

ENVIROCARE OF UTAH, INC.
THE SAFE ALTERNATIVE

June 16, 1997

Mr. Ellis W. Merschoff
Regional Administrator
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 400
Arlington, Texas 78011-8064



Re: Confirmatory Action Letter dated June 12, 1997

Dear Mr. Merschoff:

Please find attached a copy of the supplemental response to a Notice of Violation (NOV) regarding Special Nuclear Material (SNM) which has been prepared by Envirocare of Utah, Inc. (Envirocare) for the Utah Division of Radiation Control (UDRC). This response incorporates the actions expressed in your letter of June 12, 1997. Specifically:

1. Envirocare has discontinued receipt of SNM, effective June 11, 1997, until such time as Envirocare has returned its inventory to less than its license limit, regardless of "possession" status.
2. Shipments of SNM en route to Envirocare as of June 11, 1997 will continue to be delivered. Disposal of these shipments will be expedited upon arrival.
3. A written plan for disposal of SNM by June 25, 1997 is discussed in the attached letter to UDRC. The current inventory is 184.1867 g of SNM within the LARW Restricted Area (outside of the disposal embankment) and 2207.14 g of SNM within the Mixed Waste Restricted Area (outside of the disposal embankment) for a total SNM inventory as of June 16, 1997 of 2391.3267 g of SNM.
4. Envirocare will submit written confirmation of reduction of its SNM inventory to license limits upon completion.

As can be seen in the attached work plan, Envirocare will not be able to have all necessary wastes disposed by the June 25, 1997 date. Envirocare would like to discuss an extension with your office as appropriate.

Please note that Envirocare's discontinuation of SNM shipments, pending resolution of this issue, will likely result in nationwide impacts to remediation projects. Sites may be unable to meet their FFCA and/or site cleanup milestones, as negotiated with their respective states, the EPA, and local stakeholders. Sites may also be impacted in their ability to support DOE's 10-Year Cleanup Plan.

If you have any questions regarding this issue, please contact me at 532-1330.

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PDR ADOCK 07003084
C PDR



Sincerely,

Chal A. Judd
Charles Judd
President
IE67
IE07

c: William Sinclair, UDRC

97-1320

ENVIROCARE OF UTAH, INC.
THE SAFE ALTERNATIVE

June 16, 1997

Utah Division of Radiation Control
Attn: Mr. Dane Finerfrock
168 North 1950 West
Salt Lake City, UT 84114-4850

Re: Supplemental response to Notice of Violation dated May 27, 1997, Radioactive Materials License # UT 2300249

Dear Mr. Finerfrock:

This letter supplements Envirocare of Utah, Inc.'s (Envirocare's) June 3, 1997 response to a Notice of Violation (NOV) and Order to Dispose (Order) from the Division of Radiation Control (DRC) dated May 27, 1997, regarding an alleged violation of the Utah Radiation Control Rules. Envirocare hereby withdraws its request of June 3, 1997 for a hearing on the Order and its request for a stay of the Order. Envirocare hereby maintains its request for a hearing before the Utah Radiation Control Board on the above referenced NOV. Envirocare's compliance with the Order is not an admission of the allegations in the NOV.

The above referenced violation reads, in part, as follows:

"Radioactive Material License UT 2300249, Amendment #20, dated June 28, 1995, License condition 13 states: "The maximum quantity of Special Nuclear Material which the licensee may possess, undisposed of, at any one time shall not exceed; 350 grams of U-235, 200 grams of U-233, and 200 grams Pu, or any combination of them in accordance with the following formula.

$$\frac{(\text{Grams U-235})}{350} + \frac{(\text{Grams U-233})}{200} + \frac{(\text{Grams Pu})}{200} \leq 1$$

Contrary to this requirement, radioactive waste containing greater than 350 grams of U-235 was observed in storage at the Low Level Radioactive Waste Container Storage Facility. Specifically, shipment 0691-11-003 (L9643) placed in storage on November 22, 1996, and continued to be in storage on the day of the inspection, contains 493.88 grams of U-235; shipments 0691-10-0002 and 0691-10-0003, (L12946 and L 13011) placed in storage on December 20, 1996, and continued to be in storage on the day of the inspection, contains 186.9 and 175.71 grams of U-235, respectively. Also observed was shipment 2053-02-0032 (L12863), containing 86.0 grams of U-235. Based on these shipments, the total quantity of U-235, undisposed, significantly exceeded the 350 grams allowed."

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Envirocare agrees that Condition 13 of Radioactive Materials License UT 23000249, as amended (the License), limits the amount of Special Nuclear Material that Envirocare may possess, undisposed of, at any one time. Under Envirocare's understanding of DRC's interpretation of the License, Envirocare determined that the SNM in storage at the Low Level Radioactive Waste Container Storage Facility as described in the NOV was not in Envirocare's "possession." It has been Envirocare's understanding that "possession" was defined based upon Envirocare acceptance of a waste for disposal; and that movement of a waste into the Restricted Area did not necessarily signify acceptance or "possession."

This interpretation is expressed in Envirocare's original Radioactive Materials License Application, Section 4.1.3 (page 4-5), which states: "A transportation vehicle may be physically located on Envirocare site property and may still not be considered 'accepted' for management at Envirocare." Similar language is found in Envirocare's Operating Procedures for incoming waste management. This language has been reviewed and approved by DRC in the course of License approval and subsequent revisions as well as during operation of the facility.

