

40-8989



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001
February 21, 1997

G.D. Christiansen
Vice President
Kerr-McGee Chemical Corporation
Kerr-McGee Center
Oklahoma City, Oklahoma 73125

Dear Mr. Christiansen:

I am responding to your January 16, 1997, letter describing the nature of both your current and future decommissioning and cleanup activities both in, and near West Chicago, Illinois. You also expressed satisfaction with the manner in which Envirocare of Utah, Inc. has conducted its 11e.(2) byproduct material operations in disposing of materials originating from Kerr-McGee's West Chicago cleanup activities. Your primary interest however centered about possible action that may be taken by the U.S. Nuclear Regulatory Commission that would disrupt Envirocare's operations thus creating a substantial hardship to Kerr-McGee and to the West Chicago general public. Although not directly stated in your letter, the source of your concern appears to relate directly to the January 8, 1997, petition submitted to the NRC by Dr. Thomas B. Cochran of the Natural Resources Defense Council (NRDC). In its petition NRDC requested that the NRC take immediate action on a number of Envirocare matters, including, but not limited to, the revocation of all licenses issued to Envirocare for the disposal of radiological waste materials.

As you may be aware, on February 7, 1997, the NRC issued the Director's Decision on the NRDC, 10 CFR 2.206 Petition (enclosure) denying the NRDC requests. Based on the Director's assessment the NRC concluded that "no substantial health and safety issues have been raised regarding Envirocare that would require initiation of the immediate action requested by the NRDC." Although concerned about the issues recently reported in the press about Envirocare, the NRC concluded that there was not a sufficient basis to take the action requested in the NRDC petition. The bases for this conclusion are provided in the enclosed petition denial. The NRC will be closely monitoring the investigations being conducted by the State of Utah. This is being done in order to ensure that the NRC is aware of any new information that may warrant action on NRC's part.

9702270069 970221
PDR ADOCK 04008989
C PDR

NL17
11

NRC FILE CENTER COPY

G. Christiansen

2

I trust this letter responds to your concerns. If you have any questions, please feel free to contact me or the NRC Project Manager for the Envirocare facility, Mr. Harold Lefevre. I can be reached at (301) 415-7238, and Mr. Lefevre can be reached at (301) 415-6678.

Sincerely,

Joseph J. Holonich
Uranium Recovery Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Enclosure: As stated

cc: C. Judd, Executive Vice President, Envirocare

DISTRIBUTION: File Center URB r/f PUBLIC RBangart JHickey
CCain, RIV CNWRA NMSS r/f

DOCUMENT NAME: S:\DWM\URB\HEL\KERRMGEE.LTR

OFC	URB		URB	C
NAME	HLefevre		JHolonich	
DATE	2/1/97		2/1/97	

OFFICIAL RECORD COPY



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

February 7, 1997

Dr. Thomas B. Cochran, Ph.D.
Director, Nuclear Program
Natural Resources Defense Council
1200 New York Ave., N.W.
Suite 400
Washington, D.C. 20005

SUBJECT: DIRECTOR'S DECISION ON NATURAL RESOURCES DEFENSE COUNCIL'S
10 CFR 2.206 PETITION

Dear Dr. Cochran:

By letter dated January 8, 1997, you submitted to the U.S. Nuclear Regulatory Commission, on behalf of the Natural Resources Defense Council, a Petition, pursuant to 10 CFR 2.206, requesting that NRC take action regarding Envirocare of Utah, Inc. Specifically, you requested that NRC immediately revoke any license or licenses, or cause the State of Utah to revoke its Agreement State license or licenses, held by Envirocare of Utah, Inc. (Envirocare), Khosrow Semnani, or any entity controlled or managed by Khosrow Semnani; prohibit the future issuance of any license by NRC, the State of Utah, or other NRC Agreement State, to Khosrow Semnani or any entity with which he has a significant affiliation; and suspend Utah's Agreement State status until the State of Utah can demonstrate that it can operate the Utah Division of Radiation Control in a lawful manner. As a basis for this Petition, you asserted that an article in the December 28, 1996, *Salt Lake City Tribune* reported secret cash payments made by Mr. Khosrow Semnani, president of Envirocare, to Larry F. Anderson, then Director of the Utah Division of Radiation Control, and the State of Utah's subsequent initiation of a criminal investigation into the matter.

