

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

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

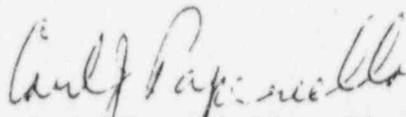
justify the actions requested by the NRDC. However, NRC will monitor the investigations and actions being conducted by the State of Utah. If NRC receives any specific information that there is a public health or safety concern as a result of these actions or from any other source, including the NRC ongoing 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. Papeziello, Director
Office of Nuclear Material Safety
and Safeguards

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
Carl J. Paperiello, Director

In the Matter of)	Docket No. 40-8989
)	License No. SMC-1559
ENVIROCARE OF UTAH, INC.)	
)	(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.

~~9702260052~~ HPP

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 40-8989/96-02 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

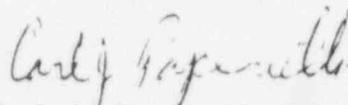
On the basis of the above assessment, I have concluded that no substantial health and safety issues have been raised regarding Envirocare that would require initiation of the immediate action requested by the NRDC, and the Petition is therefore denied. As explained above, the NRDC has not provided any 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

FEB 11 1997

Carol S. Marcus, Ph.D., M.D.
President, California Chapter
American College of Nuclear Physicians
P. O. Box 31
Los Altos, CA 94023

Dear Dr. Marcus:

This is in response to your letter dated January 21, 1997, requesting NRC to conduct a timely review of Utah's Agreement State Program with respect to issues raised in your letter to Mr. Robert Hoffman, Chairman, Utah Radiation Control Board. NRC is presently requesting information from the State of Utah on the issues you raised. We will inform you of our decision whether to conduct a review of the Utah program. If you have any questions, please contact me at 301-415-3340.

Sincerely,

Original Signed By
RICHARD L. BANGART

Richard L. Bangart, Director
Office of State Programs

cc: Mr. R. J. Hoffrnan, UT
Mr. W. J. Sinclair, UT

~~9703000152~~ 18

FEB 27 1997

ALL AGREEMENT STATES
MASSACHUSETTS, OHIO, OKLAHOMA, PENNSYLVANIA

TRANSMITTAL OF STATE AGREEMENTS PROGRAM INFORMATION (SP-97-012)

Your attention is invited to the enclosed correspondence which contains:

- INCIDENT AND EVENT INFORMATION..... XX TWO REQUESTS FOR REVIEW OF UTAH'S AGREEMENT STATE PROGRAM
- PROGRAM MANAGEMENT INFORMATION.....
- TRAINING COURSE INFORMATION.....
- TECHNICAL INFORMATION.....
- OTHER INFORMATION.....

Supplementary Information: The Natural Resources Defense Council and the American College of Nuclear Physicians have requested a review of Utah's Agreement State Program. Specifically, the organizations are concerned with the State's policies involving the regulation of the Envirocare disposal facility. Both organizations have requested the NRC's involvement in resolving this issue. Enclosed is a copy of the Director's decision relating to the NRDC petition and a copy of our letter to the ACNP on their request.

If you have any questions regarding this correspondence, please contact me or the individual named below.

POINT OF CONTACT: Kathleen Schneider
 TELEPHONE: (301) 415-2320
 FAX: (301) 415-3502
 INTERNET: KXS@NRC.GOV

Original Signed By:
 PAUL H. LOHAUS

Paul H. Lohaus, Deputy Director
Office of State Programs

Enclosures:
As stated

Distribution:

- DIR RF
- RLBangart
- PLohaus
- SDroggitis
- LRakovan
- All A/S File
- Utah File

DCD (SP03)
 DR (YES_✓)
 RSAOs) E-Mailed
 RSLOs) 3/3/97
 INTERNET: 3/3/97

59
NRC FILE CENTER COPY

DOCUMENT NAME: G:\LJR\SP97012

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	OSP	OSP: <i>PHL</i>	OSP:D <i>RLB</i>			
NAME	LJRakovan:gd/nb	PHLohaus	RLBangart	<i>Received 5/27</i>		
DATE	2/12/97*	<i>2 12/97</i>	<i>12 8/97</i>			

* See Previous Concurrence.

ALL AGREEMENT STATES
MASSACHUSETTS, OHIO, OKLAHOMA, PENNSYLVANIA

TRANSMITTAL OF STATE AGREEMENTS PROGRAM INFORMATION (SP-97-)

Your attention is invited to the enclosed correspondence which contains:

INCIDENT AND EVENT INFORMATION..... XX TWO REQUESTS FOR
PROGRAM MANAGEMENT INFORMATION..... REVIEW OF UTAH'S
TRAINING COURSE INFORMATION..... AGREEMENT STATE
TECHNICAL INFORMATION..... PROGRAM
OTHER INFORMATION.....

Supplementary Information: The Natural Resources Defense Council and the American College of Nuclear Physicians have requested a review of Utah's Agreement State Program. Specifically, the organizations are concerned with the State's policies involving the regulation of the Envirocare disposal facility. Both organizations have requested the NRC's involvement in resolving this issue.

If you have any questions regarding this correspondence, please contact me or the individual named below.

POINT OF CONTACT: Kathleen Schneider
TELEPHONE: (301) 415-2320
FAX: (301) 415-3502
INTERNET: KXS@NRC.GOV

Paul H. Lohaus, Deputy Director
Office of State Programs

Enclosures:
As stated

Distribution:

DIR RF
RLBangart
PLohaus
SDroggitis
LRakovan
Ali A/S File
Utah File

DCD (SP03)
PDR (YES_✓)
RSAOs) E-Mailed
RSLOs) / /97

DOCUMENT NAME: G:\LJR\UTAHLTR.LJR

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	OSP	OSP:DD	OSP:D				
NAME	LJRakovan:gd/nb	PHLohaus	RLBangart				
DATE	2/12/97* k ¹³	/ /97	/ /97				

* See Previous Concurrence.

OSP FILE CODE: SP-A-4 SP-AG-27

ALL AGREEMENT STATES
MASSACHUSETTS, OHIO, OKLAHOMA, PENNSYLVANIA

TRANSMITTAL OF STATE AGREEMENTS PROGRAM INFORMATION (SP-97-)

Your attention is invited to the enclosed correspondence which contains:

INCIDENT AND EVENT INFORMATION.....	XX	TWO REQUESTS FOR REVIEW OF UTAH'S AGREEMENT STATE PROGRAM
PROGRAM MANAGEMENT INFORMATION.....		
TRAINING COURSE INFORMATION.....		
TECHNICAL INFORMATION.....		
OTHER INFORMATION.....		

