

NOTATION VOTE
RESPONSE SHEET

RELEASED TO THE PDR

1/28/91
date

[Signature]
initials

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION
FROM: COMMISSIONER CURTISS
SUBJECT: SECY-90-174 - PROPOSED NOTICE OF RECEIPT OF AN APPLICATION FROM ENVIROCARE OF UTAH, INC. TO DISPOSE OF 11E(2) BYPRODUCT MATERIAL

APPROVED _____ DISAPPROVED ^X w/comments ABSTAIN _____

NOT PARTICIPATING _____ REQUEST DISCUSSION _____

COMMENTS:

See attached comments.

[Signature]
SIGNATURE

08/29/90

DATE

RELEASE VOTE

WITHHOLD VOTE

ENTERED ON "AS" YES No _____

9101300197 900829
PDR COMMS NRCC
CORRESPONDENCE PDR

[Handwritten initials]
1/19

Commissioner Curtiss' comments on SECY-90-174:

I have considered the subject paper and the staff's response of August 9, 1990 to the questions that I forwarded to the staff by my memorandum of June 5, 1990. After carefully reflecting upon the policy issues that I think this paper involves, I have reached the conclusion that I cannot approve of the staff's basic strategy for licensing the commercial receipt and disposal of section 11e.(2) byproduct material under a Commission Order rather than pursuant to codified regulations. Instead, I believe that the Envirocare site should be licensed under the provisions of 10 CFR Part 40. My reasoning follows:

First, this would be the first time that I am aware of that a facility that is required to be licensed by the Commission would be licensed under a Commission Order, rather than pursuant to a formal set of regulations. The precedential nature of this action has not been thoroughly examined by the staff and, in the absence of a more thorough analysis, I am uncomfortable departing from the longstanding Commission practice of licensing such facilities pursuant to a formal set of regulations. Nor, as discussed in more detail below, has the staff presented a persuasive case for taking this approach here. Indeed, the staff's response of August 9, 1990 acknowledges that this course of action is not one that the law compels us to take; in fact, the staff indicates that we have the option of licensing this site under 10 CFR Part 40, supplemented, as necessary, by the relevant provisions from other parts of 10 CFR.

Second, the staff has failed to explain in sufficient detail -- (i) why 10 CFR Part 40, supplemented as necessary with provisions drawn from other parts of our regulations, does not provide a sufficient framework for the licensing of this facility; and (ii) why, in view of this, the provisions that the staff proposes be incorporated in the proposed Commission Order are necessary for this particular license application.

Third, I am not convinced that licensing this facility pursuant to 10 CFR Part 40, supplemented, as necessary, with provisions from other parts of our regulations, will unduly delay our consideration of Envirocare's application. Indeed, I believe that any necessary clarifying changes to 10 CFR Part 40 are relatively minor in nature and can therefore be undertaken in parallel with the review of the application and preparation of the Environmental Impact Statement.

¹ Indeed, I found the discussion of this important policy question to be sorely lacking in the subject SECY paper.

For the foregoing reasons, I do not support the staff's recommendation that the Envirocare facility be licensed under a Commission Order. Instead, I believe this facility should be licensed under the provisions of 10 CFR Part 40. If the staff is of the view that the basic requirements of 10 CFR Part 40 need to be supplemented with guidance drawn from other sections of our regulations (e.g., 10 CFR Parts 2, 20, 51, or 61), I would recommend that the staff -- (i) identify the relevant provisions in these other parts that are necessary here; and (ii) determine whether such provisions will be used simply for the sake of providing guidance to the applicant or, alternatively, need to be imposed on the applicant in a binding fashion and, if the latter, report back to the Commission with the staff's recommendation on how best to impose such requirements in a manner that will be legally binding.²

² In this regard, I should emphasize that I do not consider the proposed notice to constitute a legally-binding Commission order, as suggested in the staff's August 9 response.