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February 24, 1996

FOIA/PA REQUEST
Case No: 97-0068
Date Rec'd: 2-25-97
Action Off: Pugh
Related Case:

VIA FACSIMILE ((301) 415-7010)
AND VIA FIRST CLASS MAIL
Mr. Russell A. Powell, Chief
FOIA/LPDR Branch
Division of Freedom of Information
and Publications Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

RE: Freedom of Information Act Request

Dear Mr. Powell:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552) and the U.S. Nuclear Regulatory Commission (NRC) regulations (10 C.F.R. Part 9, Subpart A), please provide me with a copy of the following documentation:[1]

1. All documentation submitted to any office of NRC from or pertaining to Envirocare of Utah, Inc., since April 1, 1996.

2. All documentation sent by any office of NRC to or pertaining to Envirocare of Utah, Inc., since April 1, 1996.

3. All documentation submitted to any office of NRC from or pertaining to Waste Control Specialists LLC (WCS) of Pasadena, Texas, since April 1, 1996,

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[1] "Documents" means any written, recorded or graphic material of any kind, whether prepared by NRC or by any other person, that is in NRC's possession, custody or control. The term includes, but is not limited to: letters; telegrams; cables; interoffice communications; memoranda; reports; analyses; authorizations; notebooks; lists; outlines; schedules; charts; applications; and minutes or notes of meetings or conferences (in each case whether stored in electronic/computer form or hard copy).

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including but not limited to documentation from members of the Texas Legislature and/or representatives of Texas state government or regulatory agencies.

4. All documentation sent by any office of NRC to or pertaining to Waste Control Specialists LLC (WCS) of Pasadena, Texas, since April 1, 1996, including but not limited to documentation to members of the Texas Legislature and/or representatives of Texas state government or regulatory agencies.

If any or all of this request is denied, please cite the specific exemption(s) relied upon by NRC for such denial, and inform me of any appeal procedures available under the law. I would greatly appreciate NRC handling this request as quickly as possible as responsive documents may have relevance to on-going legal proceedings. In any event, I look forward to hearing from you within 10 days as required by law.

If you need any further information to process this request, please do not hesitate to contact me during the day at (202) 663-9051.

Sincerely,

John R. Kyte

John R. Kyte

• Willfully taking action that would cause [illegible] to be in violation of NRC requirements but the action did not do so because it was detected and corrective action was taken.

• Recognizing a violation of procedural requirements and willfully not taking corrective action.

• Willfully defeating alarms which ha[ve] safety significance.

• Unauthorized abandoning of reactor controls.

• Dereliction of duty.

• Falsifying records required by NRC regulations or by the facility license.

• Willfully providing, or causing a licensee to provide, an NRC inspector or investigator with inaccurate or incomplete information on a matter material to the NRC.

• Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel in the licensee's organization.

• Submitting false information and as a result gaining unescorted access to a nuclear power plant.

• Willfully providing false data to a licensee by a contractor or other person who provides test or other services, when the data affects the licensee's compliance with 10 CFR part 50, appendix B, or other regulatory requirement.

• Willfully providing false certification that components meet the requirements of their intended use, such as ASME Code.

• Willfully supplying, by vendors of equipment for transportation of radioactive material, casks that do not comply with their certificates of compliance.

• Willfully performing unauthorized bypassing of required reactor or other facility safety systems.

• Willfully taking actions that violate Technical Specification Limiting Conditions for Operation or other license conditions (enforcement action for a willful violation will not be taken if that violation is the result of action taken following the NRC's decision to forego enforcement of the Technical Specification or other license condition or if the operator meets the requirements of 10 CFR 50.54 (x), (i.e., unless the operator acted unreasonably considering all the relevant circumstances surrounding the emergency.)

Normally, some enforcement action is taken against a licensee for violations caused by significant acts of wrongdoing by its employees, contractors, or contractors' employees. In deciding whether to issue an enforcement action to an unlicensed person as well as to the licensee, the NRC recognizes that enforcement will have to be done on a case by case basis. In making these decisions, the NRC will consider factors such as the following:

1. The level of the individual within the organization.

2. The individual's training and experience as well as knowledge of the potential consequences of the wrongdoing.

3. The safety consequences of the misconduct.

4. The benefit to the wrongdoer, e.g., personal or corporate gain.

5. The degree of supervision of the individual, i.e., how closely is the individual monitored or audited, and the likelihood of detection (such as a radiographer working independently in the field as contrasted with a team activity at a power plant).

6. The employer's resp[onse] disciplinary action taken.

7. The attitude of the w[rongdoer] admission of wrongdoing, responsibility.

8. The degree of manage[ment] responsibility or culpability

9. Who identified the mis[conduct]

Any proposed enforcemen[t action] involving individuals must b[e] with the concurrence of the a[ppropriate] Deputy Executive Director. Th[e] particular sanction to be used determined on a case-by-case [basis] Notices of Violation and Order[s] examples of enforcement actio[ns] may be appropriate against indi[viduals] The administrative action of a L[etter of] Reprimand may also be conside[red] addition, the NRC may issue Den[ials] for Information to gather informa[tion] enable it to determine whether an[y] or other enforcement action shoul[d] be issued.

