



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

February 7, 1997

Dr. Thomas B. Cochran, Ph.D.
Director, Nuclear Program
Natural Resources Defense Council
1200 New York Ave., N.W.
Suite 400
Washington, D.C. 20005

SUBJECT: DIRECTOR'S DECISION ON NATURAL RESOURCES DEFENSE COUNCIL'S
10 CFR 2.206 PETITION

Dear Dr. Cochran:

By letter dated January 8, 1997, you submitted to the U.S. Nuclear Regulatory Commission, on behalf of the Natural Resources Defense Council, a Petition, pursuant to 10 CFR 2.206, requesting that NRC take action regarding Envirocare of Utah, Inc. Specifically, you requested that NRC immediately revoke any license or licenses, or cause the State of Utah to revoke its Agreement State license or licenses, held by Envirocare of Utah, Inc. (Envirocare), Khosrow Semnani, or any entity controlled or managed by Khosrow Semnani; prohibit the future issuance of any license by NRC, the State of Utah, or other NRC Agreement State, to Khosrow Semnani or any entity with which he has a significant affiliation; and suspend Utah's Agreement State status until the State of Utah can demonstrate that it can operate the Utah Division of Radiation Control in a lawful manner. As a basis for this Petition, you asserted that an article in the December 28, 1996, *Salt Lake City Tribune* reported secret cash payments made by Mr. Khosrow Semnani, president of Envirocare, to Larry F. Anderson, then Director of the Utah Division of Radiation Control, and the State of Utah's subsequent initiation of a criminal investigation into the matter.

NRC's response to your request regarding the Agreement State program is provided in Enclosure 1. The Director, Office of Nuclear Material Safety and Safeguards, has completed his review of the other issues raised in your Petition. For reasons explained in the enclosed Director's Decision DD-97-02, dated February 5, 1997 (Enclosure 2), your request has been denied. Although the NRC is concerned about the implications raised by the issues identified in your petition, at this time we do not believe that specific information exists to take the action requested in the petition. We will be closely monitoring the investigations of this issue being conducted by the State of Utah to ensure that we are aware of any information that may warrant action on our part. In addition, you are free to submit another petition when additional facts may be available to you on this issue.

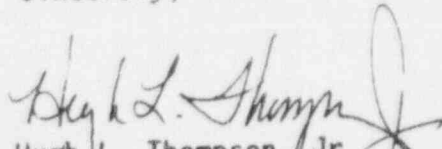
As provided by 10 CFR 2.206(c), a copy of this decision will be filed with the Secretary of the Commission for the Commission's review. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its

T. Cochran

2

own motion, institutes a review of the Decision within that time. In addition, a copy of the notice that is being filed for publication with the Office of the Federal Register is also included as Enclosure 3 for your information.

Sincerely,


Hugh L. Thompson, Jr.
Acting Executive Director
for Operations

Enclosures: As stated (3)

cc: W. Sinclair, Director, Division of Radiation Control, Utah
C. Judd, Executive Vice-President, Envirocare

NRC STAFF EVALUATION OF NATURAL RESOURCES DEFENSE COUNCIL
REQUEST TO SUSPEND SECTION 274 AGREEMENT WITH THE STATE OF UTAH

I. INTRODUCTION

In a letter dated January 8, 1997, Dr. Thomas B. Cochran, of the Natural Resources Defense Council (NRDC), requested under 10 CFR 2.206 of the Commission's regulations, that, among other things, NRC suspend its "...agreement with the state of Utah under which regulatory authority has been transferred from the NRC to the Utah's Bureau of Radiation [Division of Radiation Control], until the state of Utah can demonstrate that it can operate the Bureau of Radiation [Division of Radiation Control] in a lawful manner, and without the participation of licensees, or employees of licensees, in Bureau of Radiation [Division of Radiation Control] oversight roles." In addition, NRDC requested that the NRC immediately cause the State of Utah to revoke its licenses to Envirocare, Khosrow Semnani, its President, or any entity controlled or managed by Mr. Semnani and prohibit the future issuance of any license by the State of Utah to Mr. Semnani or any company or entity that he owns, controls, manages, or with which he has a significant affiliation or relationship. As a basis for NRDC's request, Dr. Cochran asserted that a December 28, 1996, article in *The Salt Lake Tribune* reported that between 1987 and 1995 Mr. Semnani made secret cash payments to Mr. Larry F. Anderson, who served as Director of the Utah Division of Radiation Control from 1983 until 1993. The article also reported that the Utah Attorney General's office has initiated a criminal investigation into the matter. Although NRDC's requests that NRC suspend its agreement with the State of Utah, or cause the State of Utah to revoke licenses that it issued, do not squarely fall within the scope of matters ordinarily considered under NRC's 10 CFR 2.206 process, the staff has evaluated the merits of NRDC's request.¹ The staff's evaluation of these aspects of NRDC's request follows.