Supplementary Information: The Natural Resources Defense Council and The American College of Nuclear Physicians have requested a review of Utah's Agreement State Program. Specifically, the organizations are concerned with the State's policies involving the regulation of the Envirocare disposal facility. Both organizations have requested the NRC's involvement in resolving this issue.

If you have any questions regarding this correspondence, please contact me or the individual named below.

POINT OF CONTACT: Kathleen Schneider
TELEPHONE: (301) 415-2320
FAX: (301) 415-3502
INTERNET: KXS@NRC.GOV

Paul H. Lohaus, Deputy Director
Office of State Programs

Enclosures:
As stated

Distribution:

DIR RF
RLBangart
PLohaus
SDroggitis
LRakovan
All A/S File
Utah File

DCD (SP03)
PDR (YES_✓)
RSAOs) E-Mailed
RSLOs) / /97

DOCUMENT NAME: G:\LJR\UTAHLTR.LJR

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	OSP	OSP:DD	OSP:D				
NAME	LJRakovan:gd	PHLohaus	RLBangart				
DATE	2/12/97	/ /97	/ /97				

OSP FILE CODE: SP-A-4 SP-AG-27



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

February 27, 1997

ALL AGREEMENT STATES
MASSACHUSETTS, OHIO, OKLAHOMA, PENNSYLVANIA

TRANSMITTAL OF STATE AGREEMENTS PROGRAM INFORMATION (SP-97-012)

Your attention is invited to the enclosed correspondence which contains:

INCIDENT AND EVENT INFORMATION.....	XX TWO REQUESTS FOR REVIEW OF UTAH'S AGREEMENT STATE PROGRAM
PROGRAM MANAGEMENT INFORMATION.....	
TRAINING COURSE INFORMATION.....	
TECHNICAL INFORMATION.....	
OTHER INFORMATION.....	

Supplementary Information: The Natural Resources Defense Council and the American College of Nuclear Physicians have requested a review of Utah's Agreement State Program. Specifically, the organizations are concerned with the State's policies involving the regulation of the Envirocare disposal facility. Both organizations have requested the NRC's involvement in resolving this issue. Enclosed is a copy of the Director's decision relating to the NRDC petition and a copy of our letter to the ACNP on their request.

If you have any questions regarding this correspondence, please contact me or the individual named below.

POINT OF CONTACT:	Kathleen Schneider
TELEPHONE:	(301) 415-2320
FAX:	(301) 415-3502
INTERNET:	KXS@NRC.GOV

Paul H. Lohaus, Deputy Director
Office of State Programs

Enclosures:
As stated

Natural Resources
Defense Council



1200 New York Ave., N.W.
Suite 400
Washington, DC 20005
202 289-6868
Fax 202 289-1060

January 8, 1997

James M. Taylor
Executive Director for Operations
Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Request for action pursuant to 10 CFR 2.206.

Dear Mr. Taylor:

In accordance with 10 CFR 2.206, I am writing on behalf of the Natural Resources Defense Council, Inc. (hereafter "NRDC") to request that the Nuclear Regulatory Commission (hereafter "NRC") take action to revoke all licenses held by Envirocare of Utah, Inc. (hereafter "Envirocare") for the possession and disposal of low-level radioactive and mixed waste and uranium mill tailings, and take other remedial steps. The basis for this request and the relief requested are set forth below.

Basis for Request

Envirocare accepts for disposal at its facility in Clive, Utah: a) low-level radioactive waste and mixed waste (a combination of radioactive and hazardous constituents that are subject to the Resource Conservation and Recovery Act) under an operating license issued by Utah (an agreement State with the NRC); and b) uranium mill tailings under an 11e.(2) byproduct material disposal license issued in November 1993 by the NRC. Envirocare is a private company owned by Khosrow Semnani, who also serves as its president. Mr. Semnani also is a member of Utah's Board of Radiation Control which oversees the activities of the Division of Radiation Control, which in turn has regulatory authority over Envirocare's license.

On December 28, 1996, *The Salt Lake Tribune* reported on page one that between 1987 and January 1995, Mr. Semnani made secret cash payments totaling \$600,000 to a state official who regulated his facility, namely, to Larry F. Anderson, who was director of the Utah Bureau of Radiation Control from 1983 until 1993 (See attached article). According to the article there are

10% Post-Consumer
recycled

60 West 20th Street
New York, New York 10011
212 727-2700
Fax 212 727-1773

71 Stevenson Street
Suite 1825
San Francisco, CA 94105
415 777-0220
Fax 415 485-5996

6310 San Vicente Blvd.
Suite 250
Los Angeles, CA 90048
213 934-6900
Fax 213 834-1210

Visit us at:
<http://www.nrdc.org>

0701150293 788

James Taylor
January 8, 1997
Page 2

court records that substantiate this claim. There is also evidence that these payments were in violation of Utah state law. The Utah State Attorney General's Office has initiated a criminal investigation.

Envirocare stands to profit enormously by this illegal action. For example, the U.S. Department of Energy has placed a five-year Basic Ordering Agreement with Envirocare for disposal of its low-level mixed waste generated as a result of its cleanup activities. This agreement has an estimated market value of \$350 million.

This issue is clear and straight forward. The president of this company illegally paid the regulator to get his license to store radioactive waste. The license was obtained through a totally corrupt process. Under these extreme circumstances, all of the company's licenses must be revoked. The public integrity of the NRC would be severely undermined if the Commissioners did nothing more than direct the staff to investigate whether errors of a technical nature were made in the license application, or whether the waste is currently stored in compliance with NRC technical requirements.

The burden should be on the applicant to obtain a license through a lawful process. Moreover, neither the NRC, nor any agreement state, should grant a license to, or continue to license, a company that is owned, managed or controlled by someone who has made illegal payments to Federal or state regulators responsible for the license. Nor should NRC permit a licensee to serve on a board that oversees the state agency responsible for regulating the conduct of the licensee.

Relief Requested

NRDC hereby petitions the NRC to take the following actions:

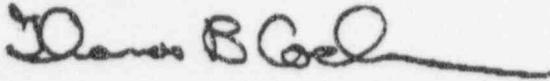
- 1) Immediately revoke the license or licenses, or cause the state of Utah to revoke its agreement state license or licenses, under which Envirocare is currently permitted to accept low-level radioactive waste and mixed waste for permanent disposal.
- 2) Immediately revoke the NRC 11e.(2) byproduct 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 by Envirocare, Khosrow Semnani, or any entity controlled or managed by Khosrow Semnani.
- 4) Prohibit the future issuance 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 has a significant affiliation or relationship.

