

30 January 1997

NOTE TO: Joseph Holonich, Chief *JH*  
Uranium Recovery Branch  
Division of Waste Management

FROM: Harold E. Lefevre, Project Manager *HEL*  
Uranium Recovery Branch  
Division of Waste Management

SUBJECT: ASSESSMENT OF STAFF RELIANCE UPON STATE OF UTAH IN ENVIROCARE-RELATED LICENSING ACTION

As indicated in Hugh Thompson's memorandum of January 7, 1997, to the Commission relative to the late 1996-early 1997 news stories concerning possible wrong-doing on the part of the owner of Envirocare of Utah, Inc. (Khosrow Semnani) and a former State of Utah official (Larry Anderson) the staff was asked to look at the Envirocare license application and staff review of that application. The purpose of the evaluation was to determine to what extent, if any, the staff relied on the State of Utah in the NRC licensing action, and what impacts that could have on the NRC licensed activities. The staff was also asked to inform the Commission if any significant issues are identified from the evaluation.

Before proceeding with details of the staff evaluation, the following chronology of milestones is presented in order to place NRC's Envirocare licensing action of November 1993 in perspective with Mr. Anderson's tenure as Director of the State of Utah Bureau of Radiation Control during the time of interest (1987 to mid 1993): (1) Final Safety Evaluation Report (FSER) issued on June 18, 1993. (2) William Sinclair replaces Larry Anderson as Director, Division of Radiation Control sometime between May and August 1993 (NOTE: Utah Bureau of Radiation Control redesignated Division of Radiation Control in mid-1991). (3) Final Environmental Impact Statement (FEIS) issued August 1993. (4) Supplement to FSER issued on September 7, 1993. (5) 11e.(2) license issued November 1993, and (6) Larry Anderson leaves State of Utah employ in early 1994.

The staff has completed the evaluation described in the first paragraph and reports the following:

- 1) Queries of the Staff: The staff responsible for the development and issuance of two major documents - the FSER and the FEIS - have indicated (with the exception of those documents referenced below) no reliance upon any licensing documents prepared for, or by the State of Utah that were developed under the direction of the former Utah Division of Radiation Control official.

The exceptions mentioned above include:

- (a) Two State of Utah-originated documents were referenced in the FSER. However, these are geologic-related documents that were created for purposes other than waste disposal. One of the documents was published by the Utah Geological Survey in 1964 (subject is a gravity survey of

5-20-97

(970215006.4) XA

K/15

the Great Salt Lake) while the second publication was prepared by the Utah Superconducting Supercollider Proposal Team (SSC) and published in 1987 for a consulting firm and addresses seismicity relevant to the proposed siting of a superconducting supercollider.

(b) Three State of Utah-originated documents were referenced in the FEIS. Two of these documents, covering calendar years 1986 and 1987, were published by the Utah Bureau of Radiation Control. These references are annual environmental monitoring reports which are essentially "data dumps" for information gathered relative to airborne radon concentrations, direct gamma radiation and other parameters in the site area. The staff relied upon data, not interpretations, that may have been presented in these reports. The third document deals with hydrologic matters and was published in 1974 by the Utah Department of Natural Resources, not the Utah Bureau of Radiation Control, approximately 13 years prior to the former Utah Bureau of Radiation Control's reported involvement with Envirocare of Utah, Inc.

(c) The staff's search of both the FSER and FEIS revealed no staff reliance on State-originated documents beyond those five cited in (a) and (b) above.

- 2) FSER and FEIS Word Search: An electronic search was made of both the FSER and the FEIS in an attempt to identify references that may have been inadvertently omitted from the bibliography/reference lists incorporated within each of these documents. No omissions were identified.
- 3) NUDOCS Search: A NUDOCs search, encompassing both public and non-public documents, was made by the staff in order to possibly identify State of Utah documents attributable to Mr. Anderson that had not come to light during the above staff FSER/FEIS query/word searches. The NUDOCs search identified three documents either originating from Mr. Anderson or directed to Mr. Anderson by NRC's Office of State Programs between May 1991 and March 1993. The subjects of this correspondence address: (1) an allegation raised by a former Envirocare employee regarding Envirocare's sales and internal management practices, (2) a congressional inquiry regarding the Envirocare facility, its operations, and sufficiency of its surety funds, and (3) the staff determination, made at the request of the State, that the special nuclear material described by Envirocare and the State of Utah is insufficient to form a critical mass. Correspondence items (1) and (2), received from the State of Utah, by its nature, was not amenable for use by the staff in making its licensing decision. Item (3) was information provided to the State by the staff and did not form a part of the staff's FSER or the FEIS.