Orders to NRC-licensed reactor operators may involve suspension for a specified period, modification, or revocation of their individual licenses. Orders to unlicensed individuals might include provisions that would:

• Prohibit involvement in NRC licensed activities for a specified period of time (normally the period of suspension would not exceed 5 years) or until certain conditions are satisfied (e.g., completion of certain training or meeting certain qualifications).

• Require notification to the NRC before resuming work in licensed activities.

• Require the person to tell a prospective employer or customer engaged in licensed activities that the person has been subject to an NRC order.

In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a Notice of Violation or a civil penalty to the Part 55 licensee, or an order to suspend, modify, or revoke the Part 55 license. These actions may be taken the first time a licensed operator fails a drug or alcohol [test] that is, receives a [positive] [illegible] FR [illegible] ily [illegible]

A Note From
Jim Lieberman

My view is that I should follow-[illegible] this closely + give the facts pre[sented] to State - offer any assistance if [illegible] with State. Jim

[illegible] applicant [illegible] participate in the drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is also subject to license suspension, revocation, or denial.

In addition, the NRC may take enforcement action against a licensee that may impact an individual, where the conduct of the individual places in question the NRC's reasonable assurance that licensed activities will be properly conducted. The NRC may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, appropriate enforcement actions may be taken regarding matters that raise issues of integrity, competence, fitness-for-duty, or other matters that may not necessarily be a violation of specific Commission requirements.

In the case of an unlicensed person, whether a firm or an individual, an order modifying the facility license may

Lobby for final vote on EO

[10] Except for individuals subject to civil penalties under section 206 of the Energy Reorganization Act of 1974, as amended, NRC will not normally impose a civil penalty against an individual. However, section 234 of the Atomic Energy Act (AEA) gives the Commission authority to impose civil penalties on "any person." "Person" is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

H/21

(FYI)

James C. Haskins (1406)
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5085 South State Street
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Telephone: (801) 268-3994
Facsimile: (801) 268-4031

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

LARRY F. ANDERSON, an individual, and LAVICKA INC., a Utah corporation,

Plaintiffs

v

KHOSROW B. SEMNANI, an individual, and ENVIROCARE OF UTAH, INC., a Utah corporation,

Defendants

ANSWER TO COUNTERCLAIM

Civil NO 960907271

Judge Frank G. Noel

COME NOW, the Plaintiffs, by and through their counsel, James C. Haskins, and respond to Defendants Counter Claim as follows:

FIRST DEFENSE

The Counterclaim fails to state a cause of action against Plaintiffs upon which relief can be granted

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SECOND DEFENSE

1. Plaintiffs admit the allegation set forth in Paragraphs 1 through 3 of the Counterclaim.

2. Plaintiffs deny the allegations set forth in Paragraph 4 of the Counterclaim.

3. Plaintiffs admit that Defendants filed applications as more fully described in Plaintiff's Complaint, but deny any other allegations or assertions of Paragraph 5 of the Counterclaim.

4. Plaintiffs specifically and adamantly deny the allegations set forth in Paragraphs 6 and 7 of the Counterclaim.

5. Plaintiffs specifically admit that Mr. Semnani agreed to making payments to Mr. Anderson as a basis of their agreement set forth in the Complaint, however, the Plaintiffs specifically deny any and all other allegations of Paragraph 8 of the Counterclaim.

6. Plaintiffs admit receiving, in accordance with the agreement of the parties, monies for services rendered by Mr. Anderson, however, specifically deny any and all other allegations set forth in Paragraph 9.

7. Plaintiffs deny the allegations contained in Paragraph 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Counterclaim.

8. Plaintiffs admit the allegations of the representation by counsel as is obvious through the filing of this action. However, the Plaintiffs allege that the letter speaks for itself and thus deny the balance of the allegations contained in Paragraph 19 of the Counterclaim.

9. Plaintiffs and counsel for Plaintiffs specifically and vehemently deny the allegations set forth in Paragraph 20 of the Counterclaim.

10. Plaintiffs deny the further allegations set forth in the claims of relief set forth by the Defendants in their Counterclaim, Paragraphs 21 through 26.

WHEREFORE, the Plaintiffs having responded to the claims made by the Defendants in their Counterclaim, do hereby pray the Court as follows:

1. For judgement as prayed in the Complaint;

2. For judgment against the Defendants such that they take nothing by their Counterclaim;

3. For dismissal, with prejudice, of the Counterclaim;

4. For costs, expenses and attorneys' fees for defending such Counterclaim; and

5. For such other relief that the Court shall deem just in the circumstances.

Dated this 3rd day of December, 1996

James C. Haskins,
Attorney for Plaintiffs

MAILING CERTIFICATE

I hereby certify that on this the 4th day of December, I did cause to be mailed, postage prepaid, a true and accurate copy of the foregoing Answer to Counterclaim to:

Gary A. Weston, esq
NIELSEN & SENIOR
1100 Eagle Gate Tower
60 East South Temple Street
Salt Lake City, UT 84111

Gary A. Weston, USB #3435
NIELSEN & SENIOR
Attorneys for Defendants
1100 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone (801) 532-1900

FILED
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DISTRICT
BY

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

LARRY F. ANDERSON, an individual, and LAVICKA INC., a Utah corporation, Plaintiffs, v. KHOSROW B. SEMNANI, an individual, and ENVIROCARE OF UTAH, INC., a Utah corporation. Defendants.	ANSWER AND COUNTERCLAIM Civil No. 960907271 Judge Frank G. Noel

Defendants, Khosrow B. Semnani and Envirocare of Utah, Inc., answer the Complaint of the Plaintiffs as follows:

FIRST DEFENSE

The Complaint fails to state a cause of action against Defendants upon which relief may be granted.