James Taylor
January 8, 1997
Page 3

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, until the state of Utah can demonstrate that it can operate the Bureau of Radiation in a lawful manner, and without the participation of licensees, or employees of licensees, in Bureau of Radiation oversight roles.

Thank you for your consideration of these matters.

Sincerely,



Thomas B. Cochran, Ph.D.
Director
Nuclear Program

VIRGIN MARY VISITING EARTH MORE; BELIEVERS SAY / D-1

The Salt Lake Tribune

Utah's Independent Voice Since 1871



www.trib.com

SATURDAY/DECEMBER 28, 1996

© 1996, The Salt Lake Tribune

147 S. 200 W. Box 90137-9000
SALT LAKE CITY, UTAH 84111

Utah Dump Owner Says Ex-Official Extorted Cash

BY JIM WOOLF

© 1996 THE SALT LAKE TRIBUNE

The owner of a disposal site of highly radioactive waste in Wasatch County said Friday the site official who regulated his facility "extorted" \$600,000 from him during eight years.

Khosro Semani, owner of investors of Utah, said the extortions were made in Larry F. Anderson, who was director of the Utah Bureau of Radiation Control from 1983 until 1993. "I didn't make the payments," Semani said, by feared Ander-

son would use his regulatory authority to create problems for his disposal company.

Anderson was given sites of \$150 per acre, gold rules and a Park City ordinance between 1987 and January 1994, said Semani.

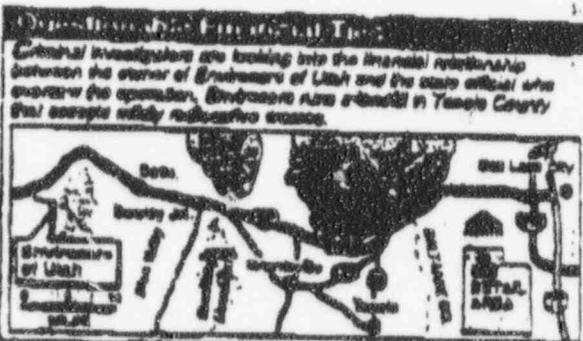
Anderson does not deny being paid by the businessmen. In a lawsuit filed last October in 9th Judicial Court, he admits having "approached" Semani in 1987 and making a verbal agreement to help establish a disposal facility for highly radioactive waste. Semani's project was approved

by Anderson in 1988.

He said Semani agreed to pay him \$100,000 in advance and 2 percent of all "direct and indirect revenues" from the operation in return for help with the "site application and consulting services."

Anderson's lawsuit contends that Semani failed to live up to his end of bargain. He is seeking more than \$3 million in "unpaid compensation" from Semani.

Utah's ethics law clearly prohibits state employees from taking money from the people they regulate.



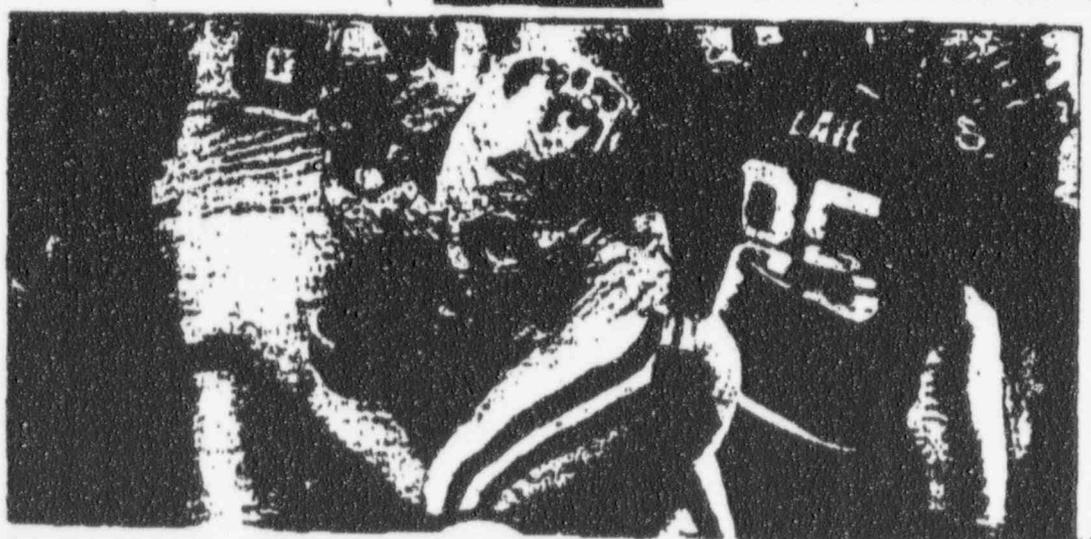
Utah Bureau of Radiation Control

It states that "no public officer or public employee shall knowingly receive, accept, take, seek, or solicit, directly or indirectly, any gift, compensation, or loan, for himself or another if: (a) it tends to influence him in the discharge of his official duties; or (b) he recently has been,

or is now, or in the near future may be involved in any power, trust, or honor or honor...

Anderson contends that he entered into this business relationship...

See BUMP OWNER, Page A-1



Ethics Panel Pushes Vote On Gingrich

Some in GOP Want Results Before Backing Speaker

Continued from previous page

WASHINGTON — The chairwoman of the House ethics committee said Friday she is pressing for an early and positive decision on the fate of Speaker Newt Gingrich, R-Ga., that would wind up his case before Congress reconvenes Jan. 7.



AS

The Salt Lake Tribune UTAH/NATION

Dump Owner Says Regulator Extorted Cash

Continued from A-1

after receiving "informal advice" from the Utah Attorney General's Office. He does not describe the nature of that advice.

Criminal investigators for the Utah Attorney General's Office last week were questioning people involved with the case, including Semnani and Anderson. "We received some documents and have been interviewing people," confirmed Todd Utzinger, spokesman for the attorney general.

Dianne Nielson, director of the Utah Department of Environmental Quality, said she has "grave concerns" about the allegations, but stressed that Envirocare is "operating correctly right now." Envirocare has had several minor violations during the years, but its overall record is comparable with most other waste-disposal companies in Utah.

Anderson, who has retired to Nevada, declined Friday to answer questions. "I have been told by my attorney not to talk to anybody about it."

Semnani concedes that he agreed to pay Anderson \$100,000 in advance and make regular payments based on either volume or profits — he doesn't recall which. But he claims he had no alternative if he wanted to successfully develop the site.