NRC's response to your request regarding the Agreement State program is provided in Enclosure 1. The Director, Office of Nuclear Material Safety and Safeguards, has completed his review of the other issues raised in your Petition. For reasons explained in the enclosed Director's Decision DD-97-02, dated February 5, 1997 (Enclosure 2), your request has been denied. Although the NRC is concerned about the implications raised by the issues identified in your petition, at this time we do not believe that specific information exists to take the action requested in the petition. We will be closely monitoring the investigations of this issue being conducted by the State of Utah to ensure that we are aware of any information that may warrant action on our part. In addition, you are free to submit another petition when additional facts may be available to you on this issue.

As provided by 10 CFR 2.206(c), a copy of this decision will be filed with the Secretary of the Commission for the Commission's review. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its

9702260036 (JP)

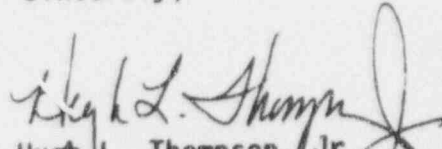
Enclosure

T. Cochran

2

own motion, institutes a review of the Decision within that time. In addition, a copy of the notice that is being filed for publication with the Office of the Federal Register is also included as Enclosure 3 for your information.

Sincerely,


Hugh L. Thompson, Jr.
Acting Executive Director
for Operations

Enclosures: As stated (3)

cc: W. Sinclair, Director, Division of Radiation Control, Utah
C. Judd, Executive Vice-President, Envirocare

NRC STAFF EVALUATION OF NATURAL RESOURCES DEFENSE COUNCIL
REQUEST TO SUSPEND SECTION 274 AGREEMENT WITH THE STATE OF UTAH

I. INTRODUCTION

In a letter dated January 8, 1997, Dr. Thomas B. Cochran, of the Natural Resources Defense Council (NRDC), requested under 10 CFR 2.206 of the Commission's regulations, that, among other things, NRC suspend its "...agreement with the state of Utah under which regulatory authority has been transferred from the NRC to the Utah's Bureau of Radiation [Division of Radiation Control], until the state of Utah can demonstrate that it can operate the Bureau of Radiation [Division of Radiation Control] in a lawful manner, and without the participation of licensees, or employees of licensees, in Bureau of Radiation [Division of Radiation Control] oversight roles." In addition, NRDC requested that the NRC immediately cause the State of Utah to revoke its licenses to Envirocare, Khosrow Semnani, its President, or any entity controlled or managed by Mr. Semnani and prohibit the future issuance of any license by the State of Utah to Mr. Semnani or any company or entity that he owns, controls, manages, or with which he has a significant affiliation or relationship. As a basis for NRDC's request, Dr. Cochran asserted that a December 28, 1996, article in *The Salt Lake Tribune* reported that between 1987 and 1995 Mr. Semnani made secret cash payments to Mr. Larry F. Anderson, who served as Director of the Utah Division of Radiation Control from 1983 until 1993. The article also reported that the Utah Attorney General's office has initiated a criminal investigation into the matter. Although NRDC's requests that NRC suspend its agreement with the State of Utah, or cause the State of Utah to revoke licenses that it issued, do not squarely fall within the scope of matters ordinarily considered under NRC's, 10 CFR 2.206 process, the staff has evaluated the merits of NRDC's request.¹ The staff's evaluation of these aspects of NRDC's request follows.

II. BACKGROUND

Section 274 of the Atomic Energy Act (AEA), as amended, provides the statutory basis under which NRC can relinquish certain of its regulatory responsibilities to the States. This makes it possible for States to license and regulate the possession and use of byproduct material, source material, and special nuclear material in quantities not sufficient to form a critical mass. The mechanism for NRC to discontinue and a State to assume authority to

¹ NRC Manual Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," issued September 23, 1994 (revised December 12, 1995), states that the scope of the 10 CFR 2.206 process is limited to requests for enforcement action against licensees or entities engaging in NRC-licensed activities. But see *State of Utah* (Agreement Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended), DD-95-1, 41 NRC 43 (1995).

regulate the radiological health and safety aspects of nuclear materials is an agreement signed by the Governor of the State and the Chairman. Before entering into such an agreement, the Governor is required to certify that the State has a regulatory program that is adequate to protect public health and safety. In addition, the Commission, by statute, must perform an independent evaluation and make a finding that the State's radiation control program is compatible with NRC's, complies with the applicable parts of Section 274 of the AEA, and is adequate to protect public health and safety.

