radiation Monitoring was changed from "(TLD Badges)" to "(Ion Chambers)" however, in item C on the same page, it is listed as Gamma TLD's. This discrepancy should be corrected.

11. All of the items listed in Table 10.3 have explanatory paragraphs within the body of the text except for Reclamation. The licensee should provide an explanatory paragraph as to what reclamation consists of.

member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the subcommittee, along with other committee members or staff who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to Mr. George Sege (telephone 301/482-3904) between 8 a.m. and 4:30 p.m. (E.S.T.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 5, 1992.

George Sege,

Technical Assistant to the Director, Office of Nuclear Regulatory Research.

[FR Doc. 92-27515 Filed 11-12-92; 8:45 am]

BILLING CODE 7890-01-01

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Research, Evaluation, and Dissemination; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Date and Time: December 3-5, 1992; 8:30 a.m. to 5 p.m.

Place: Learning Research and Development Center, 3993 O'Hara Street, Pittsburgh, PA.

Type of Meeting: Closed.

Contact Person: Ms. Beverly Hunter, Division of Research, Evaluation, and Dissemination, rm 1227, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7064.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Applications Advanced Technologies Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical

information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (8) of the Government in the Sunshine Act.

Dated: November 8, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-27487 Filed 11-13-92; 8:45 am]

BILLING CODE 7890-01-01

NUCLEAR REGULATORY COMMISSION

Nuclear Safety Research Review Committee, Waste Subcommittee; Meeting

The NSRRC Waste Subcommittee will hold a meeting on December 1, 1992, in the Parkland Room, Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows:

Tuesday, December 1, 1992—8:30 a.m.—5 p.m.

The subcommittee will review the High Level Waste Performance Assessment Research Program and an overview update of the High Level Waste Research Program. A detailed agenda will be made available at the meeting.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the subcommittee. Transcripts or recordings of the meeting will not be made. Questions may be asked only by members of the subcommittee and the staff. Persons desiring to make oral statements should notify the NRC staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the subcommittee along with other committee members or staff who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions, whether the meeting has been cancelled or rescheduled, the Chairman's

ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to Mr. George Sege (telephone 301/482-3904) between 8 a.m. and 4:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 8, 1992.

George Sege,

Technical Assistant to the Director, Office of Nuclear Regulatory Research.

[FR Doc. 92-27512 Filed 11-12-92; 8:45 am]

BILLING CODE 7890-01-01

Office of State Programs; Receipt of Petition

Notice is hereby given that, by letter dated September 21, 1992, Anthony J. Thompson, Esq., on behalf of US Ecology, Inc., filed a "Petition of US Ecology, Inc. for Review and Suspension or Revocation of Utah's Agreement State Program for Failure to Require State or Federal Site Ownership at the Envirocare of Utah, Inc. Low-Level Radioactive Waste Facility" with the U.S. Nuclear Regulatory Commission staff. The Petition requests the NRC to revoke or suspend Utah's Agreement State status under section 274 of the Atomic Energy Act for failure to require Federal or State land ownership at the Envirocare of Utah, Inc. low-level radioactive waste (LLRW) disposal facility. As a basis for the request, the Petition alleges that:

(1) Under both Utah's Agreement State program and the Federal LLRW regulatory program, LLRW may not be disposed of on privately-owned land unless the state in which the site is located or the Federal government has formally expressed a willingness to accept title to the facility at site closure;

(2) The Envirocare site is located on privately-owned land; and

(3) Neither Utah nor the United States Department of Energy has agreed to or expressed any willingness to accept title to the site.

The NRC will take appropriate action on the Petition within a reasonable time. A copy of the Petition is available for inspection and copying in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20037.

Dated at Rockville, Maryland, this 6th day of November, 1992.

For the Nuclear Regulatory Commission,
Vandy L. Miller,
Assistant Director for State Agreements
Program, Office of State Programs.
[FR Doc. 92-27513 Filed 11-13-92; 9:46 am]
BILLING CODE 7590-01-01

OFFICE OF PERSONNEL MANAGEMENT

Director's Advisory Committee on Law
Enforcement and Protective
Occupations; Open Meeting

AGENCY: Office of Personnel
Management.

ACTION: Notice of open meeting.

SUMMARY: According to the provisions
of section 10 of the Federal Advisory
Committee Act (P.L. 82-483), notice is
hereby given that the ninth meeting of
the Director's Advisory Committee on
Law Enforcement and Protective
Occupations will be held at the time and
place shown below.

DATE: November 18, 1992, 10 a.m.

PLACE: Washington Hilton and Towers,
1919 Connecticut Avenue, N.W.,
Washington, DC.

Due to the rapidly approaching
statutory deadline for completion of this
study, less than 15 days notice is given.

AGENDA: The focus of the November
18th meeting will be the soliciting of the
views of the Advisory Committee
members on the Office of Personnel
Management staff proposal for law
enforcement pay and classification
reform before OPM makes a final
decision on its recommendation.

FOR FURTHER INFORMATION CONTACT:
Phyllis G. Foley, Director, Law
Enforcement and Protective
Occupations Task Force, Office of
Compensation Policy, Personnel
Systems and Oversight Group, Office of
Personnel Management, room 7H3Q,
1900 E Street NW., Washington, DC
20415.

SUPPLEMENTARY INFORMATION: The
meeting is open to the public. If time
permits, an opportunity will be provided
for members of the public in attendance
at the meeting to provide their views.
Persons wishing to address the Advisory
Committee orally at the meeting should
submit a written request no later than
the close of business on November 18,
1992. The request must include the name
and address of the person wishing to
appear, the capacity in which the
appearance will be made, a short
summary of the intended presentation,
and the amount of time desired.

Office of Personnel Management

Douglas A. Break,

Acting Director.

[FR Doc. 92-27583 Filed 11-13-92; 9:46 am]

BILLING CODE 5301-01-01

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of
Management and Budget

Agency Clearance Officer—Kenneth
Fogash (202) 272-2142.

Upon written request copy available
from: Securities and Exchange
Commission, Office of Filings,
Information and Consumer Affairs,
Washington, DC 20549.

Revisions:

Regulation 14A—File No. 270-86
Regulation S-K—File No. 270-3
Regulation S-B—File No. 270-370
Form 10-K—File No. 270-48
Form 10-Q—File No. 270-49
Form 10-KSB—File No. 270-366
Form 10-QSB—File No. 270-369
Form SB-2—File No. 270-368
Form 10—File No. 270-81
Form S-1—File No. 270-68
Form S-4—File No. 270-287
Form S-11—File No. 270-64

Notice is hereby given pursuant to the
Paperwork Reduction Act of 1980 (44
U.S.C. 3501 et seq.), that the Securities
and Exchange Commission
("Commission") has submitted for OMB
approval proposed revisions to:

(1) Regulation 14A which sets forth
rules governing the solicitation of
proxies—Regulation 14A affects
approximately 8,000 filers and causes
filers to incur an average estimated
burden of 90 hours;

(2) Regulation S-K which provides
instructions for filing forms under the
Securities Act of 1933, Securities
Exchange Act of 1934 ("Exchange Act")
and the Energy Policy and Conservation
Act of 1975—Regulation S-K is assigned
one burden hour for administrative
convenience since it does not directly
impose burden hours on respondents;

