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POLICY ISSUE
(Notation Vote)

SECY-90-174

May 14, 1990

For: The Commissioners

From: James M. Taylor
Executive Director
for Operations

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

Purpose: To obtain Commission approval to publish in the Federal Register, a Notice of Receipt of an application from Envirocare of Utah, Inc. (Envirocare), to accept and dispose of uranium and thorium byproduct material (as defined in Section 11e.(2) of the Atomic Energy Act) received from other persons, at a site near Clive, Utah. The notice establishes the regulatory framework against which the staff will review this specific application.

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

Issue: Licensing of disposal of byproduct material that is not completely covered by either 10 CFR Part 40 or 10 CFR Part 61.

Background: By letter dated November 14, 1989, Envirocare of Utah, Inc., submitted an application to the Nuclear Regulatory Commission (NRC) staff, to dispose of uranium and thorium byproduct material (as defined by Section 11e.(2) of the Atomic Energy Act) received from other persons. Disposal would be conducted at a site that the corporation owns near Clive, Utah. The staff determined, for reasons discussed herein, that neither 10 CFR Part 40 nor 10 CFR Part 61 provides the complete regulatory framework necessary to review and act on the application.

Discussion: The staff undertook to develop an expanded notice of receipt of application which establishes the regulatory framework that the staff will apply in the review of the

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492-3450

NOTE: TO BE MADE PUBLICLY AVAILABLE
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application. The disposal site proposed by the applicant is adjacent to several other current and proposed waste disposal land uses: (1) a closed disposal cell containing uranium mill tailings reclaimed by the U.S. Department of Energy pursuant to Title I of UMTRCA; (2) an active disposal cell, for the disposal of Naturally Occurring Radioactive Material (NORM), operated by Envirocare under a license from the Utah Bureau of Radiation Control; (3) a proposed disposal cell to be used for the disposal of mixed hazardous waste and NORM material, which Envirocare will operate under the regulatory authority of appropriate Utah State agencies; (4) a proposed disposal cell for source material, as defined by Section 11z. of the Atomic Energy Act, which Envirocare will operate under license from the Utah Bureau of Radiation Control. (Utah is currently seeking an amended agreement, under Section 274b. of the Atomic Energy Act, to expand its regulatory authority to include the disposal of low-level radioactive waste. The expanded authority would not include authority to regulate the disposal of 11e.(2) byproduct material.)

In developing the proposed Notice of Receipt, the staff considered the nature of the application and the applicability of the regulations that most nearly establish the regulatory framework under which the application should be reviewed: 10 CFR Part 40, "Domestic Licensing of Source Material", and 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste."

Neither regulation clearly applies in its entirety. Aspects of both regulations should be applied. 10 CFR Part 40 contains the relevant technical criteria for the disposal of 11e.(2) byproduct material. The technical criteria in Part 40 also implement U.S. Environmental Protection Agency (EPA) standards, which include consideration of Resource Conservation & Recovery Act (RCRA) requirements for non-radioactive hazardous materials which may be present in 11e.(2) byproduct material waste. Part 61 is a regulation specifically addressing the disposal of waste material received from other persons. It addresses operational considerations specific to waste disposal and establishes procedural requirements for public participation and environmental considerations relating to licensing a commercial waste disposal facility. Accepting the application pursuant to one regulation, only, would eliminate the advantages associated with the other.

Therefore, the staff has prepared the enclosed Notice of Receipt to establish a regulatory framework, for review of this license application, which includes requirements from both regulations. This Notice would serve as the basis for licensing this specific site in Utah.

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

Coordination:

The proposed Notice of Receipt has been reviewed by the Office of the General Counsel which has no legal objection to it. The technical content of the proposed notice has been coordinated with Region IV. In addition, the proposed notice has been coordinated, through the Office of Government and Public Affairs (GPA), with the Utah Bureau of Radiation Control, the State Agreement agency in the State of Utah.

