

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
Carl J. Paperiello, Director

In the Matter of)	Docket No. 40-8989
)	License No. SMC-1559
ENVIROCARE OF UTAH, INC.)	
)	(10 C.F.R. § 2.206)

DIRECTOR'S DECISION UNDER 10 C.F.R. § 2.206

I. INTRODUCTION

In a letter dated January 8, 1997, Dr. Thomas B. Cochran, Director of Nuclear Programs, Natural Resources Defense Council (NRDC) requested, under 10 CFR 2.206 of the Commission's regulations, that NRC take action to revoke all licenses held by Envirocare of Utah, Inc. (Envirocare). Specifically, the Petition requested that "...NRC take the following actions:

- 1) Immediately revoke the license or licenses, or cause the state of Utah to revoke its agreement state license or licenses, under which Envirocare is currently permitted to accept low-level radioactive waste and mixed waste for permanent disposal.
- 2) Immediately revoke the NRC 11e.(2) byproduct material license under which Envirocare is currently permitted to accept uranium mill tailings for disposal.
- 3) Immediately revoke any other NRC license, or agreement state license, if such license exists, held by Envirocare, Khosrow Semnani, or any entity controlled or managed by Khosrow Semnani.

4) Prohibit the future issuances of any license by the NRC, the State of Utah, or other NRC agreement state, to Khosrow Semnani or any company or entity which he owns, controls, manages, or [with which he] has a significant affiliation or relationship.

5) Suspend the agreement with the state of Utah under which regulatory authority has been transferred from the NRC to the Utah's [sic] 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."

NRDC asserts, as a basis for the request, 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 (UDRC) 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 request that NRC suspend its agreement with the State of Utah, or cause Utah to revoke the license that it issued, do not squarely fall

within the scope of matters ordinarily considered under 10 CFR 2.206¹, the staff has evaluated the merits of those requests. This evaluation is contained in a separate "NRC Staff Evaluation of Natural Resources Defense Council Request to Suspend Section 274 Agreement With The State of Utah." This Director's Decision will address the NRDC requests that relate to the license to receive, store, and dispose of certain byproduct material issued to Envirocare by NRC, pursuant to Section 11e.(2) of the Atomic Energy Act of 1954 (AEA), as amended.

II. BACKGROUND

Envirocare operates a radioactive waste disposal facility in Clive, Utah, 128 kilometers (80 miles) west of Salt Lake City in western Tooele County. Radioactive wastes are disposed of by modified shallow land burial techniques. Envirocare submitted its license application to the NRC in November 1989 for commercial disposal of 11e.(2) byproduct material, as defined in Section 11e.(2) of the AEA. On November 19, 1993, NRC completed its licensing review and issued Envirocare an NRC license to receive, store, and dispose of uranium and thorium byproduct material. Envirocare began receiving 11e.(2) byproduct material in September 1994 and has been in continuous operation since.

To ensure that the facility is operated safely and in compliance with

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).

NRC requirements, the staff conducts routine, announced inspections of the site. Areas examined during the inspections include management organization and controls, operations review, radiation protection, radioactive waste management, transportation, construction work, groundwater activities, and environmental monitoring. The NRC has conducted five inspections of the Envirocare facilities and has cited the licensee for three violations. All violations were categorized in accordance with the guidance in NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy) at a Severity Level IV.² The first violation, issued as a result of a July 1995 inspection and the second violation, issued as a result of a July 1996 inspection, have been adequately resolved by Envirocare. The last inspection, conducted on November 18-22, 1996, resulted in the issuance of the third citation noted above. This violation involved a failure to develop and implement, in a timely manner: 1) site-specific standards for three constituents found in the groundwater that exceeded their baseline values, and 2) a Compliance Monitoring Plan for arsenic after it was found to exceed its baseline value. These results of the November 1996 inspection are documented in Inspection Report 40-8989/95-02 which was issued on January 28, 1997. The NRC is in the process of determining whether Envirocare has taken appropriate action to correct this violation.

In addition, the November 1996 inspection identified other areas of concern where the staff determined that additional evaluation was necessary.

² As explained in Section IV. of the Enforcement Policy, violations are normally categorized in terms of four levels of severity. A Severity Level IV violation is defined as a violation of more than minor concern which, if left uncorrected, could lead to a more serious concern.

As a result, a follow-up inspection was conducted the week of January 27, 1997. Areas that were examined during this inspection included: 1) the licensee's quality assurance/quality control program; 2) the licensee's review of changes made to the facility; and 3) contractor laboratory certification. The results of the January 27, 1997, inspection are currently being evaluated. Once this evaluation is complete, the NRC will document the results in an inspection report. Based on a preliminary review of the inspection results, no significant violations were identified.