SECOND DEFENSE

1. Admit the allegations of paragraph 1.

2. Admit the allegations of paragraph 2.

3. Admit the allegations of paragraph 3.

4. Admit the allegations of paragraph 4.

5. Deny the allegations of paragraph 5 and affirmatively allege that neither of the Plaintiffs has had any agreement with either of the Defendants enforceable under principles of either law or equity.

6. Admit the allegations of paragraph 6.

7. Admit the allegations of paragraph 7.

8. Answering paragraph 8, Defendants incorporate herein their answers to paragraphs 1 through 7 of the Complaint.

9. Answering paragraph 9, Defendants admit that, in 1987, Larry Anderson was working as an employee of the Utah State Bureau of Radiation Control, but deny the balance of the allegations of said paragraph and do affirmatively allege that, at all times subject of the Complaint, Anderson was a director of said division and responsible by law for the fair and unbiased performance of his duties as director and as an officer and employee of the State of Utah.

10. Answering paragraph 10, Defendants admit that Larry Anderson incorporated Lavicka, Inc. on February 2, 1987 as a Utah corporation, but deny the balance of the allegations of said paragraph.

11. Answering paragraph 11, Defendants admit that Anderson did approach Khosrow Semnani, but deny the balance of the allegations of said paragraph, and do affirmatively allege that Anderson made no inquiry of Mr. Semnani, but rather requested Mr. Semnani to pay monies to Anderson.

12. Answering paragraph 12, Defendants admit that Khosrow Semnani became acquainted with Larry Anderson incident to Mr. Semnani's application to the State of Utah and the State of Utah's subsequent licensing and permitting of an industrial waste disposal facility at Grassy Mtn., Tooele County, Utah, but do deny the balance of the allegations of said paragraph.

13. Deny the allegations of paragraph 13 and do affirmatively allege that at no time did Larry Anderson advise Khosrow Semnani that either Anderson or Lavicka, Inc. would provide any services or assistance to Mr. Semnani or to Envirocare of Utah, Inc.

14. Deny the allegations of paragraph 14 and affirmatively allege that Larry Anderson requested Mr. Semnani to make payment to him, in advance, of an amount of $100,000.00 and to thereafter make payment to him of an amount equal to five percent of any revenues that Mr. Semnani would receive incident to the operation of a proposed radioactive waste disposal facility at Clive, Tooele County, Utah, for which Mr. Semnani was then seeking licensing and permitting from the Utah State Bureau of Radiation Control. Defendants further affirmatively allege that Mr. Semnani advised Anderson that Mr. Semnani would pay the amounts requested by Anderson.

15. Deny the allegations of paragraph 15 and affirmatively allege that Anderson did not offer to provide, nor did Mr. Semnani agree to receive, any services or assistance from Anderson or Lavicka, Inc.

16. Deny the allegations of paragraph 16.

16. [sic] Answering the second numbered paragraph 16 [sic], admit that Khosrow Semnani caused Envirocare of Utah, Inc. to be incorporated under the laws of the State of

Utah, but deny the balance of the allegations of said paragraph, and do affirmatively allege that Envirocare of Utah was incorporated on December 4, 1987.

17. Deny the allegations of paragraph 17.

18. Admit the allegations of paragraph 18, except insofar as it is therein alleged or implied that the first waste materials delivered to the waste disposal facility were from the Environmental Protection Agency, Denver, Colorado, which allegation or implication these Defendants do deny.

19. Deny the allegations of paragraph 19.

20. Answering paragraph 20, Defendants deny that there was any agreement to pay any of the amounts as alleged by Plaintiffs, and do deny that Envirocare of Utah has at any time made any payment of any amount to either of the Plaintiffs, but do affirmatively allege that Khosrow Semnani made payment to Larry Anderson of only a portion of the amount requested by Anderson, and do deny the balance of the allegations of said paragraph.

21. Answering paragraph 21, Defendants deny that there was any agreement to pay any of the amounts as alleged by Plaintiffs, and do deny that Envirocare of Utah has at any time made any payment of any amount to either of the Plaintiffs, but do affirmatively allege that Khosrow Semnani made payment to Larry Anderson of only a portion of the amount requested by Anderson, and do deny the balance of the allegations of said paragraph.

22. Answering paragraph 22, Defendants admit that the payments made by Khosrow Semnani have been in cash and on one occasion, real property and on one or more other occasions, gold coins, but do deny the balance of the allegations of said paragraph, and

do affirmatively allege that Envirocare of Utah has not made any payments of any amounts to either of the Plaintiffs.

23. Deny the allegations of paragraph 23.

24. Answering paragraph 24, the Defendants incorporate herein their answers to paragraphs 1 through 23 of the Complaint.

25. Deny the allegations of paragraph 25.

26. Deny the allegations of paragraph 26.

27. Deny the allegations of paragraph 27 and affirmatively allege that neither of the Plaintiffs had any agreement with either of the Defendants and that the responsibilities of Larry Anderson with regard to the Defendants was that same responsibility which Anderson owed to the general public pursuant to his official duties as an officer and employee of the State of Utah.