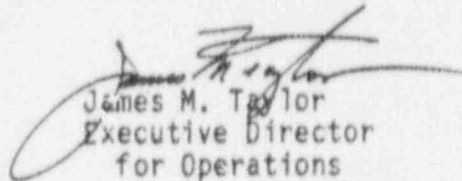
Recommendations:

That the Commission:

- (1) Approve publication, in the Federal Register, of the Notice of receipt of the application by Envirocare of Utah, Inc., to dispose of 11e.(2) byproduct material.
- (2) Approve the staff's proposed criteria by which the staff will review this application and reach a licensing decision, as described in the Notice of Receipt.

(3) Note:

- o Copies of the Federal Register Notice will be provided to the State of Utah and to other interested parties, upon request.


James M. Taylor
Executive Director
for Operations

Enclosure:
Proposed Federal Register Notice

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Tuesday, May 29, 1990.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Tuesday, May 22, 1990, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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U. S. NUCLEAR REGULATORY COMMISSION

DOCKET NO. 04008989

ENVIROCARE OF UTAH, INC.

Notice of Receipt of Application for Byproduct Material

Waste Disposal License

Notice of Availability of Applicant's Application

Notice of Regulatory Requirements That NRC will Apply

in the Review of the Application

Notice of Consideration of Issuance of

Waste Disposal License

and Notice of Opportunity for Hearing

NOTICE OF RECEIPT OF APPLICATION FOR BYPRODUCT MATERIAL WASTE DISPOSAL
LICENSE

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

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

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

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

FOR FURTHER INFORMATION CONTACT: James A. Shaffner, Operations Branch
Division of Low-Level Waste Management and Decommissioning
Office of Nuclear Material Safety and Safeguards
Nuclear Regulatory Commission
Washington, D.C. 20555

(301) 492-3450

NOTICE OF AVAILABILITY OF APPLICANT'S APPLICATION

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

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

For the commercial disposal of 11e.(2) byproduct material received from other persons for the specific purpose of disposal, the policies underlying certain administrative and procedural requirements contained in 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste," apply. The technical criteria for disposal of 11e.(2) byproduct material contained in Appendix A of 10 CFR Part 40 by their terms apply to the class of material in this specific disposal application. Therefore, by this notice, the Commission is establishing the applicability of its regulations to this specific application for the commercial disposal of 11e.(2) byproduct material.

Upon review of its regulations, the Commission has determined as a matter of policy that the following specific portions of 10 CFR Part 61, "Licensing Requirements for Land Disposal of Low-Level

Radioactive Waste," should apply to the review of an application for a license for a commercial operation to receive, possess, and dispose of 11e.(2) byproduct material received from others:

Subpart A - "General Provisions" - all provisions apply, including the definitions contained in 10 CFR 61.2, to the extent that these provisions and definitions are not contradictory to definitions and requirements in 10 CFR Part 40.

Subpart B - "Licenses" - All provisions apply except 10 CFR 61.13, 61.14 and 61.15.

Subpart F - "Participation by State Governments and Indian Tribes" - all provisions apply.

Subpart G - "Records, Reports, Tests, and Inspections" - all provisions apply.

The Commission has determined that the following specific portions of 10 CFR Part 40, Appendix A, shall apply to the review of an application to dispose of 11e.(2) byproduct material received from others:

- o Introductory discussion and definitions are applicable; including the discussion of alternatives;
- o Criterion 1 presents general goals of siting for disposal and is applicable;
- o Criterion 2 addresses proliferation of small disposal sites and is applicable;
- o Criterion 3 addresses considerations for below-grade disposal and is applicable;
- o Criterion 4 establishes site and design criteria for stability of disposal and is applicable;
- o Criteria 5A-5D address the basic ground-water protection standards imposed by the U.S. Environmental Protection Agency (40 CFR 192, Subparts D and E) and are all applicable, to the extent that the application addresses materials which have not been dewatered;
- o Criterion 5E addresses mill processes and disposal cell design considerations to limit seepage. The portion of the criterion dealing with mill processes is not applicable;

- o Criterion 5F is applicable to seepage that may occur during active disposal operations;
- o Criterion 5G sets waste solution and ground-water characterization requirements and is applicable;
- o Criterion 5H addresses storage areas and is applicable to any interim storage provision provided by the applicant;
- o Criterion 6 sets the standards for closure, i.e., stability, radon release limits, and soil cleanup, and is applicable;
- o Criteria 7 and 7A establish ground-water monitoring requirements and are applicable;
- o Criterion 8 presents requirements to minimize airborne effluent releases. Portions dealing with milling operations are not applicable; however, requirements for tailings dust control are applicable. The dose limits in Criterion 8 for thorium apply, as well as the general 40 CFR 190, established limits stipulated in 10 CFR 20.106(g).