III. DISCUSSION

In December 1996, the *Salt Lake Tribune* published a series of articles that questioned the relationship between Larry F. Anderson, former Director of UDRC and Khosrow Semnani, President of Envirocare, during the licensing of the low-level radioactive waste (LLW) disposal facility. Subsequently, the NRC staff learned that on May 16, 1996, Larry F. Anderson filed a complaint against Khosrow B. Semnani in the Third Judicial District Court of Salt Lake County, State of Utah, to obtain compensation for alleged consulting services in the sum of 5 million dollars. The complaint alleges that, while Director of UDRC, Mr. Anderson recognized the need for a LLW site in Utah; incorporated a consulting firm, Lavicka, Inc., for the express purpose of developing a plan for siting the facility; and entered into a business arrangement to provide Mr. Semnani with a license application and consulting services. Mr. Anderson alleges that Mr. Semnani, President of Envirocare, agreed to pay a consulting fee of 100,000 dollars and an ongoing remuneration of 5 percent of all direct and indirect revenues that Mr. Semnani would realize from such a facility, if the site were successful. The complaint contends that Mr. Semnani owes Mr.

Anderson unpaid compensation for consulting services in the sum of 5 million dollars.

In October 1996, Mr. Semnani filed a counterclaim in the court, denying Mr. Anderson's claim and alleging that, in fact, Mr. Anderson used his position as the Director of UDRC to extort money in the sum of 600,000 dollars. Mr. Semnani contends that all the money he paid was based on the belief that if he did not pay, Mr. Anderson would use his official position and capacity as an officer and employee of the State of Utah to deny Mr. Semnani fair consideration, review, hearing, and determination on his license application and, thereby, cause the license not to be granted, or, if Envirocare was granted a license, Mr. Anderson would use his position to subject the facility to unfair and biased oversight and supervision of the operation of the facility under the license. As a result of these allegations, the Utah Attorney General's office is investigating the relationship between Mr. Semnani and Mr. Anderson.

The NRDC petition is based on the events described above. The NRC has evaluated the NRDC's requests and found no basis to take the requested actions.

As an initial matter, NRDC requests that the NRC immediately revoke the NRC 11e.(2) byproduct material license under which Envirocare is currently permitted to accept uranium mill tailings for disposal. In addition, NRDC also asks that the NRC immediately revoke any other NRC license, or agreement state license, if such license exists, held by Envirocare, Khosrow Semnani, or

any entity controlled or managed by Khosrow Semnani.

The NRC's Enforcement Policy describes the various enforcement sanctions available to the Commission once it determines that a violation of its requirements has occurred. In accordance with the guidance in Section VI.C.3. of the Enforcement Policy, Revocation Orders may be used: (a) when a licensee is unable or unwilling to comply with NRC requirements; (b) when a licensee refuses to correct a violation; (c) when a licensee does not respond to a Notice of Violation where a response was required; (d) when a licensee refuses to pay an applicable fee under the Commission's regulations; or (e) for any other reason for which revocation is authorized under Section 186 of the Atomic Energy Act (e.g., any condition that would warrant refusal of a license on an original application). Pursuant to 10 CFR 2.202(a)(5), the Commission may issue an immediately effective order to modify, suspend, or revoke a license if the Commission finds that the public health, safety, or interest so requires or that the violation or conduct causing the violation was willful. The Commission's regulations recognize that a licensee should be afforded under usual circumstances a prior opportunity to be heard before the agency suspends a license or takes other enforcement action, but that extraordinary circumstances may warrant summary action prior to hearing. See *Advanced Medical Systems, Inc.* (One Factory Row, Geneva, Ohio 44041), CLI-94-6, 39 NRC 285, 299 (1994).

In this case the NRDC has not provided the NRC with specific information establishing that a violation of NRC requirements has occurred, nor provided the NRC with any other information that would provide a basis for immediate

suspension of the Envirocare license. As NRDC notes in its 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 supporting the existence of such extraordinary circumstances as would warrant such action, NRC believes that it would be premature to initiate immediate action pending completion of this investigation. We recognize that this matter involves potential issues of integrity, which, if proven, may raise questions as to whether the NRC should have the requisite reasonable assurance that Envirocare will comply with Commission requirements. NRC intends to follow the investigation of the State Attorney General closely. If NRC receives information of public health and safety concerns during the investigation or on its completion, or receives such information from other sources, including NRC's ongoing Agreement State oversight activities, it will evaluate that information and take such appropriate action at that time as may be warranted.

