

FEB 16 1995

Mr. William J. Sinclair, Director
Division of Radiation Control
Department of Environmental Control
168 North 1950 West
P. O. Box 144850
Salt Lake City, UT 84114-4850

Dear Mr. Sinclair:

This is in response to your letter dated November 7, 1994 in which you asked that we look into the possibility of Utah entering into a partial Agreement for uranium mill and 11e(2) byproduct material. We have consulted with the Office of the General Counsel on this question. While NRC does have the authority to enter into Section 274b Agreements for the limited purpose of allowing State regulation of subcategories of materials, we have determined that an NRC agreement with Utah for the transfer of regulatory authority for a single licensee would be inconsistent with the provisions of Section 274 of the Atomic Energy Act. In particular, such an agreement is not supported by the structure of Section 274 and the legislative history behind the Act. In addition, a single licensee agreement could run afoul of one of the purposes of Section 274 which is "to promote an orderly regulatory pattern between the Commission and the State governments" [Section 274a(3).]

We note that, if Utah wishes to pursue the regulation of 11e(2) byproduct material at the Envirocare site, it may request an amendment to its current Agreement to include the regulation of all 11e(2) byproduct material in the State.

If you have any questions on our conclusion, please contact Francis X. Cameron of the Office of General Counsel at 301-415-1642.

Sincerely,

Original Signed By
RICHARD L. BANGART
Richard L. Bangart, Director
Office of State Programs

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

February 16, 1995

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Division of Radiation Control
Department of Environmental Control
168 North 1950 West
P. O. Box 144850
Salt Lake City, UT 84114-4850

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Sincerely,

Richard L. Bangart
Richard L. Bangart, Director
Office of State Programs



State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY DIVISION OF RADIATION CONTROL

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November 7, 1994

Mr. Richard L. Bangart
Director
Office of State Programs
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

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Dear Mr. Bangart:

Thank you for the opportunity to meet with you and Paul Lohaus prior to the Management Review Board meeting on October 7, 1994. As I discussed with you in the meeting, the Division of Radiation Control (DRC) is very interested in finding a mechanism to allow us to assume primacy for the uranium mill [11e.(2)] disposal activities at Envirocare of Utah. As indicated to you in the meeting, this would be assumption of the uranium mill program on a partial basis. It is my understanding that NRC may be constrained in granting a partial Agreement State status by statutory or regulatory means. I am hoping that through a cooperative and innovative effort we can find a way to work through the existing bureaucratic process to allow Utah this unique opportunity. Our reasons for wishing to assume the 11e.(2) regulatory program at Envirocare are as follows:

(1) Envirocare is already licensed by DRC for source, by-product, special nuclear material, and naturally occurring radioactive material (NORM) wastes. Another level of regulation by NRC for 11e.(2) complicates an already complex regulatory scheme by the state of Utah. Currently four Divisions within DEQ have permits and/or licenses at Envirocare. DRC does an effective job in coordinating those activities among the Department. However, the process becomes complicated when NRC enters into the picture. Coordination must occur with both Headquarters and NRC Region IV. It is more difficult to adequately coordinate with parties located in Arlington, Texas and Rockville, Maryland. It has been our experience that coordination occurs most often as a courtesy after we have made a great deal of noise regarding the need to let us know that NRC inspectors are coming into our state. It is our perception for the most part there is no real desire or need for this coordination by certain NRC staff.

(2) Duplicative regulatory requirements are in effect at Envirocare of Utah due to the NRC 11e.(2) license. The Division of Water Quality (DWQ) has a groundwater protection program in effect for the low level and NORM waste areas of Envirocare and has extended this

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protection program to the non-radiologics at the 11e.(2) area. DRC would like to avoid this duplicative regulatory effort wherever possible. Assumption of the 11e.(2) program at Envirocare could resolve this groundwater regulatory duplication (which extends to other areas as well).

(3) A low level waste program is in existence that already oversees the facility. It is anticipated that existing staff would be sufficient to assume the regulatory responsibility. DRC can provide a better inspection capability than NRC because of DRC staff being on-site at least three to four times per week. Even though there has been communication between DRC and NRC Region IV on assumption of some inspection responsibilities, this has not been clearly defined. DRC feels that a total assumption of responsibility including the ability to take enforcement action is the only sensible approach to overseeing this facility.

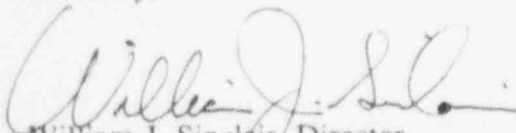
(4) A funding mechanism could be put into place to provide resources for DRC to oversee the Envirocare 11e.(2) program. Without primacy, DRC does not have the ability to collect disposal fees from the 11e.(2) activities for oversight costs. With primacy, DRC could collect fees or charge an annual fee for the program costs.

(5) Typically, DRC could provide better and faster service to Envirocare in the 11e.(2) area in terms of licensing. Additionally, licensing activities such as amendment requests would fall under DRC's public comment rule which would better inform the citizens of Utah of the 11e.(2) activities at Envirocare in the matter they are accustomed to with other waste facilities in Utah.

(6) NRC is not a signatory to the Memorandum of Understanding (MOU) developed between DEQ Divisions that regulate Envirocare. This MOU recognizes DRC has principle and comprehensive responsibility for all activities at Envirocare and therefore is the primary regulatory agency within Utah DEQ. As an example, with the transfer of the DWQ groundwater position to DRC, this has been further solidified as DRC now has assumed all groundwater responsibilities with the exception of the RCRA Mixed Waste area.

In conclusion, I feel that Utah citizens are better served having DRC as the lead agency for regulation of uranium mill activities at Envirocare. I would appreciate hearing your ideas if and how DRC can assume primacy for this facility. We would be interested in exploring any avenues such as a pilot program for partial State Agreement status. Thank you for your consideration of this matter.

Sincerely,



William J. Sinclair, Director
Division of Radiation Control

c: Dianne Nielson, Executive Director, UDEQ