Thus, at no time did Envirocare possess, undisposed of, at any one time, more than the amount of SNM specified in License Condition 13. Nevertheless, Envirocare has acted to dispose of all SNM on site, regardless of "possession" status.

It should be noted that the SNM cited in this NOV and located on Envirocare's Clive site did not and does not constitute a threat to human or environmental health, nor did it constitute a criticality hazard. The SNM in question did not exceed the radiological limits of Envirocare's license and was therefore no more a radiological risk than other waste on site.

Criticality similarly is not a concern in the large quantities of very low specific activity waste handled at Envirocare. It seems clear that the quantity limitation on possession of SNM serves the purpose of preventing the accumulation of material which could, inadvertently or through purposeful actions, be sufficient to cause a critical reaction. In the case of waste material containing diffuse SNM destined for disposal, no accidental or purposeful acts could conceivably cause such an event; else the material would not be considered waste.

SNM in waste to be disposed at Envirocare is problematic in that mass concentrations of SNM in low-level remediation wastes may be as low as 0.0004 percent. At these concentrations, a single bulk rail car or large container of waste may exceed the quantity limit; yet not provide a criticality threat. On October 21, 1992, Envirocare petitioned the NRC to provide an exemption or other such waiver from possession limits for the management of very low specific activity wastes contaminated with SNM and not capable of forming a critical reaction (a copy of this request is attached). This petition has not yet been resolved.

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Admit or deny the item of non-compliance: Envirocare denies the violation. However, Envirocare will comply with the expressed intent of the Order to Dispose issued May 27th, 1997 by managing SNM in accordance with license limits applied at the Restricted Area boundary regardless of "possession" status until a clarified policy can be resolved.

Corrective Actions taken and results achieved: Envirocare has now disposed of much of the SNM which had been noted on site on the date of the DRC inspection. A current inventory of SNM within the Restricted Area is provided below under "Date when full compliance will be achieved." Regarding the specific shipments cited in this NOV: shipment 0691-11-003 (L 9643) was disposed on April 21, 1997; shipments 0691-10-0002 (L12946), 0691-10-0003 (L13011), and 2053-02-0032 (L12863) were disposed on June 6, 1997.

Preventive measures taken: Effective June 11, 1997, Envirocare has halted SNM shipments which had been scheduled but not en route until such time as Envirocare's total SNM inventory on site within the Restricted Area, regardless of "possession" status, is reduced below license limits; and will maintain this condition thereafter. This applies to both mixed and non-mixed waste. Envirocare will pursue a further clarification of SNM "possession" policy with DRC and upon approval manage SNM in accordance with any clarified policy.

Date when full compliance will be achieved: Envirocare maintains that it is and has been in full compliance with License Condition 13. Nevertheless, in accordance with the expressed intent of the Order to Dispose issued May 27, 1997, Envirocare will reduce its inventory of SNM on site with the Radioactive Waste Manifest signed, and undisposed to the license limit by June 25, 1997 and maintain this condition thereafter, regardless of "possession" status, until such time as a clarified policy can be resolved.

As of June 16, 1997, Envirocare's SNM inventory is as follows: within the LARW facility Restricted Area (outside of the disposal embankment) – 184.19 g of SNM; and within the Mixed Waste facility Restricted Area (outside of the disposal embankment) – 2207.14 g of SNM for a total site inventory of 2391.33 g of SNM. Please see the attached summary table with a waste-stream specific schedule for disposal.

With regard to certain Mixed Waste streams, which require treatment prior to final disposal and for which Envirocare does not yet have an approved treatment formula, Envirocare is faced with two options for complying with the Order. These wastes alone constitute a quantity of SNM which would exceed License Condition 13. These wastes have not been accepted for possession by Envirocare pending approval of a treatment formula but are physically located on site.

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Option one for these wastes would allow Envirocare to comply with the expressed intent of the Order by June 25, 1997 by transferring this waste from Envirocare's Clive site to an approved storage facility pending completion of a treatment formula and scheduling of treatment facilities. The waste would then be returned to Envirocare for treatment and disposal in quantities sufficient to ensure that SNM limits are met. This is Envirocare's preferred option.

Option two would require that the Order, for these wastes only, be amended to allow the time required to approve a treatment formula, schedule treatment facilities, complete treatment, receive post-treatment confirmatory analysis results, and dispose of this waste. Option two would require that the Order be amended, for these wastes only, to August 1, 1997 for Envirocare to be in full compliance with the Order.

Protest of proposed monetary penalty: DRC's proposed monetary penalty is excessive, as Envirocare did not act with "careless disregard" in its handling and management of SNM; and in fact acted in good faith according to its best understanding of DRC's implied policy.

Further, the alleged violation is of minor safety or environmental concern, as discussed above. Therefore, even if the violation occurred as alleged, the severity level under UAC R313-14-10(3) would be severity level V. Therefore, a monetary penalty of the magnitude proposed is not warranted. The proposed imposition of civil penalty should be withdrawn, or in the alternative, modified to reflect severity level V at worst.

If you have any questions regarding this response, please contact me at 532-1330.

Sincerely,



Greg Copeland
Director of Operations

c: Ellis Merschoff, NRC Region IV
Milt Lammering, EPA Region VIII
Dennis Downs, DSHW
Myron Bateman, Tooele County Health Department