

December 21, 2000

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: William D. Travers **/RA/**
Executive Director for Operations

SUBJECT: REQUEST TO RECEIVE MAYWOOD AND WAYNE, NEW JERSEY, FUSRAP MATERIAL FOR DISPOSAL

On February 24, 2000, the Snake River Alliance, and on March 13, 2000, the Envirocare of Utah, Inc. (Envirocare), filed separate petitions pursuant to 10 CFR 2.206. The petitions requested that the Nuclear Regulatory Commission (NRC) assert jurisdiction over the disposal of mill tailings from the Formerly Utilized Sites Remedial Action Program (FUSRAP) sites.

In a letter dated September 15, 2000, Envirocare requested approval, on behalf of the U.S. Army Corps of Engineers, to receive waste from the Maywood and Wayne, New Jersey, (FUSRAP) sites. The Envirocare facility was licensed by NRC in 1993 to receive, store, and dispose of 11e.(2) byproduct material.

Attached is the staff's proposed response to the September 15 Envirocare letter. Staff delayed the issuance of this response until the Director of the Office of Nuclear Material Safety and Safeguards signed the Director's Decision which denied the February and March 2000 petitions filed by the Snake River Alliance and Envirocare pursuant to [10 CFR 2.206](#). The Office of General Counsel has reviewed the attached letter and has no legal objection. Please review the attached letter and approve its transmittal to Envirocare.

SECY, please track.

Attachment: As stated

cc: SECY
OCA
OPA
OGC
CIO
CFO

Draft 12/18/00

Envirocare of Utah, Inc.
Attn: Kenneth L. Alkema
Senior Vice President
46 West Broadway, Suite 116
Salt Lake City, UT 84101

RE: REQUEST TO RECEIVE MAYWOOD AND WAYNE, NEW JERSEY FUSRAP MATERIAL FOR DISPOSAL

Dear Mr. Alkema:

This is in response to Envirocare of Utah's (Envirocare) letter dated September 15, 2000, regarding the Maywood and Wayne, New Jersey Formerly Utilized Sites Remedial Action Program (FUSRAP) sites. You state in the letter that the U.S. Army Corps of Engineers (Corps) has requested that you seek an approval from the U.S. Nuclear Regulatory Commission (NRC) to receive waste from the Maywood and Wayne sites.

In recent years, the NRC has made clear its position that it lacks jurisdiction over tailings not at a site licensed by the NRC in 1978 or thereafter. This includes certain material from FUSRAP sites. As you are aware, on December 13, 2000, the staff issued a Director's Decision in response to your petition filed pursuant to 10 CFR § 2.206. The Snake River Alliance submitted a similar petition that was considered in conjunction with Envirocare's petition. The Director's Decision constitutes the final agency position on this matter, provided the Commission does not take the decision up for review pursuant to 10 CFR 2.206(c).

Since the Wayne site has not been under NRC or Agreement State license since 1974, four years prior to enactment of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), we do not agree with the determination that FUSRAP material from the Wayne site constitutes 11e.(2) byproduct material. Accordingly, Envirocare would not be authorized to accept the Wayne FUSRAP waste under its current license because the procedures set out as an attachment to Envirocare's March 8, 1994 letter, which are incorporated in the Envirocare license by condition 9.3, prohibit the disposal of waste other

than 11e.(2) mill tailings in the 11e.(2) cell. For the same reason, Envirocare would not be authorized to accept wastes originating from other pre-1978 FUSRAP tailings sites such as the St. Louis, Missouri and Niagara Falls, New York sites.

It is our understanding that the Maywood site to which you refer is the Stepan Company facility, portions of which are currently licensed by the NRC under license number STC-1333. We note that the Maywood licensee is authorized to possess material stored in three burial pits and that this material is described as alkaline thorium phosphate tailings. Envirocare should verify through the Corps that the material it proposes to accept from the Maywood site is the material in the three burial pits licensed by the NRC in 1978 and thereafter. Envirocare should ensure that the disposal of the material is in conformance with the conditions of its license. Having met these conditions, Envirocare is authorized to accept this material for disposal.

It is also our understanding that some of the material that would be received from the Maywood site is material other than that stored in the NRC-licensed pits. We understand that this material was not licensed by the NRC in 1978 and thereafter. For the same reasons detailed for the Wayne site above, Envirocare would not be authorized under its current license to accept Maywood material from areas of the site other than the three NRC-licensed pits.

Envirocare may request a license amendment to allow it to receive and dispose of pre-UMTRCA mill tailings, including material from the Wayne and Maywood sites. The amendment could provide that, notwithstanding the procedures set forth in the March 8, 1994 letter, pre-UMTRCA mill tailings may be disposed of in the 11e.(2) cell if such disposal provides adequate protection of public health, safety and the environment. On November 30, 2000, NRC issued interim guidance on disposal of non-11e.(2) byproduct material in tailings impoundments, as an attachment to [NRC Regulatory Issue Summary 2000-23](#), "Recent Changes to Uranium Recovery Policy."

We understand that the Wayne and Maywood site material is radiologically, physically and chemically similar to and compatible with materials already being disposed of in the 11e.(2) cell, and we note that disposal in an 11e.(2) cell will provide adequate protection of the public health, safety, and the environment. Therefore, NRC would exercise Enforcement Discretion, and would not object to continued disposal of pre-UMTRCA mill tailings while Envirocare prepares, and NRC reviews, a license amendment request to dispose of such material in the manner described above. We would allow Envirocare 120 days from the date of this letter to prepare and submit to NRC its license amendment request to dispose of pre-UMTRCA mill tailings in its 11e.(2) cell.

In accordance with 10 CFR 2.790, a copy of this letter will be available for public inspection in the NRC Public Document Room or electronically from the Publicly Available Records (PARS) component of NRC's document management system (ADAMS). ADAMS is accessible from the NRC Web site at </reading-rm/adams.html> (the Public Electronic Reading Room).

If you have any questions, please contact Harold Lefevre of my staff, either by telephone at (301) 415-6678, or by e-mail at hel@nrc.gov.

Sincerely,

Michael F. Weber, Director
Division of Fuel Cycle Safety & Safeguards
Office of Nuclear Material Safety & Safeguards

Docket No. 40-8989
License No. SMC-1559

cc: W. Sinclair, Utah Division of Radiation Control
T. Brown, EPA, Region 8, Denver, CO