(3) Regulation S-B which provides
instructions for filing forms under the
Securities Act and Exchange Act by
small business issuers—Regulation S-B
is assigned one burden hour for
administrative convenience since it does
not directly impose burden hours on
respondents;

(4) Form 10-K which is an annual
report filed by issuers of securities
registered under section 12 of the
Exchange Act—Form 10-K affects
approximately 8,287 filers and results in
1,711 burden hours;

(5) Form 10-Q which is a quarterly
report filed by issuers of securities

registered under section 12 of the
Exchange Act—Form 10-Q affects
approximately 3,236 filers and results in
180.5 burden hours;

(6) Form 10-KSB which is an optional
annual report for small business issuers
under the Exchange Act—Form 10-KSB
affects approximately 3,225 filers and
results in 1,272 burden hours;

(7) Form 10-QSB which is an optional
quarterly report filed by small business
issuers under the Exchange Act—Form
10-QSB affects approximately 3,518
filers and results in 131.5 burden hours;

(8) Form SB-2 which is a registration
form under the Securities Act filed by
small business issuers—Form SB-2 is
filed by approximately 384 filers and
results in 935 burden hours;

(9) Form 10 which is used to register
securities under the Exchange Act—
Form 10 affects approximately 110 filers
and results in 12,980 burden hours;

(10) Form S-1 which is a registration
statement under the Securities Act—
Form S-1 affects approximately 1,039
filers and results in 1,295 burden hours;

(11) Form S-4 which is used to register
under the Securities Act securities
issued in business combination
transactions—Form S-4 affects
approximately 506 filers and results in
1,245 burden hours; and

(12) Form S-11 which is used to
register under the Securities Act
securities of certain real estate
companies—Form S-11 affects
approximately 340 filers and results in
870 burden hours.

The estimated average burden hours
are made solely for purposes of the
Paperwork Reduction Act and are not
derived from a comprehensive or even a
representative survey or study of the
costs of Commission rules or forms.
General comments regarding the
estimated burden hours should be
directed to Gary Waxman at the
address below. Any comments
concerning the accuracy of the
estimated average burden hours for
compliance with Commission rules and
forms should be directed to Kenneth A.
Fogash, Deputy Executive Director,
Securities and Exchange Commission,
450 Fifth Street, NW., Washington, DC
20549 and Gary Waxman, (PRA Project
Nos. 3235-0058, 0063, 0070, 0071, 0418,
0064, 0418, 0065, 0067, 0324 and 0420),
Clearance Officer of Management and
Budget, room 3206, New Executive
Office Building, Washington, DC 20503.

Dated: October 30, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-27516 Filed 11-13-92; 9:46 am]

BILLING CODE 8010-01-01

LETTERS
FROM
THE STATE OF UTAH
TO
THE NUCLEAR REGULATORY COMMISSION

Letter dated February 12, 1993

Letter dated March 17, 1993



State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE EXECUTIVE DIRECTOR

Michael O. Leavitt
Governor
Dianne R. Nielson, Ph.D.
Executive Director

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Utah File

February 12, 1993

Carlton Kammerer, Director
State Programs
Office of Governmental and Public Affairs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Kammerer:

This is in partial response to your December 24, 1992 letter, concerning the State's rationale for its granting an exemption to Envirocare from the site ownership requirements of UAC R313-25-9(2), previously UAC R447-25-9(2). This Utah regulation is similar to NRC requirements in 10 CFR Part 61.59. The Utah regulations provide for the granting of exemptions, UAC R313-12-54, previously UAC R447-12-54, which is consistent with a similar exemption provision in NRC regulations, 10 CFR Part 61.6.

Your letter requests we address two general areas of concern, post-closure licensing procedures and the institutional controls of the disposal site after closure, in the context of specific questions listed in your attachments. The primary purpose for the trust agreement and licensing and institutional controls is to provide for the protection of public health, safety, and property. Your concerns are addressed in the following specific responses to your comments:

COMMENT 1

This comment refers to the expected dose to the public after closure as calculated by Rogers and Associates. The following partial response is provided.

The Utah Department of Environmental Quality conducted special modelling tests to determine the level of activity of specific radioactive isotopes that could safely be disposed of at the Envirocare facility without risk of exposures to the public through any pathway in excess of NRC standards. This modelling protocol and the resulting license provisions for isotope-specific limitations on other waste that can be received by Envirocare were for the purpose of providing for the protection of public health, safety, and property.

The limitations imposed on the nature and radioactivity of the materials which Envirocare is authorized to receive, and the engineering features designed to reduce post-closure exposures support the findings for

2-12-93

granting an exemption. The Envirocare facility is designed and constructed in accordance with the standards in Part 61 which are equivalent to UAC R313-25, previously R447-25. It is located away from human population at a site where ground water contamination is not a risk, although the ground water is being protected as if it were usable. It is licensed to receive only very low activity materials.

Finally, it is important to point out that it is not the State's intention to leave the site "open to unrestricted use following the 100 year active institutional control period." There is in place significant land use controls on the site as is more specifically discussed below. There is no question that government ownership would result in limits on the likelihood of uncontrolled occupation of the site. The State's position is that the government controls, as discussed below, will also limit future use of the site and limit the possibility of an inadvertent intruder.

Furthermore, it is important to note the specific circumstances involving the location of the Envirocare site. Envirocare is located within 300 feet of the Department of Energy Vitro Tailings Disposal site on the north, and also on the west side, within 300 feet of the proposed 11(e)2 disposal facility currently under active consideration by the NRC. Federal government ownership/control over those two sites will provide additional land use control.

COMMENT 2

The comment asks for a description of land use controls in the "absence of governmental control." There is no absence of governmental control, there is an absence of governmental ownership. This confusion between "control" and "ownership" may be the source of part of the expressed concerns.

It is possible to have ownership and exercise no control. On the other hand, state and local government can and do exercise control over the use of the land without any ownership rights through exercise of zoning and regulatory authorities. In the particular instance of the Envirocare facility, in addition to the license and regulatory requirements not referenced below, the following controls exist:

- a. Tooele County has zoned the area that Envirocare is in as heavy manufacturing-hazardous (MGH) designation. Enclosed is documentation on those zoning requirements (Enclosure 1).
- b. Because of the mixed waste licenses held by Envirocare, Envirocare has recorded in the public records of Tooele County an Affidavit which refers to and incorporates the land use restrictions of 40 CFR 264.117(c) which controls post closure activities at the site (Enclosure 2).
- c. Envirocare is required under License Condition 36 to provide "as built" drawings every six months. Because of Envirocare's construction techniques, each generator's waste is segregated from other waste, and site records to be provided after closure will be detailed.
- d. The transfer of site records is specifically directed by UAC R313-25-33, previously R447-25-33, particularly subparagraph (4).

- e. To be licensed, radioactive waste disposal facilities must meet siting criteria established in UAC R313-25-3, previously R447-25-3, (Enclosure 3).