28. Deny the allegations of paragraph 28.

29. Deny the allegations of paragraph 29.

30. Deny the allegations of paragraph 30.

31. Deny the allegations of paragraph 31. Khosrow Semnani affirmatively alleges that he has not made payment of all of the amounts as requested and demanded by Larry Anderson.

32. Answering paragraph 32. Defendants admit that Larry Anderson has requested and demanded payment of the amounts which he has received from Khosrow Semnani and has demanded other and additional amounts which have not been paid by Mr. Semnani and that neither of the Plaintiffs have advised or directed Mr. Semnani not to make payments to

Anderson of the amounts demanded by Anderson, but do deny the balance of the allegations of said paragraph.

33. Deny the allegations of paragraph 33 and do affirmatively allege that there is not now nor has there ever been a valid agreement which either of the Plaintiffs had with either of the Defendants.

34. Deny the allegations of paragraph 34.

THIRD DEFENSE

24. [sic] Answering paragraph 24 [sic] of the Second Cause of Action of the Complaint, Defendants incorporate herein their answers to paragraphs 1 through 34 of the Complaint.

25. [sic] Deny the allegations of paragraph 25 [sic].

26. [sic] Deny the allegations of paragraph 26 [sic].

27. [sic] Deny the allegations of paragraph 27 [sic].

28. [sic] Deny the allegations of paragraph 28 [sic] and affirmatively allege that neither of the Plaintiffs have provided services or assistance to either of the Defendants.

29. [sic] Deny the allegations of paragraph 29 [sic].

30. [sic] Deny the allegations of paragraph 30 [sic] and affirmatively allege that Lavicka, Inc. has not provided anything of value to either of the Defendants and that the only value, if any, that may have been provided by Larry Anderson was limited to such information as he was required by law to provide to the general public relative to his duties as an officer and employee of the State of Utah.

FOURTH DEFENSE

31. [sic] Answering paragraph 31 [sic] of the Third Cause of Action of the Complaint, Defendants incorporate herein their answers to paragraph 1 through 30 [sic] of the Complaint.

30. [sic] Defendants deny the allegations of paragraph 30 [sic] of the Third Cause of Action. Khosrow Semnani does affirmatively allege that Larry Anderson has engaged in an ongoing felonious practice of extortion of monies from Mr. Semnani.

31. [sic] Deny the allegations of paragraph 31 [sic] and more particularly deny that either of the Defendants has requested any service or assistance from either of the Plaintiffs and that either of the Plaintiffs have provided any assistance or service to Defendants, excepting the providing of information by Larry Anderson as he was required to provide to the general public relative to his duties as an officer and employee of the State of Utah.

32. [sic] Answering paragraph 32 [sic], Defendants deny that either Plaintiff could reasonably have had any understanding that Plaintiffs were legally entitled to payment of any amounts from either of the Defendants. Khosrow Semnani does admit that Larry Anderson believed and expected that he would receive payment of the amounts which he illegally demanded and was extorting from Khosrow Semnani. Defendants deny the balance of the allegations of said paragraph.

33. [sic] Answering paragraph 33 [sic], Khosrow Semnani admits that Larry Anderson expected payment of the amounts which he was illegally demanding and extorting from Mr. Semnani and that Mr. Semnani paid a portion of the amounts demanded by Anderson over a

period of approximately eight years. Defendants deny the balance of the allegations of said paragraph.

34. [sic] Deny the allegations of paragraph 34 [sic].

FIFTH DEFENSE

35. Answering paragraph 35, Defendants incorporate herein their answers to paragraph 1 through paragraph 34 [sic] of the Third Cause of Action of the Complaint.

36. Envirocare of Utah, Inc. is without information sufficient to form a belief as to the truthfulness of the allegations of paragraph 36 and, therefore, does deny the same. Khosrow Semnani, in answer to the allegations of 36, admits that on more than one occasion he told Larry Anderson that he would make payment to Larry Anderson of the $100,000.00 demanded of him by Anderson and of the five percent of revenues as demanded of him by Anderson, but does deny the balance of the allegations of said paragraph and does affirmatively allege that the demands made by Anderson constituted a felonious extortion of monies from Mr. Semnani.

37. Envirocare of Utah, Inc. is without information sufficient to form a belief as to the truthfulness of the allegations of paragraph 37 of the Complaint and, therefore, does deny the same. Khosrow Semnani denies the allegations of paragraph 37 and does affirmatively allege that he did tell Larry Anderson that he would make payment of amounts demanded by Larry Anderson, but that the demands made by Anderson were illegal and unlawful and he was not entitled to rely on statements made to him by Mr. Semnani in response to said illegal and unlawful demands.

38. Envirocare of Utah, Inc. is without information sufficient to form a belief as to the truthfulness of the allegations of paragraph 38 and, therefore, does deny the same. Khosrow Semnani, in answer to the allegations of paragraph 38, admits that he intended to not make payment to Larry Anderson of all of the amounts which Anderson had illegally and unlawfully demanded, that it was his hope and purpose that Anderson would not continue to demand payment of said amounts and would cease and desist in his illegal and unlawful practices. Mr. Semnani denies the balance of the allegations of said paragraph.