Based on the above staff interviews and searches the staff has not identified any reliance, other than that stated in Item 1) above, upon the State of Utah in reaching the NRC's licensing action relative to Envirocare of Utah, Inc. Not having identified a significant issue there is no need to directly inform the Commission of these findings.

cc: C. Paperiello, NMSS  
M. Knapp, NMSS  
J. Greeves, DWM  
M. Federline, DWM  
P. Pomeroy, ACNW  
K. Stablein, EDO  
D. Gillen, URB  
S. Wastler, PAHL  
R. Raspa, OIG



DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF THE EXECUTIVE DIRECTOR

Michael O. Leavitt  
Governor

Dianne R. Nielson, Ph.D.  
Executive Director

Brent C. Bradford  
Deputy Director

168 North 1950 West  
P.O. Box 144810  
Salt Lake City, Utah 84114-4810  
(801) 536-4400 Voice  
(801) 536-0066 Fax  
(801) 536-4414 TDD

January 7, 1997

Charles A. Judd  
Executive Vice President  
Envirocare of Utah Inc.  
46 West Broadway  
Suite 240  
Salt Lake City, UT 84101

Dear Mr. Judd:

The purpose of this correspondence is to provide a current statement relating to the status of Envirocare of Utah.

Envirocare currently has a radioactive materials license from the Division of Radiation Control and is authorized to receive waste under the conditions of that license. Pursuant to State rules, the license is undergoing review for a five-year renewal. A license renewal application was submitted to the Division of Radiation Control on January 29, 1996 by Envirocare. The Division of Radiation Control continues to inspect and monitor the Envirocare site.

Any questions regarding the license or operations can be directed to Bill Sinclair or Dane Finerfrock of the Division of Radiation Control at 801-536-4250.

Best regards,

Dianne R. Nielson, Ph.D.  
Executive Director

cc: Bill Sinclair, UDEQ/DRC



Post-It Date 1/16/97 # of pages 3  
Fax Note  
To Tom Cochran  
Fax  
From Jerry Weil  
Phone

## Save Wills Creek

Sherwood Bauman  
6354 Cowgill Lane  
Cummington, Ohio 43732

Telephone 1 (614) 438-2529

To: Tom Cochran & John Adams  
NRDC  
Washington and New York Offices

Reas: NRDC's recent (last Wed. January 8th, 1997.) petition with the NRC calling for the revocation of Envirocare's license.

Dear NRDC:

First, I feel that I should come right out up front and state that I and my organization have to some degree a vested interest in seeing Envirocare stay open, as thousands of communities across America do. You see, we have 600,000 TONS of Low Level Radioactive Waste's sitting in a wetland which drains into our communities drinking water supply. Additionally, other radioactive wastes which left the facility were used as road and construction fill so that many of our homes have been contaminated with said wastes.

Envirocare of Utah at this time is the ONLY facility in America which can handle large volume low concentration wastes such as ours. As an example, I would point out that during their period of operation, Envirocare has accepted but 275 curries of wastes while Barnwell has accepted in excess of 7.8 million curries and Richland over 2.4 million curries during their periods of operation. Simply put, short of leaving the wastes where they sit, there is no place to place our wastes if this facility is closed down. So, yes we do have a vested interest in seeing the facility stay open.

We usually feel that NRDC is a friend of the grassroots environmental community, and that what's best for us, affected citizens and their communities is always first and foremost at the top of the page when NRDC takes a position. For this reason, we have always felt that NRDC and our communities were always on the same game page on issues if not in complete agreement.

However, in this case, we feel that NRDC's position would do more harm than good, and would hope to point out some of the situations that could arise just here in Ohio should Envirocare's doors be closed forever to receiving wastes. Let us state clearly, that we are NOT condoning either Mr. Semnani's nor John Anderson's behaviors. We can empathize with the position that Mr. Semnani found himself in, but still feel that a complete and thorough investigation into the issues needs to be undertaken.