"There is not a trace of evidence that Larry did anything for me," he stressed.

He paid the \$100,000 and continued to make irregular payments during the next eight years. After the first payment, Semnani said he felt trapped and unable to stop for fear that Anderson would make public their secret relationship.

When he finally cut off the payments, Anderson's attorney wrote Semnani's attorney threatening a lawsuit. "I would request that you inform your client of his options, so that he might govern himself and the course of his action on these issues. I would hope that

you would explain the impact of the formal suit, regardless of any judicial outcome."

The cozy relationship between Semnani and Anderson was the subject of an internal investigation by the Utah Attorney General's Office several years ago, and Kec Alkema, former director of the Utah Division of Environmental Quality, Alkema was Anderson's immediate supervisor at the time.

"There were appearances that Larry was too close to Envirocare and maybe not using the right judgment in keeping a proper arm's length," said Alkema. "We could not say."

After quitting his state job, Alkema spent three years working for a private consulting firm in Cincinnati and Denver. In April he returned to Utah to accept a job as director of governmental relations for Semnani's Envirocare.

"I had no idea that Larry was receiving any money from Khos until he (Semnani) told me today," Alkema said Friday. "I never received anything from Khos until I went to work for him this year."

Semnani said Anderson is the only state employee he paid.

Envirocare's landfill is about 60 miles west of Salt Lake City and several miles south of Interstate 80. It was designed originally to handle large volumes of mildly radioactive dirt and debris from cleanup projects. It later received permission to handle waste that is both mildly radioactive and contains hazardous chemical wastes. Most of the material accepted at Envirocare arrives by train.

State officials are in the middle of a regularly scheduled review of Envirocare's operating license, said Bill Sinclair, who replaced Anderson as director of radiation control. "We are double checking that things done in the past were OK," he said.

If Semnani is convicted of illegal activities related to the site, Sinclair said federal rules would permit his license to be revoked.



WHALE OF A MO

Katrina, front, a 21-year-old killer pound girl at Sea World of Florida's Sea World's Shamu Stadium — a r

Ice Storm Turns Seat Into Virtual Ghost Town

Continued from A-1

Olympia, to buy batteries, fire logs and other supplies for their powerless homes.

Scores of holiday travelers and skiers were stranded when at least two feet of snow closed major routes across the Cascade Range in western Washington — Interstate 90 over Snoqualmie Pass and over Stevens Pass. A third mountain route, Pass near Mount Rainier — was initially opened, and Interstate 90 was expected to be open until today.

In Port Orchard, across Puget Sound west of Seattle, snow caused a marina roof to collapse



The Salt Lake Tribune

SECTION B

Utah

OBITUARIES

Page B-3

Semmani Won't Resign From Post

Officials Say 'Extortion' Claim Hurts State Board

BY JIM WOLFE

THIS DATE LAST THURSDAY

Kenneth Semmani said Monday he has no plans to resign from the Utah Board of Radiation Control, despite suggestions from two members that his presence may undermine public trust in the group.

Group members about his membership were after Semmani claimed last week that Larry Anderson, the former radiation control director for the state, "extorted" \$200,000 from him over an eight-year period. Anderson contends he had a business deal with Semmani. Their relationship is being investigated by the Utah Attorney General's Office.

Utah business director of the Utah Department of Environmental Quality and a member of the radiation control board, said it is critical the public trusts the board and feels confident with the integrity of its members.

Semmani's legal problems may undermine that confidence, she said.

"There is a possibility he has compromised

the integrity of the board," agreed Robert J. Hoffman, chairman of the radiation control board. But he has no plans to ask for Semmani's resignation when the board meets Friday.

The radiation control board is made up of volunteers appointed by the governor to oversee activities of the Utah Division of Radiation Control. Semmani was the dinosaur industry's representative on the board.

The businessman said he wants to hold onto his board position until "the facts come out" about his relationship with Anderson. "I have served professionally and added to the expertise of the board. I hope to remain a member."

Semmani has meetings Monday with his attorney and the Tenth Circuit Commission to explain why he made the correct payment and to answer any questions.

"I feel good," he said. "This has been being over my head for the last eight years. It is not pretty, it is not good. But it is over."

Semmani contended Anderson "capped" him in 1987 with an offer to do "something" work on his plans to develop a landfill in Tropic for mildly radioactive waste. He wanted \$100,000 in advances and backpay. Semmani felt he had to pay Anderson or risk having his project turned down. The two entered into a verbal agreement and Semmani paid the

\$100,000. During the next eight years, he made irregular payments to Anderson with \$100 bills, gold coins and a Park City condo. Anderson said he entered into this business agreement and recently sued Semmani for failing to pay him more than \$5 million from the broker's profits. Semmani has counter-sued for the \$800,000 he paid Anderson.

Anderson's lawsuit may be the strongest part of this story. It appears Anderson was in clear violation of Utah's ethics law when he entered into a financial relationship with someone under his regulatory control, and his lawsuit may offer the best evidence that he violated the law.

"He extorted money from a reputable businessman, and he thinks he has grounds to sue! This is unacceptable," said Rep. Kelly Albinson, D-West Jordan.

Albinson in 1991 helped spark an investigation of Semmani's business dealings by publishing unconfirmed reports of safety problems at the disposal site. But the Legislature's auditor found the site was generally well run and Albinson now believes Semmani to be a "pretty honest" individual.

Semmani said he has been bedeviled by Anderson's lawsuit. "Either he is exceptionally stupid, or exceptionally smart and has neither card to play."

THURSDAY, January 2, 1997

The Salt Lake Tribune PAGE A8

Opinion

OUR VIEW

The Salt Lake Tribune's Editorial Position

Semnani Must Step Down

It doesn't matter whether Khosrow Semnani is a victim of extortion or was himself a payer of bribes. Either way, he must resign immediately from the Utah Board of Radiation Control.

In addition, a grand jury should be impaneled to investigate the financial relationship between Semnani, the owner of a disposal facility in Tooele County that accepts mildly radioactive wastes, and Larry F. Anderson, the former director of the Utah Bureau of Radiation Control.

Ultimately, of course, it matters to the cause of justice and the people of Utah whether Semnani was shaken down by Anderson, whether he bribed Anderson, or whether the two had a mutually agreed upon but unethical business relationship.

However, it may take months or years for investigators and the courts to sort out what happened, whether crimes were committed and by whom. In the meantime, Semnani's continued presence on the Board of Radiation Control is intolerable, since the board oversees the regulators of Semnani's business, Envirocare of Utah. Semnani's continued service on the board erodes its credibility and public trust.

