



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

November 13, 1995

2029
40-8989

MEMORANDUM TO: The Chairman ✓
Commissioner Rogers

FROM: James M. Taylor *James M. Taylor*
Executive Director for Operations

SUBJECT: APPROVAL TO PURSUE ISSUANCE OF A SECTION 274F, ATOMIC ENERGY
ACT ORDER GIVING THE STATE OF UTAH, AUTHORITY TO LICENSE BULK
SOILS CONTAINING SPECIAL NUCLEAR MATERIAL GREATER THAN THE
350-GRAM POSSESSION LIMIT

On October 21, 1992, Envirocare of Utah filed a petition with the U.S. Nuclear Regulatory Commission. It requested that persons generating or disposing of very low-specific-activity wastes, contaminated with special nuclear material (SNM) and not capable of forming a critical reaction, be exempt from the possession limit for contained U-235 (350 grams) specified in 10 CFR Part 150. Envirocare filed this petition because the possession limit imposes a constraint on the number of rail cars allowed on its site at any one time. An alternative to filing a petition for rulemaking would have been to file for an NRC license for disposal of radioactive waste and thus get a Part 61 license from NRC for possession and disposal of this waste material. According to Envirocare, this constraint causes an accumulation of rail cars offsite during the winter months when disposal operations are slow because of the weather. However, this results in a paradoxical situation where rail cars can sit offsite with little radiological oversight but can not sit onsite where the licensee administers a radiation safety program approved by the State of Utah which provides for a higher level of radiological safety oversight. *[Handwritten star in box]*

The majority of SNM-containing waste received by Envirocare is from Department of Energy facilities or is generated in decontamination and decommissioning operations involving Atomic Energy Act (AEA) licensees who have terminated their licenses, or who are in the process of remediating their sites to obtain approval for license termination.

Envirocare currently maintains two radioactive material disposal licenses: (1) an 11e(2) byproduct material license issued by NRC for the disposal of uranium mill tailings-like materials; and (2) a 10 CFR Part 61 equivalent license issued by the State of Utah for the disposal of low-level waste. SNM received at Envirocare at this time goes into waste disposal units at the low-level waste site. Presently, this site is receiving much of the waste from ongoing decommissioning operations.

After a determination that the petition request had merit, the staff's initial approach was to pursue a rulemaking change that would grant relief to licensees who could demonstrate that criticality safety was not a concern.

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415-6701

This rule change would have substituted a new safe soil concentration limit for the mass limit of 350 grams of contained U-235. However, progress in implementing this approach was hampered because of concern about the potential reconcentration of the SNM into a critical mass after disposal, higher staff priorities, and the inequitable distribution of the costs and benefits of the rulemaking since it would be useful to only one licensee at this time.

After further consideration of this and other approaches, the staff now intends to pursue the alternate approach of issuing an order to Envirocare, under Section 274f of the AEA, that would exempt Envirocare from NRC licensing for amounts of U-235 in soil greater than the current mass limit, provided that the State revises its regulations to require State licensing of the SNM disposed in waste below the new criticality safe concentration limit for U-235. Under this section of the AEA, the Commission is authorized, by regulation or order, to grant exemptions from licensing requirements, and from its regulations applicable to licenses, as the Commission finds necessary or appropriate, to carry out an agreement with an Agreement State. The staff will share a draft of the order with Utah. As in the rulemaking approach, the proposed order will impose a new criticality safe concentration limit for diffuse U-235 in soil. This limit will be based on possession above ground, not disposal. However, the staff will factor in the results of the current Oak Ridge National Laboratory (ORNL) study of the potential reconcentration of SNM into a critical mass after disposal. Results of the ORNL study are expected in November 1995. The staff will then work with the State of Utah (possibly through a technical assistance request from the State) to develop changes to State regulations that will be consistent with NRC's proposed order exempting Envirocare from NRC licensing.

Martin G. Malsch, Deputy General Counsel of NRC's Office of the General Counsel (OGC) discussed this approach in July of 1995 with William Sinclair, the Director of the Division of Radiation Control, in Utah's Department of Environmental Quality. Based on this discussion, the State appears receptive to this approach to resolve the issue with Envirocare. It is also OGC's view that this approach is consistent with the present Agreement with the State of Utah. The same approach would be available to provide appropriate relief to other licensees and States, if similar circumstances were to exist in the future.

Unless otherwise directed, the staff intends to pursue this approach. This approach can provide licensees, Agreement States, and waste generators flexibility in the onsite handling of certain quantities of waste containing small amount of U-235 shipped for disposal. The staff also believes that this approach can be implemented at minimum cost to NRC and licensees, while ensuring or enhancing protection of the public and environment.

We have coordinated development of this memorandum with OGC and they have no legal objection.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

40-8939

17-6

February 7, 1996

MEMORANDUM TO: James Taylor
Executive Director for Operations

FROM: Shirley Ann Jackson *Shirley Ann Jackson*

SUBJECT: EXEMPTION FOR ENVIROCORE OF UTAH TO POSSESS U-235 IN EXCESS OF
CURRENT REGULATORY LIMITS

On November 13, 1995, the staff requested Commission approval to exempt Envirocare of Utah from NRC licensing for possessing amounts of U-235 in soil greater than the current mass limit (i.e., 350 grams) in 10 CFR Part 150. The staff indicated that the possession limit in 10 CFR Part 150 was preventing Envirocare from allowing rail cars, containing soil contaminated with U-235, to enter the site property because doing so would cause Envirocare to exceed its U-235 possession limits.

(1) NMSS Based on the information contained in the November 13, 1995 memorandum and the supplemental information provided by the staff in its February 6, 1996 briefing, I have no objection to the staff's proposal except for one issue. That is, the staff should complete its analyses of determining a safe concentration limit for diffuse waste before granting the exemption to Envirocare of Utah. Even though I have no objection to the staff's proposal in this instance, I would like to make a few points clear.

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- (1) I firmly believe that we as an agency should not regulate by exemption but should set reasonable and achievable standards that protect public health and safety. Having done that, we should grant exemptions to our regulations only when consideration of all reasonable alternatives for having the licensee comply with the regulations have been exhausted.
- (2) When an exemption is being considered, the staff should evaluate the merits of the exemption not only from a technical standpoint but also from the broader context of how the granting of the exemption fits within the regulatory framework of our treatment of other licensees. The granting of an exemption should not encourage other licensees to seek relief from our regulatory requirements by requesting an exemption in lieu of meeting our established standards.

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(2)

- (3) The NRC staff should assure that any exemption that might be granted does not result in an inconsistent application of our regulations and that all licensees are treated objectively and fairly. Simply put, we should assure regulatory consistency with all our licensees. I continue to believe that regulatory consistency and effectiveness are goals we should strive to attain.

The staff should consider the above points when evaluating any future exemption requests from NRC licensees.

cc: Commissioner Rogers
SECY
NGC

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