- o Criterion 8A addresses inspections for disposal areas and is applicable;
- o Criterion 9 establishes financial surety requirements and is applicable;
- o Criterion 10 establishes requirements for a long-term surveillance fee and is applicable;
- o Criterion 11 sets requirements for land and material ownership and is applicable. Before beginning operations, the applicant must demonstrate that, before termination of its license, ownership and responsibility for the site and the disposed waste material will be vested in either the State of Utah or the United States Department of Energy, pursuant to Section 83 of the Atomic Energy Act of 1954, as amended;
- o Criterion 12 addresses long-term site surveillance and is applicable;
- o Criterion 13 presents the list of hazardous constituents to be considered when setting standards and is applicable.

The NRC staff will prepare an environmental impact statement (EIS) pursuant to the requirements of 10 CFR Part 51. The EIS will be based on the staff evaluation of an environmental report to be prepared by the applicant.

The staff will adhere to the administrative procedures contained in 10 CFR Part 2, Subparts A and G, related to the issuance of a license pursuant to 10 CFR Part 61.

The waste disposal requirements contained in 10 CFR 20.311 shall apply to the facility licensee as well as to waste generators, processors, brokers, and shippers who will be sending radioactive byproduct material for disposal at the licensed facility. Based on the application, the NRC staff will consider, as part of the licensing process, exemptions from the specific packaging, classification, and labeling requirements contained in 10 CFR 20.311, for land burial, which are not germane to 11e.(2) byproduct material waste shipped to the facility. The general requirements of other Commission regulations, including 10 CFR Part 19 - "Notices, Instructions, and Reports to Workers; Inspections"; 10 CFR Part 20 - "Standards for Protection Against Radiation"; and 10 CFR Part 21 - "Reporting of Defects and Noncompliance," will apply according to their terms.

NOTICE OF CONSIDERATION OF ISSUANCE OF WASTE DISPOSAL LICENSE

The NRC staff will review this license application in accordance with the administrative, technical, and procedural requirements presented in this notice and, with the approval of the Commission, take one of the following actions: (1) grant a license to receive, possess and dispose of 11e.(2) byproduct material pursuant to statements and representations contained in the licensee's application and supporting documentation; (2) deny the application because there is insufficient evidence that public health, safety, and the environment can be protected, if a license is granted; or (3) grant a license, conditional on appropriate limitations imposed by the staff, based on the evaluation of the application.

NOTICE OF OPPORTUNITY FOR HEARING

The applicant and any person whose interest may be affected by the issuance of this license may file a request for a hearing. This Notice of Receipt constitutes formal notification of application for license for receipt of waste radioactive material from other persons for the

purpose of commercial waste disposal by the waste disposal applicant (10 CFR 2.105(a)(2)). Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days of the publication of this notice in the Federal Register; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the applicant (Envirocare of Utah, Inc., 175 South West Temple, Suite 500, Salt Lake City, Utah 84101); and must comply with the requirements set forth in the Commission's regulation, 10 CFR 2.105 and 2.714. The request for hearing shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, including the reasons why the request should be granted, with particular reference to the following factors:

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

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

The applicant, any person admitted as a party, or an entity participating under 10 CFR 2.715(e), may move the Commission to reconsider any portion of this notice relating to the applicability of specific provisions of 10 CFR Parts 40 and 61. The petition must be filed within 60 days after the person or entity is admitted to the proceeding and contain all technical or other arguments to support the petition. The motion will be processed under 10 CFR 2.730.

Dated at Rockville, Maryland, this ____ day of April, 1990

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Chilk

Secretary of the Commission