39. Deny the allegations of paragraph 39.

40. Deny the allegations of paragraph 40.

41. Deny the allegations of paragraph 41.

SIXTH DEFENSE

(Illegality and Violation of Public Policy)

42. At the time that the subject requests and demands were made by Larry Anderson for payment from Khosrow Semnani, Anderson was an officer and employee of the State of Utah and a director of the Utah State Bureau of Radiation Control, which Bureau was further responsible for the processing, review and determination of Mr. Semnani's application for a license and permit for the operation of a waste disposal facility. Said Bureau was responsible for all supervision and oversight of said facility by the State of Utah in the event of and upon the granting of a license and permit. Anderson was duty bound as said officer and employee to provide accurate, fair and unbiased information and services to members of the general public whose business interests fell within the review, determination and supervision of the Utah State Bureau of Radiation Control. Anderson was precluded by law

from requesting, demanding or accepting payment for his services as a State officer and employee other than his salary as paid by the State of Utah. Anderson's requests and demands from Khosrow Semnani of the amounts subject of Plaintiffs' Complaint were illegal and against public policy and, consequently, his supposed and alleged contract with Mr. Semnani was illegal and void as against public policy, which illegality bars the claim of right and entitlement which he makes for payment from Mr. Semnani or Envirocare of Utah, Inc. In particular:

(a) Section 67-16-5, Utah Code Ann., prohibited Anderson from soliciting, receiving and accepting any compensation if he recently had been, then was, or in the future may be involved in any governmental function with respect to Mr. Semnani's application, or if said amount would tend to influence Anderson in the discharge of his official duties. Section 67-16-12, Utah Code Ann., provides that such solicitation and/or acceptance constitutes a felonious act.

(b) Section 67-16-6, Utah Code Ann., prohibited Anderson from receiving or agreeing to receive compensation for assisting any person or business entity in any transaction involving the Utah State Bureau of Radiation Control unless Anderson first files a sworn written statement with the head of the Bureau and with the Utah Attorney General identifying the specifics and purpose of such agreement or understanding. No such written statement was filed.

(c) Pursuant to § 76-6-406(2)(g), Utah Code Ann., Larry Anderson is guilty of theft by extortion by implicitly threatening, as a public official, to take an action or withhold an official action or cause such action or withholding of such action

regarding Mr. Semnani's application and regarding the supervision and oversight of the subject waste disposal facility absent Mr. Semnani making payment of the amounts demanded by Anderson. Pursuant to § 76-6-406(2)(e), he is so guilty for thereafter threatening to reveal that payments were made by Mr. Semnani.

SEVENTH DEFENSE

(Duress)

43. All statements which Khosrow Semnani made to Larry Anderson that Mr. Semnani would pay to Anderson the amounts demanded by Anderson and all amounts so paid by Mr. Semnani were statements made and amounts paid by Mr. Semnani upon his reasonable understanding and belief that if he did not so declare to Anderson that said amounts would be paid and that if he did not in fact pay said amounts, that Anderson would use his official position and capacity as an officer and employee of the State of Utah, and the resources available to him incident to his employment, to deny Mr. Semnani a fair consideration, review, hearing and determination on Mr. Semnani's application and thereby assure the absence of a fair consideration, review, hearing and determination which would predictably cause the application to not be granted and the subject waste disposal facility not licensed or, if licensed, an unfair and biased oversight and supervision of the operation of the facility under said license. The claims of Plaintiffs are barred by the doctrine of duress in the inducement of the subject statements and payments.

EIGHTH DEFENSE

(Waiver)

44. By way of a separate affirmative defense to the claims enumerated in the Complaint, the Defendants do reallege the allegations of their Sixth Defense. The said conduct of Larry Anderson was illegal and contrary to law and known by him to have been illegal and contrary to law, and the claims of the Plaintiffs therefore are barred by the doctrine of waiver.

NINTH DEFENSE

(Statute of Frauds)

45. The supposed verbal agreement, as alleged by the Plaintiffs, was for the payment of monies for a term in excess of one year and constitutes an agreement that by its terms was not to be performed within one year from the making of the agreement and, therefore, is barred by the provisions of Section 25-5-4(1), Utah Code Annotated.

TENTH DEFENSE

(Absence of Consideration)

46. No service, assistance or information was provided by Lavicka, Inc. either pursuant or in response to the supposed agreement as alleged by the Plaintiffs, and any information and service as may have been provided by Larry Anderson was limited to that which Anderson was required by law to provide to the general public within the scope of his official duties as an officer and employee of the State of Utah and was not provided pursuant to any alleged contract with either of the Defendants. There is an absence of consideration for the supposed contract as alleged by Plaintiffs.

ELEVENTH DEFENSE

(Directed at Second and Third Causes of Action --
No Implied Contract)

47. By way of an affirmative defense to the allegations of the Second and Third Causes of Action of the Complaint, Defendants allege that no services were provided to or received by them from either of the Plaintiffs and that there was no contract, implied either in law or in fact, that will support either a claim for *quantum meruit* or unjust enrichment.

WHEREFORE, Defendants pray that the Complaint of Plaintiffs be dismissed, with prejudice, and that Defendants be awarded relief pursuant to the prayer of their Counterclaim herein.

COUNTERCLAIM

By way of counterclaim, the Defendants, Khosrow B. Semnani ("Mr. Semnani") and Envirocare of Utah ("Envirocare"), complain of the Plaintiffs, Larry F. Anderson ("Anderson") and Lavicka, Inc. ("Lavicka"), and allege:

1. Mr. Semnani is, and at all times herein mentioned was, a resident of Salt Lake County, Utah.

2. Anderson is currently a resident of the State of Nevada, but resided in Utah County, State of Utah, between 1986 and 1996.