COMMENT 3

This comment addresses the NRC's concern about licensing procedure and control. The following points are made:

- a. This comment can be responded to in part by reference to the government ownership issue. As discussed above, the focus must be on government control, not ownership per se. In NRC's Draft Environmental Impact Statement regarding 10 CFR Part 61, referred to in your letter on page 2, the primary concern is governmental control of the site. Government ownership is provided in the NRC rules as a means of maximizing control. See DEIS 4.3.6.1, pp. 4-47 through 4-49. But government ownership is not the exclusive means to protect public health and safety through long term control of the site. The Utah Division of Radiation Control recognized this fact in its Land Ownership Exemption rationale of May 8, 1992 in stating that "... private ownership itself does not directly relate to or present undue hazard to public health and safety". While government ownership is related to public health and safety, it is simply not the exclusive means of protecting public health and safety.
- b. License Condition 60 of Envirocare's license and UAC R313-25-14, previously R447-25-14, establish requirements that Envirocare must meet to apply for a license amendment that will authorize closure of the facility. License Condition 60 requires one (1) year advance notice of anticipated closure and the regulation states that the application for a license amendment to close the facility shall include "a final revision and specific details of the disposal site closure plan ...". After review and acceptance of the closure plan, the Division of Radiation Control will amend the license authorizing closure. After closure, UAC R313-25-15, previously R447-25-15, prescribes a five (5) year post-closure and maintenance period until the license is transferred to the site owner for institutional control. UAC R313-25-16, previously R447-25-16, "Transfer of License" and UAC R313-25-17, previously R447-25-17, "Termination of License," presumes that the site operator will transfer and or terminate their license authorization and turn over the site to a government agency for the control period. Since Envirocare is the site owner and operator, and no government agency is/has been authorized to take title to the site, transfer and termination of the Envirocare license would not occur. Therefore, Envirocare's owners would remain responsible for the site and the institutional control phase would be implemented in that manner.

The issue is, again, control, not ownership or licensing. The alternative means of control created by Utah through the financial surety and trust agreement give exclusive control of the trust fund to the State. R313-25-31(8), previously R447-25-31(8), states that "financial or surety arrangements shall remain in effect until the closure and stabilization program has been completed...and the license has been transferred". Until a transfer of the license occurs, the surety arrangement remains in effect and will continue to be

reviewed to determine the amount necessary to protect public health, safety, and property. With that fund and other regulatory authorities, the State will be equipped to take whatever action is necessary to protect the public health, safety, and property.

- c. There is one other factor which significantly impacts any consideration of the issue of government ownership of this site. Envirocare is also licensed to receive low level mixed waste, meaning material that qualifies as low level radioactive waste under state and federal law, and which is contaminated with materials considered hazardous under state and federal law. As a result of this licensing and permitting, certain portions of Envirocare's facility are subject to dual regulation, by the NRC and State under federal and state radiation control law, and by the U.S. Environmental Protection Agency and State under the Resource Conservation and Recovery Act (RCRA) and state law. To a significant extent, the regulatory concern of EPA and the Utah Department of Environmental Quality under RCRA is identical to that of the NRC and the State under the Atomic Energy Act, the Nuclear Waste Policy Act, and related statutes and regulations; the isolation of toxic wastes from the human environment for sufficiently long periods of time to prevent threats to public health, safety, and property.

RCRA, however, does not impose in any circumstance requirements for governmental ownership of hazardous waste disposal sites. RCRA and state hazardous waste laws rely on siting, design and construction criteria and enforcement mechanisms to protect the public health, safety, and property which is really identical to the NRC approach. See UAC R315-3-30 and R315-8-2 and 6. Envirocare's design and construction meets not only the standards of the NRC and Utah Division of Radiation Control, but also the standards of EPA and the Utah Division of Solid and Hazardous Waste. Further, any violations by Envirocare will be subject to enforcement actions under both regulatory systems. These controls are adequate alternatives to government ownership.

COMMENT 4

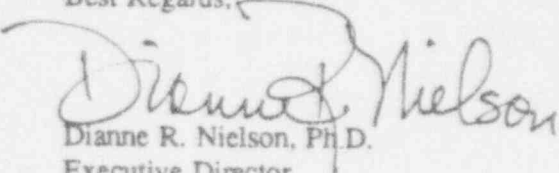
The relevance of the State's listed enforcement mechanisms (including the issuance of orders, civil penalties, criminal proceedings, and the State's ability to impound radioactive material) is that these mechanisms are part of the regulatory system that is designed to ensure protection of the public health, safety, and property. They do not stand alone. They supplement the rights of the State under the license and the State's radiation control regulations. They also supplement the trust fund which now exceeds \$1.4 million and is regularly evaluated for adjustment and is under the control of the State.

The State has not committed to "step in and take over" the site. The Utah legislature has not authorized the assumption of responsibility for the site nor has it authorized the State to take title to the site. The enforcement mechanisms, license, and trust agreement are not a direct equivalent to government ownership. The issue is not ownership *per se*, but control. Taking into account the nature and activity level of waste being disposed of at Envirocare and the closure requirements and standards, the listed enforcement mechanisms, license, and trust agreement provide the State control over the site and support the State's decision to exempt this particular facility from the requirement of government ownership.

If Envirocare attempts to abandon the site, the State will have its enforcement measures and licensure provisions to require compliance by Envirocare. Additionally, the State's most effective tool will be the trust fund, which is designed to provide the resources to safely complete any disposal and closure activities in the event of abandonment. Finally, the State could, should all these safeguards prove not to be adequate, in its discretion, take such additional actions as may be further authorized by law to protect public health, safety, and property.

If you have any questions regarding these responses, please contact Dane Finerfrock, Division of Radiation Control.

Best Regards,



Dianne R. Nielson, Ph.D.
Executive Director

Enclosure

ENCLOSURE 1

TOOELE COUNTY HAZARDOUS WASTE ZONING ORDINANCE

ENCLOSURE 2

AFFIDAVIT

IN 38

AFFIDAVIT

STATE OF UTAH

COUNTY OF SALT LAKE

The undersigned affiant having been duly sworn deposes and says as follows:

1. The affiant is Envirocare of Utah, Inc.
2. Affiant owns the following described land in Tooele County, Utah, namely:

Section 32, Township 1 South, Range 11 West, Tooele County, Utah, except for the legal description of their impoundment of the Vitro site:

PROPERTY DESCRIPTION FOR VITRO EMBALEMENT

Beginning at a point located 1120.32 feet W 89 degrees 56' W., along the section line, and 329.49 feet South from the Northeast corner of Section 32, Township 1 South, Range 11 West, Salt Lake Base and Meridian and running thence: W 89 degrees 56' 32" W 1503.72 feet, thence S 0 degrees 03' 28" W 2880.50 feet, thence S 89 degrees 56' 32" E 1503.72 feet, W 0 degrees 03' 28" E 2880.50 feet to the point of the beginning.

3. Such land has been or may be used to manage radioactive and hazardous waste.
4. The use of such land is restricted under 40 CFR 264 117(c).
5. The survey plat and record of the type, location, and quantity of hazardous waste disposed of within each cellar have been filed with the local zoning authority or the authority with jurisdiction over local land use.

IN WITNESS WHEREOF, This Affidavit is executed this 6 day of April 1989.

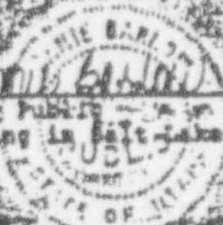
Khosrow Bannani
Khosrow Bannani, President
Envirocare of Utah, Inc.