If and when said investigation shows us that Mr. Semnani should not be in possession of a license, we would be willing to stand behind the NRDC and in fact endorse a position that he divest himself of any and all interests in Envirocare. We however, cannot endorse a position of closing this facility as we feel doing so would cause many more problems than

F/1/14

it solves, and would see hundreds of thousands if not millions of innocent Americans needlessly placed in harms way.

1. The closing of Envirocare would eliminate the only option now available in America for large volume low concentration wastes. This situation would make it very easy for the NRC and the DOE to approve dangerous insitu disposal at various facilities including most of those within the MPN (Military Production Network) and various SDMP sites here in Ohio and across America.

2. Envirocare has a safe operating record, and there have been no breaches of the liners (cells) in place at their storage facility. Additionally, the location in a desert and completely away from civilization is a much better choice for storage than various facilities currently being proposed. Their average of less than two inches of rain makes the location much more suitable than our wetlands, not to mention South Eastern Ohio's yearly rainfall figures. It also makes more sense to support leaving an open facility there (as it would still require perpetual care for some time into the future) than to risk supporting the opening of a new facility that might be a much more undesirable choice in the long range view of things. Would suggest looking at the site currently proposed out in California as an example of poor site selection.

3. By taking an absolute position of closure and license revocation, your defacto endorsing the NRC and DOE's preferred position of creating thousands of baby storage facilities via insitu disposal, with none of these facilities providing the level of safeguards that can be found at Envirocare in Utah. (Our site for instance would recieve nothing more than a flawed cap and chainlink fencing with some signs posted. Not a lot of protection for waste's which will sit there for 14 million plus years.

4. By closing said facility, we allow organizations such as the Midwest Compact and the Ohio LLRW Authority Board to fast track their plans to site disposal facilities within our state's border. The problem with this, is that the Midwest Compact and the Ohio LLRW Authority Board are running a ruse as said facility will not be accepting any decommissioning waste's, but instead is being designed and targeted to serve only active generators.

We would ask you to do a couple of things.

1. Withdraw your petition which was filed with the NRC, and rethink your position on this issue...Closing Envirocare (from our perspective) would not be in the best long term interest of the environmental community, nor in the best interest of communities currently living with these wastes. (example-in our community, the Strawsburg family had to move out of thier home when it was learned they had thirty tons of Radioactive wastes underneath the foundation of their family room where the families two little children routinely played.)

2. Set aside the instant issue (the extortion scandal), and study Envirocare's operation and safety record.. Perhaps even consider visiting the site and taking a look at their operation and its location. Find out if they as a corporation and as an environmental cleanup company are willing to work with NRDC in addressing your concerns. Instead of shooting first and asking questions later, approach the issue and your organizations

position from one of informed confidence after familiarizing yourselves with the entire picture instead of one small piece of the puzzle.

Once you've done these things, and the investigation (currently underway) is completed, then would be the time (from our perspective) to take a position in regards to what should be done. If it appears that the best course of action would be to work towards removing Mr. Semnani, or asking that he divest himself of controlling interests, then that is a position that Save Wills Creek could understand and more than likely endorse. We thank you for your time, and do hope that you'll rethink and redefine your position on this issue of grave importance to our community and its children.

Respectfully Submitted

Sherwood (forest) Bauman  
Chairperson

## ENVIROCARE BLENDING OF WASTE

### Policy

- The average concentration of waste, as received in individual bulk waste conveyances or individual waste containers, may exceed the limits stated in the license by no more than a factor of ten and may not exceed Class A limits in any case, so long as the concentrations of waste as disposed are within license limits.

### Implementation of Policy

- For containerized waste shipments, if one or more individual containers exceed the maximum concentration limit, but the weighted average concentration of the waste conveyance (i.e., truck or rail car) is below the maximum concentration limit, then the entire conveyance will be disposed of as meeting the license requirements.
- If the weighted average concentration over any individual conveyance exceeds the limits of the license, the contents will meet one of the following requirements:
  - For soil or soil-like waste, the material will be physically blended with other waste so that the resultant average concentration is below the maximum concentration limit for disposal; or
  - For debris, the material will be mixed with the proper amount of waste or clean soil to achieve proper compaction or will be placed with the proper amount of concrete to achieve stability.
- Sum of fractions rule applies.