3. Lavicka is a Utah corporation with its principal place of business in Utah County, Utah.

4. During the period between 1986 and 1994, Anderson was an officer and employee of the State of Utah and served as a director of the Utah State Bureau of Radiation Control.

5. In 1987, Mr. Semnani submitted an application to the Utah State Bureau of Radiation Control to obtain licensing and permitting for the establishment and operation of a radioactive waste disposal facility at Clive, Tooele County, Utah.

6. On a date between mid-1987 and early 1988 and while Mr. Semnani's application was before the Utah State Bureau of Radiation Control, Anderson came to Mr. Semnani's office, both unexpected and unannounced. There and on that occasion, Anderson requested that Mr. Semnani make payment to him of an amount of $100,000.00 and, in addition, an amount of $5.00 per ton for all waste material received at the disposal facility if and when licensing of the facility was obtained. Previous to this occasion, Anderson had requested that Mr. Semnani loan to Anderson amounts of money which Anderson represented were to be used for the medical expenses of Anderson's mother, then living in the State of Idaho. Semnani had loaned the amounts to Anderson, pursuant to a verbal agreement, as Anderson had requested.

7. At the time that Anderson made the loan requests of Mr. Semnani and at the time of Anderson's request for the $100,000.00 and the payment of $5.00 per ton for waste material, Mr. Semnani's requests and submissions were pending before the Utah State Bureau of Radiation Control. Mr. Semnani understood that the requests made of him were wrongful. Notwithstanding, he recognized that Anderson's official position with the State of Utah and the nature of his duties and responsibilities regarding the Bureau's review and determination

of Mr. Semnani's requests and submissions, and the subsequent supervision and oversight by the Bureau of any disposal facility as licensed and permitted by the Bureau, made predictable that Anderson would unduly encumber, if not prejudice, the review and determination of the pending application, perhaps preclude a fair and unbiased review and determination and further prejudice Mr. Semnani's dealings with the Bureau with regard to the Bureau's supervision and oversight of the facility, if licensed and approved.

8. At the time of Anderson's demand for monies from Mr. Semnani, Mr. Semnani further believed that, if he reported the demand to Anderson's superiors or to any other authority, Anderson would deny that the demand had been made and would encumber and prejudice Mr. Semnani's application and efforts with the Utah State Bureau of Radiation Control. Mr. Semnani believed that Anderson intended that Mr. Semnani should understand that such application and efforts would be encumbered and prejudiced if the requested amounts were not paid. In reliance upon that understanding and in response to the duress imposed by Anderson's official position, Mr. Semnani told Anderson that he would pay the $100,000.00 and would make a payment on a percentage basis on waste delivered to the facility.

9. Mr. Semnani made payment to Anderson of the $100,000.00 requested by Anderson and, on a number of occasions over subsequent years, made payments to Anderson in varying amounts. Mr. Semnani believes that the last payment of monies to Anderson was made in January of 1995.

10. In 1989, Anderson advised Mr. Semnani that he was interested in acquiring a residential condominium unit and requested Mr. Semnani to purchase the condominium for

Anderson. Mr. Semnani was reluctant to deliver to Anderson the sizable amount which the value of the condominium unit would have represented. Consequently, he persuaded Anderson to permit the condominium unit to be purchased by Mr. Semnani and retained in his name, but with Anderson to have virtually an unrestricted use of the condominium unit.

11. Anderson advised Mr. Semnani that the condominium unit could be purchased and retained in Mr. Semnani's name, conditional upon Anderson being given a deed to the condominium unit which Anderson would hold and not record until such date as was mutually agreeable. Mr. Semnani requested, and Anderson agreed, to provide Mr. Semnani with an unsecured promissory note representing that Anderson would repay to Mr. Semnani the amount which Mr. Semnani paid for the purchase of the condominium unit.

12. On October 27, 1989, Mr. Semnani executed and delivered to Anderson a quit-claim deed therein describing the condominium unit, commonly known as 2468 Fairway Village, Park City, Utah, Summit County, Utah ("the Condominium Property") and more particularly described as follows:

> LOT 14, THE FAIRWAY VILLAGE NO. 2 SUBDIVISION, A PLANNED UNIT DEVELOPMENT, AS THE SAME IS IDENTIFIED IN THE RECORD OF SURVEY MAP RECORDED IN SUMMIT COUNTY, UTAH, AS ENTRY NO. 180617, AND IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND BY-LAWS OF THE FAIRWAY VILLAGE NO 2 SUBDIVISION, A PLANNED UNIT DEVELOPMENT AS ENTRY NO. 180616, IN BOOK M190, AT PAGE 52, OF THE OFFICIAL RECORDS. TOGETHER WITH ANY EXCLUSIVE RIGHT AND EASEMENT OF USE IN ANY LIMITED COMMON PARKING STRUCTURE IDENTIFIED WITH THE LOT ABOVE REFERRED AND TOGETHER WITH A RIGHT AND EASEMENT USE AND ENJOYMENT IN AND TO THE COMMON AREAS DESCRIBED ON THE PLAT, AND AS PROVIDED FOR, IN SAID DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.