The AEA was amended in 1978 to require, among other things, that NRC periodically review Agreement State programs to determine the adequacy of the program to protect public health and safety and compatibility with NRC's regulatory program. Section 274j. of the AEA provides that NRC may suspend or terminate its agreement with a State if the Commission finds that such suspension or termination is necessary to protect public health and safety. As mandated by the AEA, NRC conducts periodic, onsite reviews of each Agreement State program. The results of these reviews are documented in a report to the State. The report indicates whether the State's program is adequate to protect public health and safety and also whether the program is compatible with NRC's regulatory program. In some past cases, the State is informed that the findings on adequacy and compatibility are being withheld pending further review by NRC and the resolution of outstanding issues. Currently, concerns identified in Agreement State program reviews that do not result in program suspension or termination, result in findings of adequacy, with improvements needed, and a finding of compatibility or incompatibility.

The State of Utah originally became an Agreement State on April 1, 1984. At that time, the State chose not to include authority for commercial low-level radioactive waste disposal in the Agreement. However, on July 17, 1989, Governor Norman H. Bangerter of Utah requested that the Commission amend the Agreement to provide authority for Utah to regulate commercial low-level radioactive waste disposal. NRC conducted an independent review of Utah's program for control of radiation hazards with respect to low-level radioactive waste disposal and determined that the State met the requirements of Section 274 of the AEA and that the State's statutes, regulations, personnel, licensing, inspection, and administrative procedures were compatible with those required by the Commission and were adequate to protect public health and safety. The amendment to the Utah Agreement became effective on May 9, 1990, 55 FR 22113 (May 31, 1990).

III. DISCUSSION

NRDC requested suspension of the Agreement with the State of Utah based on newspaper reports that Mr. Anderson, Director of the Utah Division of Radiation Control from 1983 to 1993, received secret cash payments from Mr. Semnani, President of Envirocare. The relationship between Mr. Anderson and Mr. Semnani is being investigated by the Utah Attorney General's office. In addition, Mr. Semnani was appointed by the Governor of Utah as a member of the State's Radiation Control Board. NRDC requested that licensees should not be allowed to serve on State radiation control advisory boards.

Pursuant to Section 274 of the AEA, NRC relinquished its regulatory authority for the licensing of the use of certain radioactive material to Utah and therefore has no direct authority over licensing of these activities in Utah. However, NRC does have authority to terminate or suspend Utah's Agreement State program under certain conditions pursuant to 274j. of the AEA. Section 274j. states:

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection b. [of this section] has become effective, or upon request of the Governor of such State, may terminate or suspend all or part of its agreement with the State and reassert the licensing and regulatory authority vested in it under this Act, if the Commission finds that: (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to insure [sic] compliance with the provisions of this section.

Based upon these periodic reviews, or upon special reviews conducted for cause, before suspension or termination of an agreement the Commission must find that: (1) termination or suspension of a State's program is required to protect the public health and safety, or (2) that the State has not complied with one or more requirements of Section 274 of the AEA (e.g., the requirement for the State program to be compatible with the NRC program). Section 274j(2) of the AEA, as amended, grants the Commission emergency authority to temporarily suspend all, or part, of its agreement with a State without notice or hearing if an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take steps to contain or eliminate the cause of danger within a reasonable time.

NRC has conducted six reviews of the Utah Agreement State program since Utah became an Agreement State in 1984. The most recent review of the Utah program was conducted on June 13-17, 1994. In fact, two separate reviews were conducted at that time. The routine Utah radiation control program review was conducted in conjunction with a pilot program entitled the Integrated Materials Performance Evaluation Program (IMPEP) in which common performance indicators were used to evaluate both the NRC Regional Office and the Agreement State programs. The review team consisted of six staff, including two NRC staff from the Division of Waste Management to participate in the review of Utah's low-level radioactive waste management regulatory program. The most recent reviews of the Utah program were conducted after Mr. Anderson had left the program.