### Submission and Approval

- Proposed on August 22, 1995.
- Clarified on August 31, 1995.
- Approved with comments on September 6, 1995.

## Andrews County landfill proposal

A commercial operator's proposal to bring radioactive materials to a landfill in Andrews County in West Texas raises new questions about disposal of low-level radioactive waste and mixed waste in Texas.

Waste Control Specialists, LLC., holds a permit to build a commercial *hazardous* waste landfill in the 15,000-population county about 50 miles northwest of Midland. The company had sought during the 1995 legislative session authority to apply for a license to accept *mixed* waste (a combination of hazardous waste and radioactive waste) for *disposal and low-level radioactive waste for processing or storage*. A bill that would have authorized issuance of such a license, SB 1697 by Bivins, died in the House.

**Limit in law.** State law requires that a license to dispose of commercial low-level radioactive waste be issued only to a public entity specifically authorized by law for radioactive waste disposal. Waste Control Specialists said it intended only to *store or process* low-level radioactive waste pending transport of the waste to the state site in Hudspeth County.

Nonetheless, the bill ignited considerable debate over possible effects the Andrews facility might have on the state waste authority. Supporters of the bill said their plan

was also opposed by other private companies that operate radioactive waste disposal sites in other states and saw the Andrews site as potential competition. SB 1697 passed the Senate 28-1 (Moncrief) but died on the House floor after Rep. Robert Saunders of LaGrange successfully raised a point of order in the last days of the session.

**Plans for DOE waste.** Waste Control Specialists recently announced that the company intends to apply for authorization from the Department of Energy (DOE) to store, treat and dispose of low-level radioactive and mixed wastes that are generated at DOE-affiliated sites. The company maintains that under federal law states do not have jurisdiction over DOE or its contractors. Federal law allows DOE to certify that it can control a private site for DOE waste under certain conditions, eliminating state jurisdiction over the site. Some have argued that Waste Control would have to transfer title to the site to the DOE for this to happen, but others say that there are other ways for the site to come under the control and oversight of the DOE short of transferring title.

Discussions about the Andrews County site have brought together the federal Nuclear Regulatory Commission (NRC), DOE, Waste Control Specialists and the state of Texas. After some initial disagreement between NRC and DOE about regulatory jurisdiction of the site, the two federal agencies agreed that it is

"legally feasible" for Waste Control Specialists to be structured as a DOE contractor. According to some legal analysts, if DOE did have oversight and control of the site, Waste Control Specialists would not fall under Texas jurisdiction unless it did so voluntarily.

DOE stores a large amount of low-level radioactive waste at sites across the country, including, for example, the privately owned Envirocare site in Utah. DOE has not definitively said whether it would want to assume control and oversight of the Waste Control Site.

**State oversight?** Texas could still work with the federal government on regulatory oversight of the site, even if Waste Control Specialists became a DOE contractor. The federal government, for example, might ask the state to be its agent to review the site, apply state standards to the area, provide regulatory oversight on behalf of the DOE and submit information concerning the site's suitability to dispose of federal low-level waste. In that way, even if Waste Control Specialists became a DOE contractor, the state could still become involved in regulatory issues at the site.

Waste Control Specialist representatives maintain that although the state would have no jurisdiction over disposal of DOE waste or its contractors, the company will "voluntarily apply for state authorization and oversight in a show of good faith to state regulators."

F/20

## raises new questions for state

The company has filed an application with the Texas Bureau of Radiation Control (BRC) at the Texas Department of Health for a license to store and process radioactive waste. State law does not prohibit treatment and storage of low-level radioactive waste at a private site, only disposal. A BRC representative said that if the application fulfilled all state requirements and was not challenged in a hearing, the license could be issued within six months. The BRC will require the company to put up a certain amount of financial security to take care of decommissioning the site in the case of a company bankruptcy.

**TNRCC license.** If Texas, rather than DOE, had jurisdiction over the Waste Control site, the firm would be required to apply for a license from the Texas Natural Resource Conservation Commission (TNRCC) in order to dispose of low-level and mixed waste (a combination of hazardous waste and radioactive materials.)