Furthermore, the NRC staff has reviewed the bases for its licensing actions involving Envirocare, and confirmed that NRC did not rely on technical evaluations performed by the State to reach a decision regarding the evaluation of Envirocare's 11e.(2) byproduct material license. The staff conducted an independent technical evaluation of Envirocare's license application and subsequent amendment requests, and concluded that Envirocare had adequately demonstrated compliance with all applicable health and safety standards and regulations. In addition, as noted above, NRC inspections of Envirocare have not revealed significant violations that would warrant immediate action.

Moreover, with regard to NRDC's request that the NRC immediately revoke any other license, the NRC has issued no other license to Envirocare, Khosrow Semnani, or any entity controlled or managed by Khosrow Semnani. For these reasons, this request is denied.

NRDC also requests that the NRC prohibit the future issuances of any license by the NRC, the State of Utah, or other NRC agreement state, to Khosrow Semnani or any company or entity which he owns, controls, manages, or with which he has a significant affiliation or relationship.

With regard to this request, we have already noted that there is no basis for NRC to take immediate action. In any event, Section 2.206 is not a venue for presenting licensing contentions of the sort raised by this aspect of NRDC's petition. Section 2.206 provides for requests for action under that portion of the NRC's regulations governing enforcement actions, namely 10 CFR Part 2, Subpart B. Subpart B is entitled "Procedure for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License, or for Imposing Civil Penalties." Since the inception of the 10 CFR 2.206 process, the Commission has consistently stated that the purpose of 10 CFR 2.206 is to provide the public with the means for *participating in the enforcement process*.³ The Commission has determined that the Section 2.206 process should be focused on requests for enforcement action rather than evaluations of safety concerns. In accordance with this determination, the Commission's

³ "Requests to Impose Requirements by Order on a Licensee, or to Modify, Suspend or Revoke a License," 39 FR 12353 (April 5, 1974); "LeBoeuf, Lamb, Leiby & Macrae," 41 FR 3359 (January 22, 1976); "Petitions for Review of Director's Denial of enforcement Requests," 42 FR 36239 (July 14, 1977).

Management Directive 8.1, "Review Process for 10 C.F.R. 2.206 Petitions," Part III, Section A, states that petitions will be reviewed under 10 C.F.R. 2.206 if the request is for enforcement action, and that a request under Section 2.206 should be distinguished from a request to deny a pending license application or amendment.

Because this request by the NRDC concerns licensing-type action, not enforcement-type action, the staff has determined that, consistent with the guidance of Management Directive 8.11, this request is not within the scope of 10 CFR 2.206⁴. To the extent that further facts may be developed that may warrant consideration of this request, the matter may be raised in an individual licensing proceeding; however, no such proceeding is presently pending, as there is no application pending for the issuance of a license to Envirocare.

IV. CONCLUSION

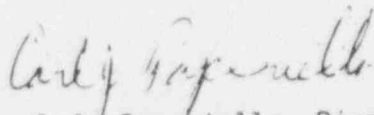
On the basis of the above assessment, I have concluded that no substantial health and safety issues have been raised regarding Envirocare that would require initiation of the immediate action requested by the NRDC, and the Petition is therefore denied. As explained above, the NRDC has not provided any information in support of its requests of which the NRC was not already aware. Moreover, NRC inspections of the Envirocare facility have not revealed the existence of extraordinary circumstances that would warrant immediate suspension of the Envirocare license. In addition, the staff's

⁴ Even if this request were interpreted as a request that the NRC issue an enforcement order prohibiting Mr. Semnani from engaging in licensed activities, and thus constitute a request for enforcement action within the scope of Section 2.206, NRDC has not provided the NRC with specific information such as would warrant the requested action, as explained above.

review of the technical basis for its issuance of the license and subsequent amendments found no evidence of the existence of any substantial health or safety issue that would justify the actions requested by the NRDC. NRC will monitor the investigations and actions being conducted by the State of Utah. If NRC receives any specific information that there is a public health or safety concern as a result of these actions or from any other source, including the NRC ongoing Agreement State oversight activities, NRC will evaluate that information and take such action as it deems is warranted at that time.

Dated at Rockville, Maryland this 54 day of February 1997.

FOR THE NUCLEAR REGULATORY COMMISSION


Carl J. Paperiello, Director
Office of Nuclear Material Safety
and Safeguards