The most recent review included evaluations of program changes made in response to previous review recommendations (including recommendations concerning the State's low-level radioactive waste disposal program), review of the State's written procedures and policies, discussions with program management and staff, technical evaluation of selected license and compliance files, accompaniment of a State inspector, review of the State's incident and

allegation files, and the evaluation of the State's responses to an NRC questionnaire that was sent to the State in preparation for the review. In addition, portions of the review covered the Utah low-level radioactive waste regulatory program and included review of open items identified in NRC staff correspondence sent to the State following dispatch of the previous NRC review letter. Based on these reviews conducted in 1994, the Utah program for agreement materials was found adequate to protect public health and safety and was found to be in accordance with the provisions of Section 274 of the AEA.

In light of the foregoing, the issue now is whether the controversy surrounding the relationship between Mr. Anderson and Mr. Semnani poses a safety concern of such significance as to require NRC to begin the process to revoke or suspend Utah's Agreement State program. NRC has determined that it does not have a basis to initiate such action at this time. NRDC has not provided NRC with any information that would suggest that an immediate public health and safety issue exists. As Dr. Cochran notes in his request, the Utah State Attorney General has initiated a criminal investigation into the matter of the relationship between Mr. Anderson and Mr. Semnani. Absent specific information suggesting a public health and safety concern, NRC believes that it would be premature to initiate the requested subject action pending completion of this investigation. NRC intends to follow the investigation closely. If at any time NRC receives information of public health and safety concerns during the investigation or upon its completion, or receives such information from other sources, including NRC's ongoing Agreement State oversight activities, NRC will evaluate this information and take such action as is warranted. NRC is required by law to continue to review the Utah Agreement State program for adequacy and compatibility.

Envirocare currently has a radioactive materials license from the Utah Division of Radiation Control (formerly the Bureau of Radiation) and is authorized to receive waste under the conditions of that license. In accordance with State rules, the license is currently undergoing review by the State for a five year renewal. The license renewal application was submitted to the State on January 29, 1996, by Envirocare. The Utah Division of Radiation Control has indicated it is reviewing responses to the first set of interrogatories on the application, and it continues to inspect and monitor the Envirocare site. The State of Utah has offered, and NRC has accepted, a briefing on the status of the license renewal review. NRC intends to follow the State's license renewal review.

NRDC also requested that NRC suspend the agreement with the State of Utah until Utah demonstrates it can operate its radiation control program without the participation of employees of licensees in an oversight capacity. Mr. Semnani was appointed by the Governor of Utah to serve as a member of the State's Radiation Control Board. In previous Utah program reviews, NRC has recommended to the State that it develop formal conflict-of-interest procedures in coordination with the Attorney General's office. The staff is satisfied that the State has adopted conflict-of-interest procedures consistent with those of other division boards within the Utah Department of Environmental Quality. In addition, NRC has recently learned that Mr. Semnani has taken a two-month leave of absence from the Utah Radiation Control Board pending the completion of the criminal investigation.

IV. CONCLUSION

For the reasons stated above, NRC has determined not to take the action requested by NRDC at this time. NRC will continue to review the Utah Agreement State Program as required by law as well as to follow the investigation being conducted by the State's Attorney General and the State's review of Envirocare's license renewal application. If at any time termination or suspension of the Utah Agreement is required to protect public health and safety or the State has not complied with one or more of the requirements of Section 274 of the AEA, NRC will initiate the proper actions.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONOFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
Carl J. Paperiello, Director

In the Matter of) Docket No. 40-8989
ENVIROCARE OF UTAH, INC.) License No. SMC-1559
) (10 C.F.R. § 2.206)

DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

I. INTRODUCTION

In a letter dated January 8, 1997, Dr. Thomas B. Cochran, Director of Nuclear Programs, Natural Resources Defense Council (NRDC) requested, under 10 CFR 2.206 of the Commission's regulations, that NRC take action to revoke all licenses held by Envirocare of Utah, Inc. (Envirocare). Specifically, the Petition requested that "...NRC take the following actions:

- 1) Immediately revoke the license or licenses, or cause the state of Utah to revoke its agreement state license or licenses, under which Envirocare is currently permitted to accept low-level radioactive waste and mixed waste for permanent disposal.
- 2) Immediately revoke the NRC 11e.(2) byproduct material license under which Envirocare is currently permitted to accept uranium mill tailings for disposal.
- 3) Immediately revoke any other NRC license, or agreement state license, if such license exists, held by Envirocare, Khosrow Semnani, or any entity controlled or managed by Khosrow Semnani.