Semnani's amazing story is that he paid Anderson \$600,000 over eight years. During a portion of that period, Anderson was director of the state's Bureau of Radiation Control and approved

Semnani's project in 1988. Semnani claims that he feared that if he didn't make the payments, Anderson would use his authority as a regulator to create problems for Semnani's company.

Anderson, by contrast, claims in a lawsuit that he had a legitimate business relationship with Semnani as a consultant and that Semnani's payments fell short of what he owes Anderson.

Utah ethics law prohibits a public officer or employee from accepting gifts or compensation if it tends to influence the recipient in the discharge of official duties or if the recipient is involved in any government action that affects the donor.

Anderson claims in court documents that he entered into the business agreement with Semnani after receiving "informal advice" from the Utah Attorney General's Office. Ken Alkema, former director of the Utah Division of Environmental Quality and Anderson's former immediate supervisor, also contends the A.G.'s office conducted an internal investigation of the business relationship between Semnani and Anderson. "We found nothing," Alkema told *The Tribune*.

The attorney general's office now is once again investigating the affair. However, since the A.G.'s office may be compromised by its previous involvement with this matter, an independent grand jury investigation is appropriate.

7671	1-2-97	1		
Utah Board of Radiation Control				
Utah Board of Radiation Control				
Utah Board of Radiation Control				
Utah Board of Radiation Control				

G970017
Paperiello, NMSS
Cys: Thompson
Jordan
Norry
Blaha
Cyr, OGC
Bangart, SP
Kennedy, NRR

NATURAL RESOURCES DEFENSE COUNCIL
1200 NEW YORK AVENUE, NW, SUITE 400
WASHINGTON, DC 20005
Tel: 202-289-6868
Fax: 202-289-1060
email: tcochran@nrdc.org

FACSIMILE TRANSMITTAL SHEET

TO: Hugh L. Thompson, Jr., Acting Executive Director for Operations
FAX #: 301-415-2162
FROM: Thomas Cochran
DATE: January 9, 1997
TOTAL PAGES (including cover): 8

NOTE: The attached letter replaces a previously faxed version addressed to James M. Taylor, dated and faxed January 8, 1996, from Thomas B. Cochran of the Natural Resources Defense Council, re: Request for action pursuant to 10 CFR 2.206.

ACNP

American
College of
Nuclear
Physicians

California
Chapter

Dorothy Duffy Price
Executive Director

Box 31
Los Altos, CA 94023

TEL (415) 949-1341
FAX (415) 949-1341

January 21, 1997

The Honorable Shirley Ann Jackson
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Petition to Conduct Expedited Agreement State
Program Compatibility Review

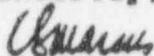
Dear Chairman Jackson:

Attached is a petition submitted by the American College of Nuclear Physicians California Chapter ("California ACNP") to the Utah Radiation Control Board and Utah Department of Environmental Quality seeking reasonable and prudent protection from what we are concerned may be significant deficiencies in the state's regulation of the Envirocare disposal facility.

By copy of the petition, prepared consistent with 10 CFR Part 2, Subpart H, s.2802(c), California ACNP hereby petitions the NRC to conduct a timely review of Utah's Agreement State Program with respect to the issues raised to ensure that Agreement State compatibility requirements are properly implemented. Petitioner seeks your particular attention to implementation of financial assurance requirements.

With Utah in the midst of reviewing a license renewal application based on receipt of up to 10.5 million cubic feet of waste per year, California ACNP respectfully requests your personal involvement in resolving the nationally important issues raised by our petition. In our view, a thoughtful and substantive response to the situation in Utah is critical to maintaining NRC's credibility as the federal entity responsible for regulating the management of low-level radioactive wastes.

Sincerely,



Carol S. Marcus, Ph.D., M.D.
Director, Nuclear Med. Outpt. Clinic
Harbor-UCLA Medical Center

and
Professor of Radiological Sciences,
UCLA

and
President, American College of Nuclear
Physicians, California Chapter

cc: Honorable Lauch Faircloth

9703060102-1000

January 21, 1997

Robert J. Hoffman, Chairman
and Members
Utah Radiation Control Board
Department of Environmental Quality
168 North 1950 West
P.O. Box 144850
Salt Lake City, UT 84114-4850

Subject: Petition for Rulemaking

Dear Mr. Hoffman:

The following petition is submitted to the Utah Radiation Control Board in accordance with the State of Utah's responsibilities as an Agreement State under Section 274 (b) of the federal Atomic Energy Act as amended. Petition format and content is based on the U.S. Nuclear Regulatory Commission's 10 CFR Part 2, Subpart H, section 2.802(c) rule. We request that you inform us immediately if Utah law or regulations require us to follow an alternate procedure so we may take the necessary steps to resubmit it. By copy of this letter, we request that the Department of Environmental Quality undertake any related actions which are reserved to it or the Division of Radiation Control consistent with its Agreement State responsibilities and authority. We further request, by copy of this letter, that the NRC appropriately consider all Agreement State compatibility questions including the posting of sufficient financial assurances.

I. General Problem Statement and Proposed Solution

1. Problem Statement: Envirocare is not currently required to post substantial financial assurances, a circumstance we consider directly inconsistent with the state's earlier decision to exempt Envirocare from 10 CFR Part 61 institutional control requirements for land ownership. This concern is compounded by Utah's recent authorization to dispose of non-containerized nuclear power plant ion exchange resin wastes.

Envirocare is now actively pursuing a state license renewal based on acceptance of up to 10.5 million cubic feet of radioactive waste per year from combined private sector and government sources. (For comparison purposes, Ward Valley is licensed to receive a total of 5.5 million cubic feet of waste over the site's entire 30-year life). Of this total,

ACNP

American
College of
Nuclear
Physicians

California
Chapter

Dorothy Duffy Price
Executive Director

Box 31
Los Alamos, CA 94023

TEL (415) 949-1341
FAX (415) 949-1341

January 21, 1997
Robert J. Hoffman, Chairman
and Members
Page -2-

for Envirocare, more than 1 million cubic feet would be comprised of nuclear reactor-related low-level wastes, of which 80,000 cubic feet may comprise resin and other nuclear power plant cleaning wastes. An additional 3 million cubic feet of annual capacity is proposed for unspecified radioactive wastes containing naturally occurring and man-made isotopes falling within the 10 CFR Part 61.55 Class A concentration limits. When compared to the detailed source term analysis and related safety evaluation performed by California for Ward Valley, Envirocare's request to take an unidentifiable source term of 3 million cubic feet/year raises serious questions about the level of detail used for pathways analysis and performance assessment.