Subscribed, and sworn to before me this 6 day of

April 1989

My Commission Expires:
5/24/91

Notary Public
Residing in Salt Lake County



43

BOOK 285

025720

PAGE 43A-439

EN 1 PT 1001-1

RECORDED AT REQUEST OF

Emmeline

EMERGENCY SERVICES

1001 APR -6 PM 2:48

BONRA S. McKENNETH

TOOLE COUNTY RECORDS

DEPUTY *Adm* FEE \$0.00

[Faint, mostly illegible text and markings at the bottom of the page, possibly a continuation of the record or a separate document.]

ENCLOSURE 3

R313-25 SITING CRITERIA

(19) "Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

(20) "Stability" means structural stability.

(21) "Surveillance" means monitoring and observation of the disposal site for purposes of visual detection of need for maintenance, custodial care, evidence of intrusion, and compliance with other license and regulatory requirements.

(22) "Waste" means those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-Level Radioactive Waste Policy Act, P.L. 96-573, that is, radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11 e.(2) of the Atomic Energy Act (uranium or thorium tailings and waste).

(23) "Treatment" means the stabilization of waste or the reduction in volume of waste by a chemical or a thermal process.

(24) "Land Disposal Facility" means a facility where wastes are kept, maintained, stored, or held for a period exceeding one year.

R447-25-3 Siting Criteria and Pre-licensing Plan Approval for Commercial Radioactive Waste Disposal Facilities.

(1) Each person proposing to construct or operate a commercial radioactive waste disposal facility, including waste incinerators, must obtain a plan approval from the Bureau of Radiation Control prior to applying for a license. No plan may be approved that does not meet the siting criteria and plan approval requirements contained in R447-25-3.

(2) The siting criteria and plan approval requirements in this section apply to prelicensing plan approval applications that have been submitted and that have not yet been approved, as well as all future applications.

(3) Treatment and disposal facilities, including commercial radioactive waste incinerators, may not be located:

(a) within or underlain by:

(i) national, state, and county parks, monuments, and recreation areas; designated wilderness and wilderness study areas; wild and scenic river areas;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitat for listed or proposed endangered species as designated pursuant to federal law;

(iii) 100 year floodplains;

- (iv) 200 ft. of Holocene faults;
 - (v) underground mines, salt domes and salt beds;
 - (vi) dam failure flood areas;
 - (vii) areas likely to be impacted by landslide, mud flow, or other earth movement, unless adverse impacts can be reasonably mitigated;
 - (viii) farmlands classified or evaluated as "prime", "unique", or of "statewide importance" by the U.S. Department of Agricultural Soil Conservation Service under the Prime Farmland Protection Act;
 - (ix) five miles of existing permanent dwellings, residential areas, and other habitable structures including, schools, churches, and historic structures;
 - (x) five miles of surface waters including intermittent streams, perennial streams, rivers, lakes, reservoirs, estuaries, and wetlands.
 - (xi) 100 ft. of uranium mill tailings piles;
 - (xii) 1000 ft. of archeological sites to which adverse impacts cannot reasonably be mitigated;
 - (xiii) recharge zones of aquifers containing ground water which has a total dissolved solids content of less than 10,000 mg/l;
 - (xiv) drinking water source protection areas designated by the State Drinking Water Committee;
- (b) in areas:
- (i) above or underlain by aquifers containing ground water which has a total dissolved solids content of less than 500 mg/l and which do not exceed state ground water standards for any containment;
 - (ii) above or underlain by recharge zones of aquifers containing ground water which has a total dissolved solids content of less than 3000 mg/l;
 - (iii) above or underlain by aquifers containing ground water having a total dissolved solids content of less than 3000 mg/l and within State ground water quality standards;
 - (iv) above or underlain by aquifers containing ground water which has a total dissolved solids content between 3000 and 10,000 mg/l where the distance from the surface to the ground water is greater than 100 ft.;
 - (v) areas subject to the lowering or collapse of the land surface, either locally or regionally, such as areas of extensive withdrawal of water, gas, or oil;

(vi) areas above or underlain by weak and unstable soils, such as soils that lose their ability to support foundations as a result of hydrocompaction, expansion, or shrinkage;

(vii) areas above or underlain by karst terrains.

(4) Incinerators with an associated ground disposal facility may not be located above aquifers containing ground water which has a total dissolved solids content below 500 mg/l. Incinerators without an associated ground disposal facility may not be located above aquifers containing ground water which has a total dissolved solids content below 3000 mg/l.

(5) No facility may be located within a distance to existing drinking water wells and watersheds for public water supplies of one year ground water travel time plus 1000 feet for incinerators and of five years ground water travel time plus 1000 feet for land disposal facilities.

(6) The plan approval application must include hydraulic conductivity and other information necessary to adequately determine the one or five year ground water travel distance, as applicable.

(7) The plan approval application must include adequate studies to determine whether ground water aquifers exist in the area of the proposed site and the quality of the ground water of all aquifers identified in the area of the proposed site.

(8) The Bureau may require the applicant to conduct vadose zone or other near surface monitoring if the Bureau determines it is reasonably necessary to support or confirm information provided in the plan approval application.

(9) Emergency response and safety.

(a) The plan approval application shall address the availability and adequacy of emergency services, including medical and fire response. The application shall provide evidence that the applicant has coordinated emergency response plans with local and regional emergency response resources. A plan approval application must demonstrate reasonable availability of emergency services, including medical and fire response services.

(b) The plan approval application shall include emergency response plans for responding to emergencies both at the site and involving wastes being transported to and from the site within the state. Details of the proposed emergency response plan shall be given in the plan approval application and will be stipulated in the plan approval and radioactive materials license.

(c) The plan approval application shall proposed transportation routes within the state for the radioactive wastes to be transported. No proposed plan may be approved which proposes that radioactive waste be transported on roads or bridges where weight restrictions would be exceeded. No proposed plan may be approved which unreasonably poses adverse impact or risk of harm to inhabited areas. The plan approval application shall address risks to inhabited areas, including both residential and non-residential areas; the width, condition, the types of roads to be used; roadside development on proposed routes; seasonal and climatic factors which may affect safety; alternate emergency access to the facility; the type, size, and configuration of vehicles proposed to haul wastes; transportation restrictions on proposed routes; and the transportation means and routes available to evacuate the population at risk in the event of accidents, including spills and fires.

(10) Siting Authority. The Bureau recognizes that Titles 10 and 17 of the Utah Code gives cities and counties authority for local use planning and zoning. Nothing in R447-25-3 precludes cities and counties from establishing additional requirements as provided by applicable state and federal law.

R447-25-4 License Required.

(1) No person may receive, possess, and dispose of waste received from other persons at a land disposal facility unless authorized by a license issued by the Bureau pursuant to this chapter, and R447-22 of these rules.

(2) Each person shall file an application with the Bureau pursuant to R447-22-32 of these rules and obtain a license as provided in this chapter before commencement of construction of a land disposal facility. Failure to comply with this requirement may be grounds for denial of a license.

R447-25-5 Content of Application.

In addition to the requirements set forth in R447-22-33 of these rules, an application to receive from others, possess, and dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in R447-25-6 through R447-25-10.

R447-25-6 General Information.