To dispose of commercial mixed waste on a non-DOE site in Texas, an entity must have both a hazardous waste disposal permit and a license from TNRCC for the disposal of commercial low-level radioactive waste. Waste Control Specialists already holds a hazardous waste disposal permit, but could not under

current law apply for the TNRCC low-level radioactive waste disposal license that would be needed to dispose of commercial mixed waste.

Health and Safety Code sec. 401.203 allows a commercial radioactive waste disposal license to be issued "only to a public entity specifically authorized by law for radioactive waste disposal." Mixed waste contains both radioactive and hazardous waste.

Only the Texas Low-Level Radioactive Waste Disposal Authority currently fits the statutory description. The authority, however, does not plan to dispose of mixed waste, as Texas produces very little commercial mixed waste, and has not applied for a permit to treat or dispose of hazardous waste. If Waste Control Specialists obtained such a permit, it could, presumably, accept mixed waste not only from the federal government, the biggest generator, but also from other sources.

**Competition?** Some have argued that the Waste Control Specialists facility might eventually compete with the state authority by offering waste generators a spot to store and process low-level radioactive waste "temporarily," reducing the push to build a permanent storage site. That waste would, however, eventually have to be disposed of since most generators would probably not wish to pay indefinitely for off-site storage.

**Effect of compact.** It is unlikely that the Andrews County operation would compete directly with the state's facility if the Texas compact is ratified. The compact requires that all commercial low-level radioactive waste in the compact region go to the authority. That might still allow the Andrews County facility to accept DOE waste, both low-level and mixed. The authority is not authorized to dispose of DOE waste, and its staff says there are no plans to seek such authority.

Most observers agree that Waste Control Specialists could compete directly with the authority only if the Texas compact remains unratified and the Legislature amends the law that limits issuance of a low-level radioactive waste disposal license to a "public entity specifically authorized by law for radioactive waste disposal." (Health and Safety Code sec. 401.203). However, the Board of Health is authorized to exempt a firm from sec. 401.203, if it finds that the exemption would not constitute a significant risk to the public health and safety and the environment (sec. 401.106).

Representatives of the state disposal authority say that only if Waste Control Specialists entered the commercial low-level radioactive waste disposal business would the firm plan have any possible impact on the authority.

Envirocare



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

9707260036 7 pp

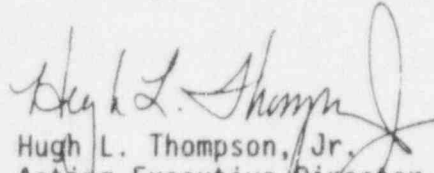
F/21

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.<sup>1</sup> 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

---

<sup>1</sup> 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)*, DO-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, compatible with the applicable parts of Section 274 of the AEA, and is adequate to protect public health and safety.

The AEA was amended in 1976 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. Bangert 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.

Ex. 5

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.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSIONOFFICE 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.

9702260052 Dupa  
15pb

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 2.206<sup>1</sup>, 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

---

<sup>1</sup> 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.<sup>2</sup> 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 40-8989/96-02 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.

---

<sup>2</sup> 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 C.F.R. 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

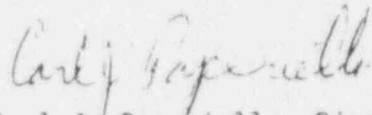
suspension of the Envirocare license. As NRDC notes in its request, the Utah State Attorney General has initiated a criminal investigation into the matter of the relationship between Mr. Anderson and Mr. Semnani. Absent specific information supporting the existence of such extraordinary circumstances 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.

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

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

\*See previous concurrence

OFC	HLUR*		HLUR*		DWM*		OGC <i>SG</i>		NMSS*
NAME	SWastler		JHolonich		JGreeves		JGoldberg <i>SG</i>		EKraus
DATE	01/30/97		01/31/97		02/02/97		02/7/97		02/29/97
OFC	NMSS		OI*		OE*		OSP*		EDO <i>HT</i>
NAME	CPaperiello		RFortuna		JLeiberman		RBangart		HThompson
DATE	02/5/97		02/04/97		02/04/97		02/03/97		02/7/97