2. Proposed Solution: The following petition components are respectfully submitted in the interest of obtaining reasonable and prudent protection from liability which may arise as a result of what appear to be significant deficiencies or potential deficiencies in the State of Utah's regulatory program for the Envirocare facility.
 - (a) The California Chapter of the American College of Nuclear Physicians ("California ACNP"), whose members or member employers have shipped or will ship low-level radioactive waste to the Envirocare of Utah disposal facility in Tooele County, hereby file this petition for rulemaking with the Utah Radiation Control Board to obtain an indemnification from the State of Utah and/or its licensee for contingent environmental liability costs related to the disposal of low-level waste disposed at the Envirocare facility.
 - (b) California ACNP petitions the Board to consider promulgation of an emergency rule to prohibit the continued, non-containerized disposal of nuclear power plant ion exchange resins at the Envirocare facility. Petitioner does not understand why the Division of Radiation Control chose to authorize this apparently extraordinary practice in the midst of its ongoing review of Envirocare's radioactive materials license renewal application. Accordingly, an immediate order rescinding the Division's 1996 authorization pending Board action on this petition and completion of the Division's license renewal review process also appears to be appropriate.

January 21, 1997
Robert J. Hoffman, Chairman
and Members
Page -3-

- (c) California ACNP petitions the Board to evaluate the potential need to order the timely removal, packaging and off-site disposal of such waste consistent with ALARA principles and other occupational radiation safety considerations.

The purpose of petition components (b) and (c) is to minimize the liability and related harms of practices we are concerned may be incompatible with the 10 CFR Part 61 regulatory framework and inconsistent with generally accepted worker radiation protection standards.

II. Petitioner's Grounds for and Interest in the Action Requested

Due to delays in the State of California's efforts to establish a commercial low-level waste disposal facility to service the four Southwestern Compact member states and California's loss of access to the Northwest Compact's low-level waste site in Washington State, certain members of California ACNP or member employers have utilized or may utilize the Envirocare disposal facility. In the context of the potential regulatory deficiencies described herein, such utilization gives rise to contingent liabilities for which our members now seek timely protection. As physicians with specialized expertise in radiation protection, we also have a professional concern with worker protection related to the safe handling of nuclear power plant ion exchange resins.

III. Statement and Analysis of Specific Issues:

1. California ACNP believes that financial assurance requirements for closure and postclosure monitoring and maintenance at the Envirocare facility may be inadequate. We understand that the funding levels now set aside to carry out these activities at the Envirocare facility are considerably less than those in place for South Carolina's Barnwell disposal facility and Washington's Richland disposal facility.

As envisioned by §61.63(a), NRC anticipated that no license would be issued prior to submittal of "a binding arrangement, such as a lease, between the applicant and the disposal site owner that ensures that sufficient funds will be available to cover the costs of monitoring and any required maintenance during the institutional control period." Utah's decision to exempt Envirocare from the 61.59(a) land ownership requirement and forgo the ability to

January 21, 1997
Robert J. Hoffman, Chairman
and Members
Page -4-

enforce funding adequacy through a revocable leasehold interest would be understandable had the state been fiscally conservative in establishing Envirocare's financial assurance requirements and otherwise stringently applied Part 61 requirements. As discussed below, this does not appear to be the case.

As of January 1997, the Washington Department of Ecology's dedicated accounts for Site Closure (\$24.2 million) and Perpetual Surveillance/Maintenance (also \$24.2 million) for its Richland low-level radioactive waste disposal site exceed \$48 million. According to South Carolina officials, approximately \$87 million is set aside for its Barnwell site. Of this amount, \$12 million is designated for closure and stabilization and \$75 million is available for long-term care. Based on a January 16, 1996 discussion with Dane Finerfrock of the Utah Radiation Control Division, only \$5 million has been deposited with a custodian for both closure and long-term monitoring and maintenance of Envirocare's radioactive materials facilities.

We are quite concerned about this financial assurance differential within the overall context that Envirocare is operating on private land, accepts far greater waste volumes and more diverse waste types than either the Richland or Barnwell commercial sites, and carries out storage and processing operations in addition to disposal. Unlike the Washington and South Carolina facilities, Envirocare also disposes of "mixed wastes". Moreover, we understand that large volumes of undisposed waste are often present at the Envirocare site.

In the event this site were ordered closed prior to disposing of all of the wastes present at the facility and/or remedial actions involving buried wastes were required, it appears that very limited funds would be available. CERCLA experience teaches us that a private site owner/operator may be unwilling or unable to respond effectively necessitating government-funded actions which may later be recovered from the waste generators.

A final question, which we hope can be affirmatively answered, is whether the State of Utah (as in Washington and South Carolina) controls the \$5 million closure and long-term monitoring and maintenance fund. In other words, does the state have the ability to access the fund over the licensee's potential objections? If not, there is added reason for concern about the comparatively meager available funds.

January 21, 1997
Robert J. Hoffman, Chairman
and Members
Page -5-

The liability exposure to petitioner's members and member employers appears to be magnified by Utah's 1996 authorization to dispose of unpackaged ion exchange resins, an authorization based on a unique practice under which radionuclide concentrations present in containerized waste arriving at the site are emptied and diluted with soil in the disposal trench to meet applicable license limits (see attached Utah Division of Radiation Control Information Notice). According to Appendix P (November 1996) of Envirocare's license renewal submittals, the company is now seeking state approval to dispose of up to 80,000 cubic feet a year of nuclear power plant resins and solidified cleaning agents.

2. California ACNP is concerned that the Division of Radiation Control's authorization to dilute and dispose of non-containerized ion exchange resins may be contrary to the intent of the §61.55 waste classification system, invites violation of the §61.56(b) waste stability requirements, and may violate ALARA worker exposure principles. The §61.55 classification system for commercial low-level wastes is based on isotope concentration limits calculated on a per-unit-volume basis averaged across the size of the container. Utah's decision to base license compliance on isotope concentrations achieved within the disposal trench, after diluting the waste with soil at 9:1 ratio, appears inconsistent with §61.55 provisions for determining concentrations in the waste itself. In concept, it appears that Utah's approach allows Envirocare to accept waste at its gate which exceeds its license limits and may even exceed the §61.55 Class A limits. In the latter instance, §61.56(b) would require specified waste form stability measures which appear to be inconsistent with Utah's requirement regarding containerized waste. Moreover, we understand that Utah's regulatory authorization to accept the resins was based on existing license conditions applicable to debris waste posing little or no radiological hazard, and that no separate state-enforced license conditions exist to protect against the radiological hazards involved in emptying resin containers and mixing the waste within the trench.