The general information shall include each of the following:

(1) identity of the applicant including:

(a) the full name, address, telephone number, and description of the business or occupation of the applicant;

(b) if the applicant is a partnership, the name and address of each partner and the principal location where the partnership does business;

(c) if the applicant is a corporation or an unincorporated association;

(i) the state where it is incorporated or organized and the principal location where it does business; and

(ii) the names and addresses of its directors and principal officers; and

(d) if the applicant is acting as an agent or representative of another person in filing the application, all information required under R447-25-6(1) must be supplied with respect to the other person.

(2) Qualifications of the applicant shall include each of the following:



State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF THE EXECUTIVE DIRECTOR

Michael O. Leavitt
Governor

Dianne R. Nielson, Ph.D.
Executive Director

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B. Gordon
K. Winsberg

SAS
VM
KWS
DMS

March 17, 1993

Carlton Kammerer, Director
State Programs
Office of Governmental and Public Affairs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Kammerer:

This provides our response to your September 2, 1992 letter, regarding the April 13-17, 1992, Utah program review conducted by NRC staff and the December 24, 1992 letter, requesting responses to additional concerns regarding the Envirocare site ownership issue. Partial responses to the December 24, 1992 letter, were provided to you during the February 1993 meetings here in the Division of Radiation Control (DRC) offices. Additionally, at those meetings you asked us to further review two issues: the adequacy of the restrictive covenants on the Envirocare site, and what would be the result if Envirocare went into bankruptcy. The DRC responses to these questions and those from the September 2, 1992 letter, follow beginning with the September letter.

COMMENT 1: Status and Compatibility Of Regulations (Category 1 Indicator)
A Comment of MINOR SIGNIFICANCE.

RESPONSE: The DRC has prepared administrative rules for approval and rulemaking by the Utah Radiation Control Board. We understand the necessity that regulations, which are matters of compatibility, be adopted as effective State radiation control rules within the three-year period allowed after the NRC adoption. It is anticipated that the Radiation Control Board will act accordingly regarding the decommissioning rule and any others.

COMMENT 2A: Land Ownership Exemption

RESPONSE: This was responded to, in part, in the DRC February 12, 1993 letter. Additional information will be provided later in this letter.

COMMENT 2B: Completion of Safety Evaluation Report

RESPONSE: The DRC and the Division of Water Quality have been reviewing changes to the ground water monitoring program for the Envirocare site for approximately 10 months. Many of these changes are significant departures from the original License and the Ground Water Discharge Permit, therefore requiring a revised Statement of Basis. The demonstration of how the site meets the regulatory requirements will be further clarified in the revised Statement of Basis. At this time, it is unclear when the reviews regarding these issues will be completed.

COMMENT 2C: Operating Procedures

RESPONSE: The DRC has received copies of the Envirocare Radiological Safety Procedures Manual. Envirocare is required to submit new or revised procedures as available.

COMMENT 2D: Averaging of Waste Concentration

RESPONSE: The DRC intends to formalize its position on waste concentration averaging. The DRC has reviewed the NRC Draft guidance for applicability and has asked Envirocare for their comments on the NRC guidance. Envirocare's current waste characterization program includes certain provisions with respect to average concentration. Envirocare's comments and current provisions will be reconciled with the policy.

COMMENT 2E: Placement of Waste

RESPONSE: The construction quality assurance/quality control plan for Envirocare's LARW embankment is in the process of being reviewed to insure that the area between the intersection of any lifts (including new lifts being placed adjacent to older, in-place sloped "mounds" of successive lifts) is properly compacted. As new lifts are placed next to older lifts, all material on the outer edge of the older lifts which has an in-place density of less than 90% of standard Proctor will be removed. In effect, the older existing slope will be "notched" so that the uncompacted material on the slope of the older embankment is removed prior to an adjacent new lift being placed and compacted. This lift intersection between older and newer material will be tested to demonstrate an in-place density of at least 90% standard Proctor at a specified frequency.

COMMENT 2F: Definition of a Lift

RESPONSE: Envirocare has proposed that the total surface area of a lift be at least 10,000 square feet. The construction quality assurance/quality control plan is in the process of being revised to incorporate this surface area definition of a lift. Lift thickness is limited to not more than 12 inches of loose waste material per lift.

COMMENT 2G: Leachate Collection System

RESPONSE: To avoid the potential surface infiltration of surface water, Envirocare has proposed sealing the unapproved leachate collection system by pressure grouting using a sand, cement and bentonite slurry mixture pumped into the leachate pipe. The pipe would then be cut off below the radon barrier. The DRC concurs with this proposal and Envirocare has committed to sealing the leachate collection pipe during this years construction season.

Comment 2H: Hydraulic Conductivity of the Clay Liner

RESPONSE: This is regarding the addition of clay deflocculants to the native soils, at the Envirocare site for the purpose of decreasing permeability. Envirocare has provided an engineering report addressing this issue. Likewise, DRC staff have independently evaluated this problem. The conclusion is the additive will be stable relative to site conditions and waste chemistry and that it can be reasonably expected that the permeability of the liner will not significantly increase over the design life.

Issues from the meetings held on February 16 and 17, 1993.

ISSUE A: Restrictive Covenants

RESPONSE: We have reviewed the restrictive covenants with the Attorney General's Office. As a result of that review and discussion with Envirocare, we have entered into a supplementary agreement with Envirocare which clarifies restrictions which will run with the land. A copy of that agreement is attached.


Letter to C. Kammerer
Nuclear Regulatory Commission
Page Four
March 17, 1993

ISSUE B: Consequences of Bankruptcy

RESPONSE: Bankruptcy is governed by federal law and Envirocare would be subject to the same federal requirements and processes as any other corporation. After review of these issues, it was determined that it was not necessary to provide a detailed description of the general federal process, but that comment on a couple of specific issues would be appropriate. A bankruptcy proceeding in the federal courts would likely involve the appointment of a trustee which would manage the assets and take responsibility for the obligations of the corporation, which would include the obligations established by the Utah license. In addition, it should be noted that the financial surety and trust agreement is irrevocable and gives exclusive control of the trust fund to the State. The assets in that fund would not be an asset of the corporation subject to dispersal to creditors in the bankruptcy.

If you have any questions regarding these responses, please contact Dane Finerfrock, Division of Radiation Control.

Best Regards,

A handwritten signature in cursive script, reading "Dianne R. Nielson". The signature is written in dark ink and is positioned above the printed name and title.

Dianne R. Nielson, Ph.D.
Executive Director

Attachment

AGREEMENT
ESTABLISHING COVENANTS AND RESTRICTIONS

THIS AGREEMENT is made the day and year hereinafter given by and between ENVIROCARE OF UTAH, INC., a Utah corporation (hereinafter "Envirocare"), having its general offices at 215 South State Street, Suite 1160, Salt Lake City, Utah 84111, and UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY (hereinafter the "Department").

RECITALS:

A. Envirocare owns legal title and holds possession of the following-described land (said land and buildings and appurtenances thereon hereinafter called "the property") in Tooele County, Utah:

Section 32, Township 1 South, Range 11 West, Tooele County, Utah, excepting the following-described property being the Vitro impoundment site:

PROPERTY DESCRIPTION OF VITRO EMBANKMENT

Beginning at a point located 1120.32 feet North 89°56' West, along the section line, and 329.49 feet South from the Northeast corner of Section 32, Township 1 South, Range 11 West, Salt Lake Base and Meridian and running thence North 89°56'32" West 1503.72 feet; thence South 0°03'28" West 2880.50 feet; thence South 89°56'32" East 1503.72 feet; thence North 0°03'28" East 2880.50 feet to the point of beginning.