Anderson, without the knowledge of Mr. Semnani, recorded the deed on December 1, 1994, but represented to the office of the Summit County, Utah, Recorder that the deed was being

recorded at the request of Mr. Semnani's company, S.K. Hart Engineering. Said representation was false.

13. On the same said date of October 27, 1989, Anderson executed and delivered to Mr. Semnani a promissory note in the face amount of $295,090.79, declaring that Anderson would make payment to Mr. Semnani of said amount, together with interest accruing at the rate of 11 percent per annum from November 1, 1989 until paid, and with the entire balance of principal and interest to be paid on November 1, 1990.

14. On December 14, 1989, Anderson executed and delivered to Mr. Semnani a second promissory note, declaring that he would pay to Mr. Semnani on or before July 30, 1990, the sum of $12,900.00, together with interest thereon at the rate of 10½ per annum.

15. The two promissory notes were requested by Mr. Semnani to evidence amounts paid and/or which he had told Anderson he would pay. Mr. Semnani understood that, although Anderson had executed and delivered said promissory notes, Anderson had no intention of making payment of the same or returning to Mr. Semnani the amounts previously received from him.

16. Anderson's employment by the State of Utah terminated in 1993. Following said termination, Anderson continued to come to Mr. Semnani, demanding that Mr. Semnani make payments to him. In response to those demands, and with the desire that Anderson not reveal to others that Anderson had been demanding and receiving payment from Mr. Semnani, Mr. Semnani continued to pay to Anderson various amounts from time to time. Mr. Semnani hoped that Anderson would eventually abandon his felonious practice of extorting monies from Mr. Semnani.

17. In January of 1995, Mr. Semnani advised Anderson that he would no longer pay any amounts to Anderson. Anderson responded that he had an attorney who would file suit against Mr. Semnani and that such suit would constitute a substantial embarrassment to Mr. Semnani which Mr. Semnani should want to avoid. Anderson told Mr. Semnani that he would make no further demands upon Mr. Semnani if he would pay him an amount of five million dollars. Mr. Semnani continued his refusal to pay further amounts, and no additional amounts have been paid since January 1995.

18. The total amounts paid by Mr. Semnani to Anderson, including the value of the condominium unit now held by Anderson and which Anderson received as a consequence of his ongoing felonious practice of extortion, totals not less than $600,000.00.

19. On May 16, 1996, Anderson was represented by Mr. James C. Haskins, attorney at law. Anderson and Lavicka caused said attorney on said date to prepare a letter addressed to Mr. Semnani's attorney of record and to place said letter in the United States mails addressed to said attorney. A copy of said letter is attached as Exhibit "A" to this Counterclaim and by this reference incorporated herein. The concluding paragraph of said letter reads:

> I would request that you inform your client of his options, so that he might govern himself and the course of action on these issues. I would hope that you would explain the impact of the formal suit, regardless of any judicial outcome.

Accompanying said letter was a copy of the Complaint which the Plaintiffs have now filed in this action.

20. Said Complaint and letter of May 16, 1996 constituted an additional act of extortion and was part and parcel of Anderson's ongoing felonious practice of extortion of monies from Mr. Semnani.

FIRST CLAIM FOR RELIEF

(By Mr. Semnani Against Anderson for Wrongful Conversion)

21. Defendant, Mr. Semnani, realleges and incorporates by refernce the allegations of paragraphs 1 through 20 of his Counterclaim.

22. Anderson has received the monies and property demanded of and paid by Mr. Semnani and has continued to retain the same. Anderson was not entitled to said money and property, all of which belonged to and constituted the property of Mr. Semnani. Anderson has refused to return to Mr. Semnani the money and property received from him, and has declared and continues to declare that he is entitled to retain the same and, pursuant to his Complaint in this action, demands additional amounts to be paid by Mr. Semnani. Anderson intentionally received and continues to retain said monies and property, without lawful justification and with the intention to exercise dominion and control thereof, and to continue to deprive Mr. Semnani of its use, possession and value. Mr. Semnani demands that said monies and property be forthwith returned to him.

23. As a consequence of the wrongful conduct of Anderson, Mr. Semnani has sustained damages in an amount not less than $600,000.00, together with interest thereon accruing at the rate of 10 percent per annum from date received by Anderson.

24. The demand by Anderson for the payment of said monies and delivery of said property and his refusal to pay over and return the same to Mr. Semnani was and is done

willfully and maliciously, with a reckless disregard for the rights, entitlement and interest of Mr. Semnani in and to said monies and property and was intended to damage Mr. Semnani, for which reason Mr. Semnani is entitled to an award of punitive damages against Anderson in the amount of $1.8 million, in addition to the actual damages sustained as a result of said wrongful conversion.

SECOND CLAIM FOR RELIEF

(By Both Defendants Against Both Plaintiffs For Attorney Fees)

25. Defendants reallege and incorporate the allegations of paragraphs 1 through 20 of their Counterclaim.

26. Defendants allege, against each Plaintiff, that the Complaint filed by said Plaintiffs in this action constitutes an action within the contemplation of and precluded by Section 76-6-406(2)(e), Utah Code Ann., and is a felonious attempt to extort monies from said Defendants and that the said Complaint and the claims therein made against these Defendants is without merit and was neither brought nor asserted against these Defendants in good faith, and that Defendants should be awarded, pursuant to Section 78-27-56, Utah Code Ann. and against said Plaintiffs, reasonable attorney fees incurred by Defendants in defending against the Complaint.