Since the technical requirements of 10 CFR Part 61 are a matter of rather strict compatibility for Agreement States, we do not understand how Utah was apparently able to redefine the application of §61.55 without formally receiving approval from the NRC. Compatibility issues are also raised by the non-containerized disposal of commercial

January 21, 1997
Robert J. Hoffman, Chairman
and Members
Page -6-

low-level waste, a practice prohibited by all other commercial low-level waste sites and seemingly in conflict with the intent of the §61.56 waste characteristics requirements. Now, for example, is the §61.56(a)(3) 1 $\frac{1}{2}$ volume limit on free-standing liquids currently enforced in the absence of containers? Is this requirement applied?

Utah's practices raise a series of practical concerns due to the inherent nature of ion exchange resin waste. Used to filter strontium-90, cesium-137, cobalt-60 and other fission products out of the reactor's primary coolant loop, discarded resins often require shielding to minimize worker radiation exposure. (Petitioner notes that license renewal application Appendix P makes no mention of Sr-90 and other fission products). Is the 80,000 cubic feet of resin and other cleaning wastes reflected in Appendix P an established limit? Was performance modeling performed prior to the authorization? What effect did the assumed source term increase have on the modeling? How were the resins assumed to be distributed within the disposal units?

Assuming for a moment that these matters have been fully and properly-resolved, it is difficult to understand why such potentially dangerous wastes were administratively approved under existing license conditions developed for relatively innocuous debris materials. How will Utah regulators and Envirocare ensure that applicable waste concentration limits and potential waste form stability requirements are met? How are shielding considerations during package unloading and solid mixing addressed? What measures are in place to prevent unintended dispersion of the uncontained, lightweight resin beads? Is the entire trench volume used to calculate concentration limit compliance? If so, how is this accomplished and how are potential "hot spots" accounted for? What quality assurance program requirements and facility operating procedures are in place to address each of these considerations? The import of these questions is underscored by the seemingly minimal regulatory review and public process which accompanied the state's approval of this major change in the facility's waste acceptance criteria.

Beyond the site-specific regulatory and safety considerations noted, petitioner is also concerned that the availability of comparatively inexpensive disposal capacity for large volumes of commercial nuclear power plant residues and other commercial low-level wastes will have a lethal effect on current efforts to license and open new Compact

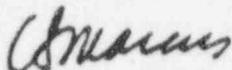
January 21, 1997
Robert J. Hoffman, Chairman
and Members
Page -7-

disposal facilities pursuant to the federal Low-Level Radioactive Waste Policy Act. Since the Barnwell site has a finite remaining capacity, and the Richland site is only open to the Northwest and Rocky Mountain Compact states, Envirocare seems poised to emerge as the nation's main disposal site.

Perhaps our greatest fear is that Envirocare's cheap prices, expanding waste acceptance criteria and vast unused capacity will lead to abandonment of the new facility siting efforts now underway, and that Envirocare will indeed become the main national disposer just long enough to develop problems which force its unexpected closure. This scenario would leave our members and many other waste producers across the nation with no place to take their waste and an undesired share of potentially significant environmental restoration costs. In many ways, this fear lies at the crux of the issue.

We look forward to the State of Utah's formal reply and stand ready to help answer any questions you, the Department of Environmental Quality, or other state officials may have in considering this petition.

Sincerely,



Carol S. Marcus, Ph.D., M.D.
Director, Nuclear Med. Outpt. Clinic
Harbor-UCLA Medical Center
and
Professor of Radiological Sciences,
UCLA
and
President, American College of Nuclear
Physicians, California Chapter

January 21, 1997
Robert J. Hoffman, Chairman
and Members
Page -8-

Attachment: May 7, 1996 Information Notice (Subject: ion exchange resin disposal)

cc w/ attachment:

Governor Michael O. Leavitt
Shirley Ann Jackson, Chairman, U.S. Nuclear Regulatory Commission
Dianne R. Nielson, Executive Director, Utah Department of
Environmental Quality
William Sinclair, Executive Secretary, Radiation Control Board
and Director, Radiation Control Division
Don Womeldorf, Executive Director, Southwestern Compact
Members, California ACNP Board

APPENDIX P - PROJECTED WASTE STREAMS

I Determination of Types, Kinds, and Quantities of Waste

Waste to be received will consist of naturally occurring and accelerator produced radioactive material (NARM), source material, special nuclear material and byproduct (11c.(1)) material. The nature of remediation activities has changed with time and it is expected that this pattern will continue. Envirocare has researched the currently known sources of radioactive and mixed waste and has developed the following waste characteristics. The radioactivity and volumes are the best estimates at this time, but may vary well change over the period of the license. Envirocare's original license was based on modeling which established upper limits to the concentrations of specific radionuclides in waste. After analyzing available data, the controlling factor was determined to be the on-site worker. The conclusion being that annual average concentrations in waste received should not exceed the calculated concentrations. For a mixture of radionuclides, the sum-of-fractions rule applies. Envirocare does not believe that any change in worker behavior that may change the nature of individual waste streams received for disposal will have a significant impact on the overall nature of the waste disposed or on the environment.

Envirocare's initial license was based on modeling which established upper limits to the concentrations of specific radionuclides in waste. After evaluating available data, the controlling factor for most radionuclides was determined to be the on-site worker, assuming an respiratory protection and full-time exposure to unscheduled periods of radioactivity and general gamma radiation at the center of the disposal cell without consideration for shielding provided by equipment. The maximum concentrations for several radionuclides were based on groundwater protection levels. Subsequently, additional radionuclides were added to the license with concentration limits determined to provide the same level of radiation exposure control as that established by the original model. Groundwater protection modeling was used to confirm that these concentrations were also protective of groundwater. The conclusion of the original modeling was that annual average concentrations in waste received should not exceed the individual concentrations based on either worker exposure or groundwater protection standards. For a mixture of radionuclides, the sum-of-fractions rule was applied in order to control worker exposure.

Because Envirocare does provide respiratory protection to workers and control gamma exposure by limiting the time spent in close proximity to waste material, worker doses can be controlled to ALARA goals without necessarily controlling actual average concentrations through such measures as use of radiation work areas. However, in order to ensure groundwater protection, average concentrations of individual radionuclides within a lift area will not exceed the concentration limits of Table 4. A lift area is defined as the volume of material within the 100 feet sphere lift from horizon line to top of the waste.