B. The Department has issued to Envirocare its license (No. UT 2300249) to receive, possess and dispose of certain radioactive material at and upon the property and pursuant to the terms and conditions as specified in the license, as well as other approvals

BOOK 348

054898

PAGE 104-107

EN _____ PT _____ AB _____

Envirocare, Inc.

93 MAR 16 PM 4:26

DONNA S. McKEEN
TOOELE COUNTY RECORDER

for a mixed waste facility permit (No. UTD 982598898) and ground water discharge permit (No. UGW 450005).

C. On April 6, 1989, Envirocare executed a certain Affidavit providing for restrictions on the use of the property in conformity with the license, permits and approvals issued by the Department, and caused said Affidavit to be recorded on April 6, 1989, at Entry No. 25720, in Book 285, at Page 438, of the official records of the County Recorder of Tooele County, Utah.

D. The parties desire to clarify and supplement the Affidavit of April 6, 1989, and the covenants therein made and use restrictions thereby granted and imposed upon the property.

NOW, THEREFORE, it is hereby agreed as follows:

1. Envirocare does declare and grant and the parties do agree that the property shall be used in conformity with and subject to the conditions, restrictions and limitations provided by 40 CFR 264.117(c) and that no use of the property shall be made in derogation or violation thereof.

2. No use shall be made of the property or permitted thereon which is in violation of the laws of the United States of America and the State of Utah and of any division, department or agency thereof, nor of the laws and ordinances of Tooele County, Utah.

3. That portion of the property upon which radioactive waste material is stored or disposed shall be operated, maintained and site closure thereon performed as required by the laws of the State of Utah and of the Department.

4. This Agreement and the covenants and restrictions herein contained constitutes a perpetual covenant running with the land as to the property and shall be recorded in the official records of the County Recorder of Tooele County, State of Utah.

5. This Agreement and the covenants and restrictions herein contained are in addition to and shall supplement and not be in substitution of that certain Affidavit dated April 6, 1989, as hereinabove described. The parties acknowledge and agree that said Affidavit and the provisions, covenants and restrictions therein contained remains in full force and effect, and said covenants and restrictions are perpetual and run with the land.

6. The rights, conditions, covenants and restrictions as contained in this Agreement shall inure to the benefit of and be binding on the heirs, personal representatives, successors and assigns of the respective parties hereto.

DATED this 16 day of March, 1993.

UTAH DEPARTMENT OF ENVIRONMENTAL
QUALITY

By Dianne F. Nielson
Executive Director, Department
of Environmental Quality

[THE DEPARTMENT]

ENVIROCARE OF UTAH, INC., a
Utah corporation

By Khosrow B. Semnani
Khosrow B. Semnani, President

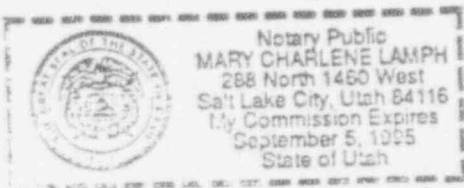
[ENVIROCARE]

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

On the 16 day of March, 1993, personally appeared before me Dianne B. Nielson, who being by me duly sworn did say that she is the Executive Director of the Department of Environmental Quality and that she did sign the foregoing instrument on behalf of the Utah Department of Environmental Quality and that said Department executed the same.

My Address and Commission
Expiration Date Are:

Mary Charlene Lamp
NOTARY PUBLIC

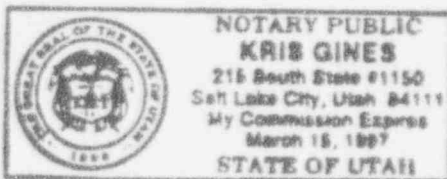


STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

On this 15th day of March, 1993, personally appeared before me KHOSROW B. SEMNANI, who being by me duly sworn did say that he is the President of Envirocare of Utah, Inc. and that he did sign the foregoing instrument as President of said corporation and that said corporation executed the same.

My Address and Commission
Expiration Date Are:

Kris Gines
NOTARY PUBLIC





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

Dianne R. Nielson, Ph.D.
Executive Director
Department of Environmental Quality
168 North 1950 West
P.O. Box 144810
Salt Lake City, Ut 84114-4810

Dear Dr. Nielson:

Thank you for your letters of February 12 and March 17, 1993, responding to our comments and recommendations following our review of the State's radiation control program which were sent to the State of Utah in our letters of September 2 and December 24, 1992.

We appreciate the positive actions you and your staff are implementing in response to our comments. Our understanding is that the State is developing a decommissioning rule that when adopted would bring your regulations up-to-date. Your responses to the other comments appear acceptable, except for the land ownership exemption which is discussed below, and we will verify them during the next review of your program.

The State's response on the rationale for the exemption from the land ownership requirement presented the concept of exercising control of the site equivalent to that provided by governmental ownership. The Nuclear Regulatory Commission (NRC) considers this to be an acceptable approach to providing the rationale for the exemption. The State presented several clarifying points on how the State would exercise control of the site without the need for the State or Federal government to have title to the site. The NRC considers this approach acceptable with the proper implementing mechanism(s) put in place. With the implementation of a restrictive covenant that will run with the land (an example is presented as Attachment 1), the NRC staff considers the State's controls to be adequate. Please submit a copy of a final restrictive covenant when it is implemented so that our documentation will be complete.

We consider the State of Utah's rationale of exercising effective control of the waste disposal site without State or Federal land ownership to be acceptable and to provide equivalent control to that which would be provided by implementing State or Federal land ownership.

In discussions with your staff on February 17, 1993 and in subsequent discussions, your staff agreed to update, as part of the annual review, the Trust Agreement and supporting calculations to remove the inconsistencies identified in the attachment to the December 24, 1992 letter from me to Mr. Kenneth Alkema. Attachment 2 contains a discussion of the major issues and the comments identified by the NRC staff. We will review this update during our next program review.

Dr. Nielson

2

I appreciate your support of the State's radiation control program and look forward to working with you in the future. Should you have any questions, please feel free to contact me or Robert Doda, Region IV, State Agreements Officer.

Sincerely,

Carlton Kammerer, Director
Office of State Programs

Attachments:
As stated

cc: L. Anderson
D. Finerfrock

AGREEMENT

ESTABLISHING OF RESTRICTIVE COVENANTS

THIS AGREEMENT is made the day and year herein after given by and between Envirocare of Utah, Inc. (hereafter "Envirocare"), a Utah corporation having its general offices at 215 South State Street, Suite 1160, Salt Lake City, Utah 84111, and UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY (hereinafter the "Department").

RECITALS:

(1) Envirocare is the record owner of the following described premises located in Tooele County, Utah, to wit:

SEE ATTACHED EXHIBIT A FOR A LEGAL DESCRIPTION AND EXHIBIT B FOR A DIAGRAM OF THE PROPERTY.

(2) Envirocare is in the process of constructing and operating a low-level radioactive waste disposal facility described in Exhibit B for the permanent disposal of radioactive material pursuant to a license granted by the Department under R447-25.