9702264452 (1/98)

4) Prohibit the future issuances of any license by the NRC, the State of Utah, or other NRC agreement state, to Khosrow Semnani or any company or entity which he owns, controls, manages, or [with which he] has a significant affiliation or relationship.

5) Suspend the agreement with the state of Utah under which regulatory authority has been transferred from the NRC to the Utah's [sic] Bureau of Radiation [Division of Radiation Control], until the state of Utah can demonstrate that it can operate the Bureau of Radiation [Division of Radiation Control] in a lawful manner, and without the participation of licensees, or employees of licensees, in Bureau of Radiation [Division of Radiation Control] oversight roles."

NRDC asserts, as a basis for the request, that a December 28, 1996, article in *The Salt Lake Tribune* reported that between 1987 and 1995, Mr. Semnani made secret cash payments to Mr. Larry F. Anderson, who served as Director of the Utah Division of Radiation Control (UDRC) from 1983 until 1993. The article also reported that the Utah Attorney General's office has initiated a criminal investigation into the matter.

Although NRDC's request that NRC suspend its agreement with the State of Utah, or cause Utah to revoke the license that it issued, do not squarely fall

within the scope of matters ordinarily considered under 10 CFR 2.206¹, the staff has evaluated the merits of those requests. This evaluation is contained in a separate "NRC Staff Evaluation of Natural Resources Defense Council Request to Suspend Section 274 Agreement With The State of Utah." This Director's Decision will address the NRDC requests that relate to the license to receive, store, and dispose of certain byproduct material issued to Envirocare by NRC, pursuant to Section 11e.(2) of the Atomic Energy Act of 1954 (AEA), as amended.

II. BACKGROUND

Envirocare operates a radioactive waste disposal facility in Clive, Utah, 128 kilometers (80 miles) west of Salt Lake City in western Tooele County. Radioactive wastes are disposed of by modified shallow land burial techniques. Envirocare submitted its license application to the NRC in November 1989 for commercial disposal of 11e.(2) byproduct material, as defined in Section 11e.(2) of the AEA. On November 19, 1993, NRC completed its licensing review and issued Envirocare an NRC license to receive, store, and dispose of uranium and thorium byproduct material. Envirocare began receiving 11e.(2) byproduct material in September 1994 and has been in continuous operation since.

To ensure that the facility is operated safely and in compliance with

¹ NRC Manual Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," issued September 23, 1994 (revised December 12, 1995), states that the scope of the 10 CFR 2.206 process is limited to requests for enforcement action against licensees or entities engaging in NRC-licensed activities. But see *State of Utah* (Agreement Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended), DD-95-1, 41 NRC 43 (1995).

NRC requirements, the staff conducts routine, announced inspections of the site. Areas examined during the inspections include management organization and controls, operations review, radiation protection, radioactive waste management, transportation, construction work, groundwater activities, and environmental monitoring. The NRC has conducted five inspections of the Envirocare facilities and has cited the licensee for three violations. All violations were categorized in accordance with the guidance in NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy) at a Severity Level IV.² The first violation, issued as a result of a July 1995 inspection and the second violation, issued as a result of a July 1996 inspection, have been adequately resolved by Envirocare. The last inspection, conducted on November 18-22, 1996, resulted in the issuance of the third citation noted above. This violation involved a failure to develop and implement, in a timely manner: 1) site-specific standards for three constituents found in the groundwater that exceeded their baseline values, and 2) a Compliance Monitoring Plan for arsenic after it was found to exceed its baseline value. These results of the November 1996 inspection are documented in Inspection Report 40-8989/95-02 which was issued on January 28, 1997. The NRC is in the process of determining whether Envirocare has taken appropriate action to correct this violation.

In addition, the November 1996 inspection identified other areas of concern where the staff determined that additional evaluation was necessary.

² As explained in Section IV. of the Enforcement Policy, violations are normally categorized in terms of four levels of severity. A Severity Level IV violation is defined as a violation of more than minor concern which, if left uncorrected, could lead to a more serious concern.