S:\dwm\pahl\slw\NRDC-TL.DFT

OFFICIAL RECORD COPY

Distribution: EDO G970017/NMSS 9700010

PUBLIC

Docket File 40-8989

DWM r/f

DWM t/f

PAHL r/f

HLUR r/f

NMSS Dir. Off. r/f

CPoland

MFederline

JGreeves

DGillen

HLefevre

RFonner, OGC

PLohaus, OSP

SDroggitis, OSP

JGoldberg, OGC

GDeegan, IMNS

JDeCicco, IMNS

SChidakel, OGC

WBrown, RIV

RO'Connell, IMNS

DMurphy, OI

KStablein, EDO

LCoblentz, OE

PTressler, EDO

Commission, on its 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/enclosures: W. Sinclair, Director, Division of Radiation Control, Utah  
C. Judd, Executive Vice-President, Envirocare  
\*See previous concurrence

OFC	HLUR*		HLUR*		DWM*		OGC		NMSS*	
NAME	SWastler		JHolonich		JGreeves		JGoldberg		EKraus	
DATE	01/30/97		01/31/97		02/02/97		02/ /97		02/29/97	
OFC	NMSS		OI*		OE*		OSP*		EDO	
NAME	CPaperiello		RFortuna		JLeiberman		RBangart		HThompson	
DATE	02/ /97		02/04/97		02/04/97		02/03/97		02/ /97	

S:\dwm\pah\slw\NRDC-TL.DFT

OFFICIAL RECORD COPY

Distribution:

EDO Ticket 970010

PUBLIC

Docket File 40-8989

DWM r/f

DWM t/f

PAHL r/f

HLUR r/f

Dir r/f

CPoland t/f

MFederline

JGreeves

DGillen

HLefevre

RFonner,

PLohaus, OSP

SDroggitis, OSP

JGoldberg, OGC

GDeegan, IMNS

JDeCicco, IMNS

SChidakel, OGC

WBrown, RIV

RO'Connell

DMurphy, OI

KStablein, EDO

LCoblentz, OE

Commission, on its 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

OFC	HLUR		HLUR	EC	DWM		OGC		NMSS	
NAME	SWastler		JHornovich		JGreeves		WReamer Cold Bell		EKraus	Attached for comment
DATE	01/30/97		01/21/97		02/2/97		02/ 97		01/29/97	
OFC	NMSS		DMurphy		DElbert		OSP/Leffler		EDO	
NAME	CPaperiello		RFortuna		JLieberman		ABangart SK		HThompson	
DATE	02/ /97		02/4/97		02/4/97		02/3/97		02/ /97	

S:\dwm\pahl\slw\NRDC-TL.DFT

OFFICIAL RECORD COPY

Distribution:

EDO Ticket 970010  
PUBLIC  
Docket File 40-8989  
DWM r/f  
DWM t/f  
PAHL r/f  
HLUR r/f  
Dir r/f  
CPoland t/f  
MFederline  
JGreeves  
DGillen  
HLeffevre  
RFonner  
PLohaus, OSP  
SDroggitis, OSP  
JGoldberg, OGC  
GDeegan, IMNS  
JDeCicco, IMNS  
SChidakel, OGC  
WBrown, RIV  
RO'Connell  
DMurphy, OI  
KStablein, EDO  
LCoblentz, OE

Bo 1/31

U. S. NUCLEAR REGULATORY COMMISSION  
NATURAL RESOURCES DEFENSE COUNCIL  
RECEIPT OF PETITION AND ISSUANCE OF A  
DIRECTOR'S DECISION UNDER 10 CFR 2.206

---

Notice is hereby given that by Petition dated January 8, 1997, Thomas B. Cochran, on behalf of Natural Resources Defense Council (NRDC), requested that the Nuclear Regulatory Commission (Commission) take immediate action with regard to Envirocare of Utah, Inc. Specifically, the Petition requested NRC to 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

9702260071

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 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.

As a basis for the request, the Petitioner asserts that on December 28, 1996, an 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.

The NRC response to the Petitioner's request regarding the Agreement State program is provided in a "NRC Staff Evaluation of Natural Resources Defense Council Request to Suspend Section 274 Agreement With The State of Utah." The other issues raised in the Petition have been evaluated by the Director of the Office of Nuclear Material Safety and Safeguards. After review of the Petition, the Director has denied the Petitioner's requests.

The Director's Decision 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. 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 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

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.<sup>1</sup> 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

---

<sup>1</sup> NRC Manual Directive E.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).

4702260036 Dufre S/b

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.