(3) The parties desire to clarify and supplement the Agreement Establishing Covenants and Restrictions recorded March 16, 1993 at Book 348, pages 104-107.

Now, therefore, these restrictive covenants are executed by Envirocare to ensure the long-term integrity of the disposal facility for the safety of the people of the State of Utah, to wit:

(1) These covenants shall be in addition to any restrictive covenants currently on record affecting the above-described premises, and recorded at , Tooele County Records.

(2) No excavation or construction, except as necessary to maintain the integrity of the above described premises, shall be allowed after the low-level radioactive waste is disposed of and the facility closed.

(3) No uses of the property shall be made which may impair its integrity. Any change in use following closure of the facility shall require the prior written consent of the Department, or its successors or assigns, which shall not be unreasonably withheld.

(4) Envirocare, its successors or assigns, shall erect monuments and markers and shall thereafter continuously maintain, while it has title, these monuments and markers. These monuments and markers are to be approved by the Department to warn of the presence of radioactive material at the site.

(5) Envirocare shall notify the Department of its intent to convey any interest in the property described herein. Such conveyance shall not be made without the prior written approval of the Department, provided however that such approval is not to be unreasonably withheld. No conveyance of title, easement or other interest in the property shall be consummated by Envirocare

without adequate and complete provision for continued maintenance of the property.

(6) Any State or Federal governmental agency, affected by any violations of these restrictive covenants, may enforce them by legal action in the District Court for Tooele County.

(7) Any of the parties mentioned in the previous paragraph may obtain an immediate temporary restraining order from the District Court upon allegation that these restrictive covenants have been violated without any further showing being required. Envirocare, its successors or assigns, shall then bear the burden of proof as to why such temporary restraining order should not be made a permanent injunction by the Court.

(8) Envirocare, its successors and assigns, shall not at any time institute legal proceedings, by way of quiet title or otherwise, to remove or amend these restrictive covenants unless the Department has given advance written approval.

These restrictive covenants shall run with the land in perpetuity and shall be binding upon Envirocare, its successors and assigns.

Dated this _____ day of _____, 1993.

UTAH DEPARTMENT OF ENVIRONMENTAL
QUALITY

ENVIROCARE OF UTAH, INC., a
Utah corporation

By: _____
Executive Director, Department
of Environmental Quality

By: _____
Khosrow B. Semnani, President

STATE OF UTAH)
) ss.
COUNTY OF TOOELE)

The foregoing instrument was acknowledged before me this _____ day of _____, 1993, by _____ of Envirocare of Utah, Inc. on behalf of the Corporation.

NOTARY PUBLIC

SUMMARY OF MAJOR CONCERNS REGARDING THE
ENVIROCARE OF UTAH LLW DISPOSAL FACILITY,
AND ACCEPTABLE RESPONSES

I. ISSUE: Implications of Bankruptcy

- A. Specific Concern: The responsibility and authority of a court appointed trustee in the event of the licensee filing for bankruptcy.

Acceptable Response: A trustee appointed by a Federal court has a fiduciary responsibility to exercise the safe control of all assets. In the case of a disposal site, the trustee would be responsible for the control of access to the site and any other obligations of the license pertaining to maintaining the site in a safe condition. The State would be able to continue to exercise its police powers to protect the public health and safety at the site.

This is acceptable to the staff.

II. ISSUE: Deed Modification

The deed or land records should be modified to place more specific restrictions on (future) activities at the site.

- A. Specific Concern: Documents already in the Public Record, such as the Affidavit enclosed in the letter from D. Nielson (DEQ) to C. Kammerer (NRC) of February 12, 1993, and the Agreement referenced in the March 17, 1993 letter from D. Nielson (DEQ) to C. Kammerer (NRC), are not adequate to effect control over the site equivalent to that of a land owner.

Acceptable Response: The staff has drafted a restrictive covenant document that the State of Utah and Envirocare informally find consistent with State property law. The staff considers the controls in this document, when implemented, along with those already being implemented by the State of Utah to be equivalent to those implemented through the NRC licensing process. The State is being asked to submit the final restrictive covenant to the NRC when implemented. The staff will verify this action as part of the next program review.

This is acceptable to the staff.

III. ISSUE: Passive Institutional Controls Beyond the 100 year Active Institutional Control Period

Neither the State of Utah, nor Envirocare have addressed what happens after 100 years have elapsed.

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ENVIROCARE OF UTAH LLW DISPOSAL FACILITY,
AND ACCEPTABLE RESPONSES

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This is acceptable to the staff.

III. ISSUE: Passive Institutional Controls Beyond the 100 year Active Institutional Control Period

Neither the State of Utah, nor Envirocare have addressed what happens after 100 years have elapsed.

- A. Specific Concern: The Trust Agreement, which funds the active controls, expires at the end of the 100 year active control period. Subsequent controls have not been addressed.

Acceptable Response: As stated above, the State of Utah and Envirocare have reviewed the draft restrictive covenant which restricts future use of the land in perpetuity and agree that such a document is implementable. The State in the February 12, 1993 letter explained their licensing process and administrative process that they will continue to use to exercise control of the site even if Envirocare is no longer present. The staff considers these activities to be equivalent to those required by the NRC regulations.

This is acceptable to the staff.

- B. Specific Concern: License termination is also an issue. There has been no mention of when the license will be terminated.

Acceptable Response: A commitment from the State of Utah (February 12, 1993 letter) that it will keep Envirocare under license for the duration of the active institutional control period (~100 years), and until an application for license termination has been approved. (The Utah State regulations contain requirements for license termination similar to those in 10 CFR Part 61. These requirements are in Utah Code at R447-25-17.)

Note that 10 CFR 61.31(c)(2) contains a requirement that permanent monuments or markers warning against intrusion be installed as a condition for license termination. There is no funding provided for monuments or markers in the Trust Agreement. Envirocare should also make a commitment to place these markers (this is already required by Utah regulations at R447-25-17(3)(c)). The draft restrictive covenant also includes a commitment to place and maintain these monuments and markers.

This is acceptable to the staff.

- C. Specific Concern: As a part of the December 24, 1992 letter, we pointed out that, "[t]he Land Ownership Exemption Rationale references existing Utah State laws which could provide the means to control the disposal site. These laws address issuing orders to enforce law and rules, civil penalties, criminal proceedings and the State's ability to impound radioactive material if it poses an imminent threat or danger to the public health. We do not understand the relevance of these provisions to ownership of the site, to the responsibility for the site after 100 year active institutional control period, and the possible abandonment of the site by the present owner."

In response, the Department of Environmental Quality stated in their February 12, 1993 letter that, "[t]he relevance of the State's listed enforcement mechanisms (including the issuance of orders, civil penalties, criminal proceedings, and the States' ability to impound

radioactive material) is that these mechanisms are part of the regulatory system that is designed to ensure protection of the public health, safety, and property. They do not stand alone. They supplement the rights of the State under the license and the State's radiation control regulations...."

Acceptable Response: The State has stated that its program to exercise control over the disposal site is equivalent to the control of a disposal site under the land ownership provision in Part 61. These civil, criminal, and police powers of the State of Utah are over and above the authority of the State under its Radiation Control Act. As such, these authorities do provide additional mechanisms to exercise control over this site whether or not the site owner is conducting adequate control of the site. The addition of the restrictive covenant will add an additional control mechanism that the State or the Federal government can use to restrict the future use of this site.