As a result, a follow-up inspection was conducted the week of January 27, 1997. Areas that were examined during this inspection included: 1) the licensee's quality assurance/quality control program; 2) the licensee's review of changes made to the facility; and 3) contractor laboratory certification. The results of the January 27, 1997, inspection are currently being evaluated. Once this evaluation is complete, the NRC will document the results in an inspection report. Based on a preliminary review of the inspection results, no significant violations were identified.

III. DISCUSSION

In December 1996, the *Salt Lake Tribune* published a series of articles that questioned the relationship between Larry F. Anderson, former Director of UDRC and Khosrow Semnani, President of Envirocare, during the licensing of the low-level radioactive waste (LLW) disposal facility. Subsequently, the NRC staff learned that on May 16, 1996, Larry F. Anderson filed a complaint against Khosrow B. Semnani in the Third Judicial District Court of Salt Lake County, State of Utah, to obtain compensation for alleged consulting services in the sum of 5 million dollars. The complaint alleges that, while Director of UDRC, Mr. Anderson recognized the need for a LLW site in Utah; incorporated a consulting firm, Lavicka, Inc., for the express purpose of developing a plan for siting the facility; and entered into a business arrangement to provide Mr. Semnani with a license application and consulting services. Mr. Anderson alleges that Mr. Semnani, President of Envirocare, agreed to pay a consulting fee of 100,000 dollars and an ongoing remuneration of 5 percent of all direct and indirect revenues that Mr. Semnani would realize from such a facility, if the site were successful. The complaint contends that Mr. Semnani owes Mr.

Anderson unpaid compensation for consulting services in the sum of 5 million dollars.

In October 1996, Mr. Semnani filed a counterclaim in the court, denying Mr. Anderson's claim and alleging that, in fact, Mr. Anderson used his position as the Director of UDRC to extort money in the sum of 600,000 dollars. Mr. Semnani contends that all the money he paid was based on the belief that if he did not pay, Mr. Anderson would use his official position and capacity as an officer and employee of the State of Utah to deny Mr. Semnani fair consideration, review, hearing, and determination on his license application and, thereby, cause the license not to be granted, or, if Envirocare was granted a license, Mr. Anderson would use his position to subject the facility to unfair and biased oversight and supervision of the operation of the facility under the license. As a result of these allegations, the Utah Attorney General's office is investigating the relationship between Mr. Semnani and Mr. Anderson.

The NRDC petition is based on the events described above. The NRC has evaluated the NRDC's requests and found no basis to take the requested actions.

As an initial matter, NRDC requests that the NRC immediately revoke the NRC 11e.(2) byproduct material license under which Envirocare is currently permitted to accept uranium mill tailings for disposal. In addition, NRDC also asks that the NRC immediately revoke any other NRC license, or agreement state license, if such license exists, held by Envirocare, Khosrow Semnani, or

any entity controlled or managed by Khosrow Semnani.

The NRC's Enforcement Policy describes the various enforcement sanctions available to the Commission once it determines that a violation of its requirements has occurred. In accordance with the guidance in Section VI.C.3. of the Enforcement Policy, Revocation Orders may be used: (a) when a licensee is unable or unwilling to comply with NRC requirements; (b) when a licensee refuses to correct a violation; (c) when a licensee does not respond to a Notice of Violation where a response was required; (d) when a licensee refuses to pay an applicable fee under the Commission's regulations; or (e) for any other reason for which revocation is authorized under Section 186 of the Atomic Energy Act (e.g., any condition that would warrant refusal of a license on an original application). Pursuant to 10 CFR 2.202(a)(5), the Commission may issue an immediately effective order to modify, suspend, or revoke a license if the Commission finds that the public health, safety, or interest so requires or that the violation or conduct causing the violation was willful. The Commission's regulations recognize that a licensee should be afforded under usual circumstances a prior opportunity to be heard before the agency suspends a license or takes other enforcement action, but that extraordinary circumstances may warrant summary action prior to hearing. See *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 299 (1994).

In this case the NRDC has not provided the NRC with specific information establishing that a violation of NRC requirements has occurred, nor provided the NRC with any other information that would provide a basis for immediate

suspension of the Envirocare license. As NRDC notes in its request, the Utah State Attorney General has initiated a criminal investigation into the matter of the relationship between Mr. Anderson and Mr. Semnani. Absent specific information supporting the existence of such extraordinary circumstances as would warrant such action, NRC believes that it would be premature to initiate immediate action pending completion of this investigation. We recognize that this matter involves potential issues of integrity, which, if proven, may raise questions as to whether the NRC should have the requisite reasonable assurance that Envirocare will comply with Commission requirements. NRC intends to follow the investigation of the State Attorney General closely. If NRC receives information of public health and safety concerns during the investigation or on its completion, or receives such information from other sources, including NRC's ongoing Agreement State oversight activities, it will evaluate that information and take such appropriate action at that time as may be warranted.