II. BACKGROUND

Section 274 of the Atomic Energy Act (AEA), as amended, provides the statutory basis under which NRC can relinquish certain of its regulatory responsibilities to the States. This makes it possible for States to license and regulate the possession and use of byproduct material, source material, and special nuclear material in quantities not sufficient to form a critical mass. The mechanism for NRC to discontinue and a State to assume authority to

¹ NRC Manual Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," issued September 23, 1994 (revised December 12, 1995), states that the scope of the 10 CFR 2.206 process is limited to requests for enforcement action against licensees or entities engaging in NRC-licensed activities. But see *State of Utah (Agreement Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended)*, DD-95-1, 41 NRC 43 (1995).

regulate the radiological health and safety aspects of nuclear materials is an agreement signed by the Governor of the State and the Chairman. Before entering into such an agreement, the Governor is required to certify that the State has a regulatory program that is adequate to protect public health and safety. In addition, the Commission, by statute, must perform an independent evaluation and make a finding that the State's radiation control program is compatible with NRC's, complies with the applicable parts of Section 274 of the AEA, and is adequate to protect public health and safety.

The AEA was amended in 1978 to require, among other things, that NRC periodically review Agreement State programs to determine the adequacy of the program to protect public health and safety and compatibility with NRC's regulatory program. Section 274j. of the AEA provides that NRC may suspend or terminate its agreement with a State if the Commission finds that such suspension or termination is necessary to protect public health and safety. As mandated by the AEA, NRC conducts periodic, onsite reviews of each Agreement State program. The results of these reviews are documented in a report to the State. The report indicates whether the State's program is adequate to protect public health and safety and also whether the program is compatible with NRC's regulatory program. In some past cases, the State is informed that the findings on adequacy and compatibility are being withheld pending further review by NRC and the resolution of outstanding issues. Currently, concerns identified in Agreement State program reviews that do not result in program suspension or termination, result in findings of adequacy, with improvements needed, and a finding of compatibility or incompatibility.

The State of Utah originally became an Agreement State on April 1, 1984. At that time, the State chose not to include authority for commercial low-level radioactive waste disposal in the Agreement. However, on July 17, 1989, Governor Norman H. Bangerter of Utah requested that the Commission amend the Agreement to provide authority for Utah to regulate commercial low-level radioactive waste disposal. NRC conducted an independent review of Utah's program for control of radiation hazards with respect to low-level radioactive waste disposal and determined that the State met the requirements of Section 274 of the AEA and that the State's statutes, regulations, personnel, licensing, inspection, and administrative procedures were compatible with those required by the Commission and were adequate to protect public health and safety. The amendment to the Utah Agreement became effective on May 9, 1990, 55 FR 22113 (May 31, 1990).

III. DISCUSSION

NRDC requested suspension of the Agreement with the State of Utah based on newspaper reports that Mr. Anderson, Director of the Utah Division of Radiation Control from 1983 to 1993, received secret cash payments from Mr. Semnani, President of Envirocare. The relationship between Mr. Anderson and Mr. Semnani is being investigated by the Utah Attorney General's office. In addition, Mr. Semnani was appointed by the Governor of Utah as a member of the State's Radiation Control Board. NRDC requested that licensees should not be allowed to serve on State radiation control advisory boards.

Pursuant to Section 274 of the AEA, NRC relinquished its regulatory authority for the licensing of the use of certain radioactive material to Utah and therefore has no direct authority over licensing of these activities in Utah. However, NRC does have authority to terminate or suspend Utah's Agreement State program under certain conditions pursuant to 274j. of the AEA. Section 274j. states:

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection b. [of this section] has become effective, or upon request of the Governor of such State, may terminate or suspend all or part of its agreement with the State and reassert the licensing and regulatory authority vested in it under this Act, if the Commission finds that: (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to insure [sic] compliance with the provisions of this section.

