

April 11, 2000

MEMORANDUM William D. Travers
TO: Executive Director for Operations
FROM: Annette L. Vietti-Cook, Secretary /RA/
SUBJECT: STAFF REQUIREMENTS - SECY-00-0066 - PROPOSED RESPONSE TO STATE OF UTAH ON RE-EXAMINATION OF THE UTAH LAND OWNERSHIP EXEMPTION FOR THE ENVIROCARE OF UTAH, INC., (ENVIROCARE) SITE

This is to advise you that the Commission has not objected to the staff's plans to send the subject letter to the State of Utah, provided as attachment 1 to SECY-00-0066, subject to the attached edits.

Attachment: As stated

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
CIO
CFO
OCA
OIG
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR
DCS

ATTACHMENT

Edits to Letter to the State of Utah

1. Paragraph 1, line 4, delete 'private land ownership'

Paragraph 1, line 5, add ', for State or Federal land ownership.' after 'requirement'

2. Combine and revise paragraphs 2 and 3 (to form new paragraph 2), as follows:

We agree with ~~the your~~ view expressed in your December 14, 1999 letter that the proposed change in facility operations to accept Class B and C waste provides a good opportunity for the State of Utah to re-examine ~~this issue. We believe Utah should use the opportunity presented by the request for expansion of the facility submitted by Envirocare to re-examine~~ continuation of the existing land ownership exemption. ~~This We believe such a re-examination~~ **should** ~~would be of benefit from the standpoint of evaluation e continuation~~ of the exemption in the context of the proposed expansion. Further, ~~a re-examination would provide an opportunity to re-evaluate~~ **We also believe it is worthwhile at the same time to revisit** the original bases for the exemption to ensure they ~~continue to remain valid and continue to provide adequate long term control. This re-examination should serve to identify and to determine~~ whether any changes are needed in the existing mechanisms that have been developed and applied ~~through the exemption~~ in lieu of government land ownership. ~~The earlier exemption granted by Utah remains a national precedent and A a re-examination at this time would provide continued assurance that adequate long term controls, equivalent to those provided by government land ownership, are in place, and would remain in place throughout the operating lifetime of the facility and also following closure of the facility. This would apply both for the current scope of operations and the proposed expansion.~~

3. Revise paragraph 4 (new paragraph 3), as follows:

The NRC sStaff understands that even though Utah's implementing rule for government land ownership is compatible with Section 61.59 (a), which requires either State or Federal ownership, part of the basis for granting the original exemption was that Utah does not have legislative authority to hold title to land used for disposal of radioactive waste. This lack of legislative authority was part of the basis for granting the original exemption. Utah's implementing rule for government land ownership, compatible with Section 61.59 (a), includes both State and Federal ownership. Under Utah's rule, State ownership is precluded, but Federal ownership is a possible option. Thus, We agree, as you suggest stated in your March 6, 2000 letter , that Utah staff may wish to consider whether legislative consideration of the current statute excluding State land ownership also should also be re-examined at this time.

4. Revise paragraph 5 (new paragraph 4), as follows:

We are prepared to assist you , in accordance with agency procedures and available resources, should you proceed with a review of the land ownership exemption issue. **Such assistance would not entail a *de novo* review of any submittal from Envirocare, but assistance in interpretation of NRC regulations in Part 61 and implementing guidance.**