Furthermore, the NRC staff has reviewed the bases for its licensing actions involving Envirocare, and confirmed that NRC did not rely on technical evaluations performed by the State to reach a decision regarding the evaluation of Envirocare's 11e.(2) byproduct material license. The staff conducted an independent technical evaluation of Envirocare's license application and subsequent amendment requests, and concluded that Envirocare had adequately demonstrated compliance with all applicable health and safety standards and regulations. In addition, as noted above, NRC inspections of Envirocare have not revealed significant violations that would warrant immediate action.

Moreover, with regard to NRDC's request that the NRC immediately revoke any other license, the NRC has issued no other license to Envirocare, Khosrow Semnani, or any entity controlled or managed by Khosrow Semnani. For these reasons, this request is denied.

NRDC also requests that the NRC prohibit the future issuances of any license by the NRC, the State of Utah, or other NRC agreement state, to Khosrow Semnani or any company or entity which he owns, controls, manages, or with which he has a significant affiliation or relationship.

With regard to this request, we have already noted that there is no basis for NRC to take immediate action. In any event, Section 2.206 is not a venue for presenting licensing contentions of the sort raised by this aspect of NRDC's petition. Section 2.206 provides for requests for action under that portion of the NRC's regulations governing enforcement actions, namely 10 CFR Part 2, Subpart B. Subpart B is entitled "Procedure for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License, or for Imposing Civil Penalties." Since the inception of the 10 CFR 2.206 process, the Commission has consistently stated that the purpose of 10 CFR 2.206 is to provide the public with the means for *participating in the enforcement process*.³ The Commission has determined that the Section 2.206 process should be focused on requests for enforcement action rather than evaluations of safety concerns. In accordance with this determination, the Commission's

³ "Requests to Impose Requirements by Order on a Licensee, or to Modify, Suspend or Revoke a License," 39 FR 12353 (April 5, 1974); "LeBoeuf, Lamb, Leiby & Macrae," 41 FR 3359 (January 22, 1976); "Petitions for Review of Director's Denial of enforcement Requests," 42 FR 36239 (July 14, 1977).

Management Directive 8.1, "Review Process for 10 C.F.R. 2.206 Petitions," Part III, Section A, states that petitions will be reviewed under 10 C.F.R. 2.206 if the request is for enforcement action, and that a request under Section 2.206 should be distinguished from a request to deny a pending license application or amendment.

Because this request by the NRDC concerns licensing-type action, not enforcement-type action, the staff has determined that, consistent with the guidance of Management Directive 8.11, this request is not within the scope of 10 CFR 2.206⁴. To the extent that further facts may be developed that may warrant consideration of this request, the matter may be raised in an individual licensing proceeding; however, no such proceeding is presently pending, as there is no application pending for the issuance of a license to Envirocare.

IV. CONCLUSION

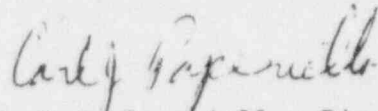
On the basis of the above assessment, I have concluded that no substantial health and safety issues have been raised regarding Envirocare that would require initiation of the immediate action requested by the NRDC, and the Petition is therefore denied. As explained above, the NRDC has not provided any information in support of its requests of which the NRC was not already aware. Moreover, NRC inspections of the Envirocare facility have not revealed the existence of extraordinary circumstances that would warrant immediate suspension of the Envirocare license. In addition, the staff's

⁴ Even if this request were interpreted as a request that the NRC issue an enforcement order prohibiting Mr. Semnani from engaging in licensed activities, and thus constitute a request for enforcement action within the scope of Section 2.206, NRDC has not provided the NRC with specific information such as would warrant the requested action, as explained above.

review of the technical basis for its issuance of the license and subsequent amendments found no evidence of the existence of any substantial health or safety issue that would justify the actions requested by the NRDC. NRC will monitor the investigations and actions being conducted by the State of Utah. If NRC receives any specific information that there is a public health or safety concern as a result of these actions or from any other source, including the NRC ongoing Agreement State oversight activities, NRC will evaluate that information and take such action as it deems is warranted at that time.