Based upon these periodic reviews, or upon special reviews conducted for cause, before suspension or termination of an agreement the Commission must find that: (1) termination or suspension of a State's program is required to protect the public health and safety, or (2) that the State has not complied with one or more requirements of Section 274 of the AEA (e.g., the requirement for the State program to be compatible with the NRC program). Section 274j(2) of the AEA, as amended, grants the Commission emergency authority to temporarily suspend all, or part, of its agreement with a State without notice or hearing if an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take steps to contain or eliminate the cause of danger within a reasonable time.

NRC has conducted six reviews of the Utah Agreement State program since Utah became an Agreement State in 1984. The most recent review of the Utah program was conducted on June 13-17, 1994. In fact, two separate reviews were conducted at that time. The routine Utah radiation control program review was conducted in conjunction with a pilot program entitled the Integrated Materials Performance Evaluation Program (IMPEP) in which common performance indicators were used to evaluate both the NRC Regional Office and the Agreement State programs. The review team consisted of six staff, including two NRC staff from the Division of Waste Management to participate in the review of Utah's low-level radioactive waste management regulatory program. The most recent reviews of the Utah program were conducted after Mr. Anderson had left the program.

The most recent review included evaluations of program changes made in response to previous review recommendations (including recommendations concerning the State's low-level radioactive waste disposal program), review of the State's written procedures and policies, discussions with program management and staff, technical evaluation of selected license and compliance files, accompaniment of a State inspector, review of the State's incident and

allegation files, and the evaluation of the State's responses to an NRC questionnaire that was sent to the State in preparation for the review. In addition, portions of the review covered the Utah low-level radioactive waste regulatory program and included review of open items identified in NRC staff correspondence sent to the State following dispatch of the previous NRC review letter. Based on these reviews conducted in 1994, the Utah program for agreement materials was found adequate to protect public health and safety and was found to be in accordance with the provisions of Section 274 of the AEA.

In light of the foregoing, the issue now is whether the controversy surrounding the relationship between Mr. Anderson and Mr. Semnani poses a safety concern of such significance as to require NRC to begin the process to revoke or suspend Utah's Agreement State program. NRC has determined that it does not have a basis to initiate such action at this time. NRDC has not provided NRC with any information that would suggest that an immediate public health and safety issue exists. As Dr. Cochran notes in his request, the Utah State Attorney General has initiated a criminal investigation into the matter of the relationship between Mr. Anderson and Mr. Semnani. Absent specific information suggesting a public health and safety concern, NRC believes that it would be premature to initiate the requested subject action pending completion of this investigation. NRC intends to follow the investigation closely. If at any time NRC receives information of public health and safety concerns during the investigation or upon its completion, or receives such information from other sources, including NRC's ongoing Agreement State oversight activities, NRC will evaluate this information and take such action as is warranted. NRC is required by law to continue to review the Utah Agreement State program for adequacy and compatibility.

Envirocare currently has a radioactive materials license from the Utah Division of Radiation Control (formerly the Bureau of Radiation) and is authorized to receive waste under the conditions of that license. In accordance with State rules, the license is currently undergoing review by the State for a five year renewal. The license renewal application was submitted to the State on January 29, 1996, by Envirocare. The Utah Division of Radiation Control has indicated it is reviewing responses to the first set of interrogatories on the application, and it continues to inspect and monitor the Envirocare site. The State of Utah has offered, and NRC has accepted, a briefing on the status of the license renewal review. NRC intends to follow the State's license renewal review.

NRDC also requested that NRC suspend the agreement with the State of Utah until Utah demonstrates it can operate its radiation control program without the participation of employees of licensees in an oversight capacity. Mr. Semnani was appointed by the Governor of Utah to serve as a member of the State's Radiation Control Board. In previous Utah program reviews, NRC has recommended to the State that it develop formal conflict-of-interest procedures in coordination with the Attorney General's office. The staff is satisfied that the State has adopted conflict-of-interest procedures consistent with those of other division boards within the Utah Department of Environmental Quality. In addition, NRC has recently learned that Mr. Semnani has taken a two-month leave of absence from the Utah Radiation Control Board pending the completion of the criminal investigation.

IV. CONCLUSION

For the reasons stated above, NRC has determined not to take the action requested by NRDC at this time. NRC will continue to review the Utah Agreement State Program as required by law as well as to follow the investigation being conducted by the State's Attorney General and the State's review of Envirocare's license renewal application. If at any time termination or suspension of the Utah Agreement is required to protect public health and safety or the State has not complied with one or more of the requirements of Section 274 of the AEA, NRC will initiate the proper actions.