

June 16, 2003

Mr. Jim Bierer, Chair
Fernald Citizens Advisory Board
1055 N. Fairfax Street, Suite 204
Alexandria, Virginia 22314

Dear Mr. Bierer:

I am responding on behalf of the Commission to your letter of April 16, 2003, which asked that the U.S. Nuclear Regulatory Commission (NRC) consider accepting the U.S. Department of Energy's (DOE's) designation of radiological wastes currently stored in three silos at its Fernald facility near Fernald, Ohio, as 11e.(2) byproduct material. DOE made that request to NRC in its letter dated July 22, 2002 (Enclosure 1).

Prior to receiving DOE's request, Envirocare of Utah, Inc., the operator of the 11e.(2) disposal facility where DOE intended to ship the waste, submitted an amendment request, dated March 13, 2002, to modify its license to accept and dispose of waste currently in Silo 3 at the Fernald facility. In this request, the material is characterized as 11e.(2) byproduct material. In a letter dated April 8, 2002 (Enclosure 2), NRC informed Envirocare of Utah, Inc., that the material does not meet the Atomic Energy Act of 1954 definition of 11e.(2) byproduct material.

NRC staff carefully considered the DOE request of July 22, 2002, against Director's Decision DD-00-06 (Enclosure 3). In that decision, the NRC staff concluded that material meeting the definition of section 11e.(2) of the Atomic Energy Act of 1954, as amended, but not under license by NRC (or an Agreement State), on or after enactment of the Uranium Mill Tailings Radiation Control Act of 1978, was not considered 11e.(2) byproduct material subject to NRC jurisdiction. Consistent with that decision and the staff's position in their April 8, 2002, letter to Envirocare of Utah, Inc., the staff has concluded that the Fernald silo waste material, not having been subject to an NRC license, is not considered to be 11e.(2) byproduct material subject to NRC jurisdiction and can not be disposed of in an 11e.(2) disposal facility as 11e.(2) byproduct material. However, this decision does not preclude disposal of the Fernald material as non-11e.(2) byproduct material in an 11e.(2) disposal facility if certain conditions are met. These conditions can be found in Enclosure 1, "Interim Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments," to Regulatory Issue Summary 00-023, "Recent Changes to Uranium Recovery Policy," dated November 30, 2000 (Enclosure 4).

Mr. Jim Bierer

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The Commission appreciates hearing the views of the Fernald Citizens Advisory Board. If you have any questions or comments on this matter, please do not hesitate to contact me.

Sincerely,

/RA/

Nils J. Diaz

Enclosures:

1. DOE letter to NRC dated July 22, 2002
2. NRC letter to Envirocare dated April 8, 2002
3. Director's Decision DD-00-06 dated December 13, 2000
4. NRC Regulatory Issue Summary 2000-03

cc: Jesse Hill Roberson, Assistant Secretary
for Environmental Management, DOE