Dated at Rockville, Maryland this 54 day of February 1997.

FOR THE NUCLEAR REGULATORY COMMISSION



Carl J. Paperiello, Director
Office of Nuclear Material Safety
and Safeguards

U. S. NUCLEAR REGULATORY COMMISSION
NATURAL RESOURCES DEFENSE COUNCIL
RECEIPT OF PETITION AND ISSUANCE OF A
DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that by Petition dated January 8, 1997, Thomas B. Cochran, on behalf of Natural Resources Defense Council (NRDC), requested that the Nuclear Regulatory Commission (Commission) take immediate action with regard to Envirocare of Utah, Inc. Specifically, the Petition requested NRC to take the following actions:

- 1) Immediately revoke the license or licenses, or cause the state of Utah to revoke its agreement state license or licenses, under which Envirocare is currently permitted to accept low-level radioactive waste and mixed waste for permanent disposal.
- 2) Immediately revoke the NRC 11e.(2) byproduct material license under which Envirocare is currently permitted to accept uranium mill tailings for disposal.
- 3) Immediately revoke any other NRC license, or agreement state license, if such license exists, held

~~9702260071~~ (488)

by Envirocare, Khosrow Semnani, or any entity controlled or managed by Khosrow Semnani.

4) Prohibit the future issuances of any license by the NRC, the State of Utah, or other NRC agreement state, to Khosrow Semnani or any company or entity which he owns, controls, manages, or [with which he] has a significant affiliation or relationship.

5) Suspend the agreement with the state of Utah under which regulatory authority has been transferred from the NRC to the Utah's Bureau of Radiation [Division of Radiation Control], until the State of Utah can demonstrate that it can operate the Bureau of Radiation [Division of Radiation Control] in a lawful manner, and without the participation of licensees, or employees of licensees, in Bureau of Radiation [Division of Radiation Control] oversight roles.

As a basis for the request, the Petitioner asserts that on December 28, 1996, an article in *The Salt Lake Tribune* reported that between 1987 and 1995 Mr. Semnani made secret cash payments to Mr. Larry F. Anderson, who served as Director of the Utah

Division of Radiation Control from 1983 until 1993. The article also reported that the Utah Attorney General's office has initiated a criminal investigation into the matter.

The NRC response to the Petitioner's request regarding the Agreement State program is provided in a "NRC Staff Evaluation of Natural Resources Defense Council Request to Suspend Section 274 Agreement With The State of Utah." The other issues raised in the Petition have been evaluated by the Director of the Office of Nuclear Material Safety and Safeguards. After review of the Petition, the Director has denied the Petitioner's requests.

The Director's Decision concluded that no substantial health and safety issues have been raised regarding Envirocare that would require initiation of the immediate action requested by the NRDC. The NRDC has not provided any information in support of its requests of which the NRC was not already aware. Moreover, NRC inspections of the Envirocare facility have not revealed the existence of extraordinary circumstances that would warrant immediate suspension of the Envirocare license. In addition, the staff's review of the technical basis for its issuance of the license and subsequent amendments found no evidence of the existence of any substantial health or safety issue that would

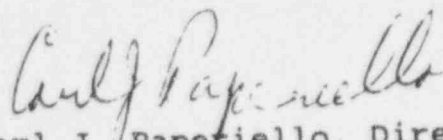
justify the actions requested by the NRDC. However, NRC will monitor the investigations and actions being conducted by the State of Utah. If NRC receives any specific information that there is a public health or safety concern as a result of these actions or from any other source, including the NRC ongoing Agreement State oversight activities, NRC will evaluate that information and take such action as it deems is warranted at that time.

The complete "Director's Decision under 10 C.F.R. § 2.206" (DD-97-02) is available for public inspection in the Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C. 20555. The Director's Decision is also available on the NRC Electronic Bulletin Board at (800) 952-9676.

A copy of this Decision will be filed with the Secretary for the Commission's review, in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 14 day of February 1997.

FOR THE NUCLEAR REGULATORY COMMISSION


Carl J. Papefiello, Director
Office of Nuclear Material Safety
and Safeguards