This is acceptable to the staff.

IV. ISSUE: Trust Agreement Modifications

- A. The Trust Agreement needs to be amended as specified in our December 24, 1992 letter to Envirocare. For example: current provisions for routine maintenance in cost estimates appear inadequate, provisions for monitoring appear inadequate, and no funding is provided for record transfers, deed restrictions, markers, etc. (See December 24, 1992 letter for details)

Acceptable Response: This issue may be addressed directly by revising the Trust Agreement to correct or incorporate the missing or inadequate items (using the December 24, 1992 letter as a guide). The State of Utah has committed to re-evaluate the cost estimates for the trust amount and revise the Trust Agreement to incorporate an updated cost amount. The amount of \$1.2 million is on deposit in the trust fund and is under the control of the State of Utah. The staff has reviewed the December 24, 1992 letter comments and proposed resolutions to these comments are presented below. The State's revision to the calculations and Trust Agreement will be reviewed during the next program review.

This is acceptable to the staff.

RESOLUTION OF COMMENTS IN THE ENCLOSURE TO THE
DECEMBER 24, 1992 LETTER FROM C. KAMMERER TO K. ALKEMA

Comments on the Land Ownership Exemption Rationale

Comment 1: This comment requested a dose assessment for the period beyond the 100 year period.

Resolution: The proposal by the State of Utah to control the site with the use of several mechanisms makes this comment no longer applicable.

Comment 2: This comment requested a description of the control of the land to be implemented in the absence of governmental ownership.

Resolution: The State submitted a deed annotation which the staff did not find adequate. The staff proposed a more detailed "restrictive covenant" which, if found acceptable to the State of Utah and Envirocare, would be acceptable to the staff.

Comment 3: This comment requested additional information on (1) who the licensee will be during the active control period, (2) who the licensee will be if Envirocare abandons the site, and (3) what the licensing procedures will be following site closure.

Resolution: The State of Utah responded to the comment in their letter dated February 12, 1993. (1) Control will be maintained by the State of Utah regardless of who the site owner is. (2) Since Envirocare is the site owner and operator, and no governmental agency is/has been authorized to take title to the site, transfer and termination of the Envirocare license would not occur prior to the active institutional control period. The State will hold Envirocare responsible for the site and the active institutional control period. (3) The Utah regulations for license transfer and termination presumes that the site operator will transfer and/or terminate their license authorization and turn over the site to a government agency for the active institutional control period. As stated above, the State will require Envirocare to remain the licensee until the regulatory requirements have been met. This is acceptable to staff.

Comment 4: The comment requested additional clarification on the various mechanisms the State of Utah identified and their applicability to the abandonment of the site by Envirocare.

Resolution: The State of Utah responded that in addition to the license with Envirocare the State has other mechanisms available for protecting the public health and safety. The mechanisms include the issuance of orders, civil penalties, criminal proceedings, and the State's ability to impound radioactive material. The

State has control of a trust fund established by Envirocare that contains in excess of \$1.2 million which is sufficient money to close the site and provide for the active institutional control period. The State is prepared to use these mechanisms to control the site if Envirocare were to abandon the site. The Utah legislature has not authorized the State to take title to the site nor to take responsibility for the site. With the addition of a specific restriction on the future use of the land, these mechanisms should provide for the control of the waste disposal area for the period of time contemplated in 10 CFR Part 61. This is acceptable to the staff.

Comments on the Trust Agreement and Section 10 of the License Amendment Application

A. These concerns were for the site closure period.

Comment A.1: Section 10 did not contain cost estimates for the transfer of site records to the appropriate municipality, county, county zoning board, State officials, local and Federal agencies.

Resolution: The State is working with the licensee to include the costs of the records transfer in the next annual update to the surety amount.

This is acceptable to the staff.

Comment A.2: Section 10 did not contain any cost estimates or plans regarding the placement of monuments, trench markers or warning signs.

Resolution: The State is working with the licensee to include the costs of the monument and other markers in the next annual update to the surety amount.

This is acceptable to the staff.

Comment A.3: Section 10 stated that the costs for excavation and construction were costs that are based on actual costs charged ... for similar work. Cost estimated should be based on independent regional contractor estimates.

Resolution: The State staff civil engineer compared the cost estimates to the Dodge Book cost estimate for the region and found the estimates used by the licensee to be mid-range values. This was acceptable to the State staff.

This is acceptable to the staff.

Comment A.4: Section 10 did not contain drawings with adequate details to evaluate the dimensions and amounts of materials needed for closure.

Resolution: The State used detailed engineering documents to establish the amounts of materials needed for closure of the site. This explains the differences in Section 10 and the closure cost estimates. The detailed plans are available for NRC review in the State office. The State has requested that the licensee develop a new closure plan to pull the engineering and cost estimate into a coherent document.

This is acceptable to the staff.

B. These concerns were for the post closure active control period.

Comment B.1: The groundwater monitoring plan should be based on site history and stability, and may prove to be either more or less strenuous than what is currently estimated.

Resolution: The State Division of Radiation Control is deferring the groundwater monitoring requirements for the post closure active control period to the State Division of Water Quality which has issued the discharge permit for the entire site operations. This monitoring plan will cover the radiological and nonradiological constituents that are appropriate for the site. The costs for the monitoring plan following its approval will be included in the annual update to the surety amount.

This is acceptable to the staff.

Comment B.2: The post closure funding does not provide for items of routine custodial activities, or repairs, if necessary, such as removing debris, control of vegetation, fence repair or replacement monitoring equipment repair or replacement, or minor repair of disposal unit covers.

Resolution: The State is working with the licensee to update their cost estimates for the next annual update. Those costs that can be estimated will be included in the next update.

This is acceptable to the staff.

Comment B.3: The post closure cost estimates do not include amounts for contingencies.

Resolution: The State has not specifically addressed unexpected events and planned for them. The NRC regulations do not provide for any specific contingency amounts in its surety arrangement for the active control period. The State does include a generic contingency percentage in its cost estimate and does not plan to include any additional amounts.

This is acceptable to the staff.

Comments C: The trust fund addresses only the periods of site operation, closure and 100 years after closure. The fund dissolves after 100 years, and any remaining money returned to Envirocare. This is standard; however, if the surety arrangement is designed to compensate for the lack of land ownership, it seems that some mention of the passive control period should be made.

Resolution: The State requirement is the same as NRC's. That is, the funds for the active control period will be transferred to the State or Federal government when the license is transferred and any funds remaining will be returned to the licensee. Since the license will not be transferred to the State or Federal government, the money in the trust fund will remain and the State will control the use of these funds. At the end of the active control period (100 years), if the requirements for termination of the license are not met by Envirocare, the license will remain in effect and the State will continue to control the trust fund.

This is acceptable to the staff.

Comments D-3: These comments were minor inconsistencies in the documentation supplied by the licensee and the State.

Resolution: The State has committed to correct the inconsistencies in the annual update to the surety amounts. The State has also informed Envirocare that it should prepare a new closure plan that would clarify the concerns raised.

This is acceptable to the staff.