Materials being considered for disposal include:

1. Naturally occurring radioactive material (NORM) waste - contaminated soils and building debris, less than 100 pCi/g average concentration with Uranium, Thorium-230, and Radium-226 considered to be in equilibrium.
200,000 cubic feet per year (cfy)
2. Radioactive waste (RAW) - contaminated soils with scrap metal, glass, wood and masonry rubble. Weighted average concentration approximately 40 pCi/g—However, with small amounts are as high as up to 10,000 pCi/g.
3,000,000 cfy
3. Sludges, tailings, or residues from industrial waste streams containing various NORM materials. Uranium and thorium decay chain nuclides 50 - 5,000 pCi/g with weighted average concentration approximately 300 pCi/g.
160,000 cfy
4. Soils from decommissioning of reactor facilities contaminated with any of the byproduct materials associated with such operations. Major radionuclides are Fe-55, Co-58, Co-60 and Cs-137 with weighted average concentrations of approximately 100 pCi/g—but with some small quantities up to 40,000 pCi/g of each nuclide.
400,000 cfy
5. Non-compatible debris from decommissioning of reactor facilities contaminated with any of the byproduct materials associated with such operations. Major radionuclides are Fe-55, Co-58, Co-60 and Cs-137 with weighted average concentrations of approximately 100 pCi/g—but with some small quantities up to 40,000 pCi/g of each nuclide.
200,000 cfy
6. Dry active waste from cleanup and maintenance of nuclear reactors, fuel processing and D&D operations. May contain any source, special nuclear or byproduct material nuclides. Most nuclides are in the range of a few tens of pCi/g, but C-14 and tritium may be as high as 100,000 pCi/g in some wastes and Co-58, Co-60, Cs-137 or Fe-55 may reach 40,000 pCi/g.
350,000 cfy

7. Slimes and solidified sludge agents containing byproduct materials from nuclear power plants. Most radionuclides are at a few tens of pCi/g, but Co-60 and Co-137 will be as high as 60,000 pCi/g in some waste streams.

80,000 c/y

8. Sludges, millings, slag or residues from industrial waste streams containing various sources, byproduct or special nuclear materials. A weighted average concentration less than 50 pCi/g.

2,500,000 c/y

9. Sludge flow that contaminated by introduction of mixed oxides or uranium metal. Depleted uranium over-enriched ranges 1,000 pCi/g, maximum 300,000 pCi/g. Co-137 averaging 300 pCi/g; maximum 20,000 pCi/g. Some may contain Ra-226 at approximately 100 - 1,000 pCi/g.

60,000 c/y

10. Depleted uranium from the Department of Defense target area cleanup or from Department of Energy gaseous diffusion plants. Target area concentrations weighted average about 400 pCi/g; gaseous diffusion plant wastes as high as 250,000 pCi/g.

400,000 c/y

11. Cleanup of industrial areas with trace quantities of fission products or fallout from past above ground testing.

20,000 c/y

12. Accelerator-produced radioactive materials from D&D projects. May contain any activation products, primarily Co-60 and often with concentrations approximately 100 pCi/g.

60,000 c/y

13. Treated mixed waste containing any sources, special nuclear or by-product materials in concentrations approximately 100 pCi/g.

60,000 c/y

14. The unsorted waste including material removed from haul roads and from building sites includes a small amount usually of laboratory waste. Weighted average concentrations 10 pCi/g for the uranium and thorium decay chain nuclides, less than one pCi/g for all others.

21,000 c/y

145. Because of the nature of Envirocare's operations, it is anticipated that unfractionated waste streams will be identified in the future as construction, waste treatment and waste-generating processes develop. Radioactivity could include any of the naturally occurring or man-made radionuclides. Concentrations would not exceed Class A limits and the average concentrations in a cell area would not be greater than those of Table 4.

3,000,000 c/y

146. Any of the above waste streams may contain some hazardous materials and, therefore, be classified as mixed waste.

500,000 c/y

At the termination of disposal activities at the site, it is reasonable to assume there will be some concentrated soils with trace quantities of radioactivity that will need to be recovered and placed in the embankment. Also, dismantling of existing facilities will generate considerable waste, consisting of haul road materials, asphalt paving, concrete structures, steel debris, but lag debris and pond liners.

3. Composite Projection of Waste Inventories

3.1 "Initial" Inventory

The inventory of all radionuclides in storage or disposal at the end of 1992 is shown in Table 1. The uranium and thorium decay chain nuclides comprise the majority of radioactivity in inventory. This reflects the importance of Envirocare as a NORM disposal facility, as well as the remediation of large projects involving various source material waste streams. This inventory also demonstrates the low overall concentration of radioactivity in waste received by



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

~~970226002~~ 7991

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. Bangert 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.

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

9703/90237

APP

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

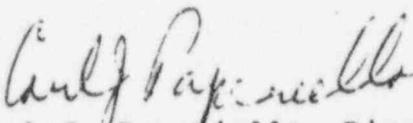
justify the actions requested by the NRDC. However, NRC will monitor the investigations and actions being conducted by the State of Utah. If NRC receives any specific information that there is a public health or safety concern as a result of these actions or from any other source, including the NRC ongoing 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 7th day of February 1997.

FOR THE NUCLEAR REGULATORY COMMISSION


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

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
Carl J. Paperiello, Director

In the Matter of)
ENVIROCARE OF UTAH, INC.) Docket No. 40-8989
) 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.

0702260052 11PP

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 40-8989/96-02 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

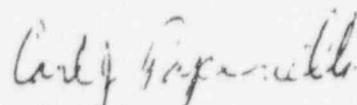
On the basis of the above assessment, I have concluded that no substantial health and safety issues have been raised regarding Envirocare that would require initiation of the immediate action requested by the NRDC, and the Petition is therefore denied. As explained above, the NRDC has not provided any 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

FEB 11 1997

Carol S. Marcus, Ph.D., M.D.
President, California Chapter
American College of Nuclear Physicians
P. O. Box 31
Los Altos, CA 94023

Dear Dr. Marcus:

This is in response to your letter dated January 21, 1997, requesting NRC to conduct a timely review of Utah's Agreement State Program with respect to issues raised in your letter to Mr. Robert Hoffman, Chairman, Utah Radiation Control Board. NRC is presently requesting information from the State of Utah on the issues you raised. We will inform you of our decision whether to conduct a review of the Utah program. If you have any questions, please contact me at 301-415-3340.

Sincerely,

Original Signed By
RICHARD L. BANGART

Richard L. Bangart, Director
Office of State Programs

cc: Mr. R. J. Hoffman, UT
Mr. W. J. Sinclair, UT

9703060152 1P