WHEREFORE, Defendants pray for judgment against the Plaintiffs as follows:

1. On his First Claim for Relief, Khosrow B. Semnani prays for judgment against Larry F. Anderson for the total amount of monies paid by Mr. Semnani to Anderson, said amount to be determined by the Court, but which amount is not less than $250,000.00, and for an order of the Court requiring Anderson to disgorge, reconvey and redeliver to Mr.

Semnani the condominium unit and other property received from Mr. Semnani and for a judgment in an amount equal to the fair market value of such property as not disgorged and reconveyed, together with interest on all said amounts accruing at the rate of ten percent per annum from date received by Anderson. Further, for punitive damages in an amount of $1.8 million and costs of court and such further relief as the Court may deem proper in the premises.

2. On their Second Claim for Relief, Defendants pray for judgment against the Plaintiffs in the amount of attorney fees incurred by Defendants in defending against the Complaint in this action, for costs of court and such further relief as the Court may deem proper in the premises.

DATED this 1st day of November, 1996.

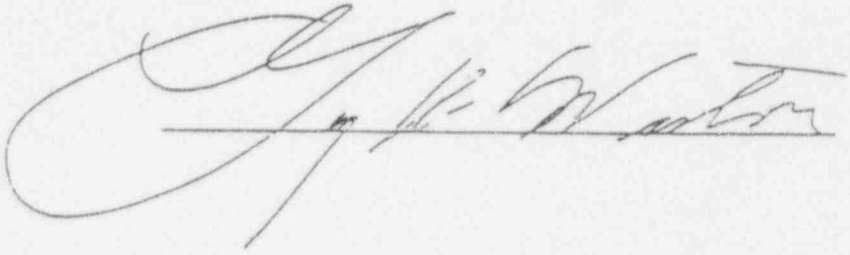
NIELSEN & SENIOR

Gary A. Weston
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November, 1996, I did cause a true and correct copy of the foregoing ANSWER AND COUNTERCLAIM to be mailed, United States mails, postage prepaid, addressed to the following:

James C. Haskins, Esq.
Haskins & Associates
5085 South State Street
Murray, Utah 84107-4840



HASKINS & ASSOCIATES

James C. Haskins

Attorney At Law

5085 South State Street
Murray, Utah 84107
Telephone: (801) 268-3994
Facsimile: (801) 268-4031

May 16, 1996

Gary A. Weston, esq.
Nielson & Senior
Suite 1100
60 East South Temple
Salt Lake City, UT 84111

Re: Anderson et al v. Semnani et al

Dear Gary:

Please find enclosed the final draft of the complaint which our client has authorized us to file. As you can see, this complaint embodies the issues which have become the central focus of our client's repeated demands against Mr. Semnani and Envirocare. As you can see from the information contained herein, we believe that Mr. Anderson has an actionable case. We would seek to resolve this matter between our clients through some kind of meaningful input from your client as to his intentions or a proposal which would be mutually beneficial.

If we can not otherwise resolve the issues, I have been authorized to proceed with the Complaint which I will file in the Third District Court not later than June 3, 1996. The sole reason that this complaint has not been filed at this time is to allow a the good faith effort to otherwise finalize an understanding. I have informed my client of the rigors and inherent public nature of a demanding suit. He has prepared himself and engaged this office to respond to level necessary to bring your client to finalize the outstanding issues.

I would request that you inform your client of his options, so that he might govern himself and the course of action on these issues. I would hope that you would explain the impact of the formal suit, regardless of any judicial outcome.

I will proceed absent your input as set forth above.

Sincerely,

James C. Haskins,
Attorney for Larry Anderson

EXHIBIT "A"

Gary A. Weston, USB #3435
NIELSEN & SENIOR
Attorneys for Defendants
1100 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone (801) 532-1900

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

LARRY F. ANDERSON, an individual, and LAVICKA INC., a Utah corporation, Plaintiffs, v. KHOSROW B. SEMNANI, an individual, and ENVIROCARE OF UTAH, INC., a Utah corporation. Defendants.	NOTICE OF APPEARANCE FOR DEFENDANTS AND ACCEPTANCE OF SERVICE OF PROCESS Civil No. 960907271 Judge Frank G. Noel

Gary A. Weston of the firm of Nielsen & Senior does hereby enter his appearance as attorney for the Defendants in the herein action and, being duly authorized by them to accept service of process on their behalf, hereby accepts service of the Summons and Complaint in the above-captioned action, and agrees that said service shall have the same force and effect as if said Defendants had been served with process in accordance with the Utah Rules of Civil Procedure. Defendants agree to answer, plead, or otherwise respond, as provided in said Rules.

James C. Haskins (1406)
HASKINS & ASSOCIATES
5085 South State Street
Murray, Utah 84107-4840
Telephone: (801) 268-3994
Facsimile: (801) 268-4031

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

LARRY F. ANDERSON, an individual, and LAVICKA INC., a Utah corporation, Plaintiffs v. KHOSROW B. SEMNANI, an individual, and ENVIROCARE OF UTAH, INC., a Utah corporation, Defendants	COMPLAINT Civil Number 960907221 CN JUDGE FRANK G. NOEL

COME NOW, the Plaintiffs, by and through their counsel, James C. Haskins, and allege the following claims as against the Defendants as follows:

JURISDICTION

1. The individual Plaintiff, Larry F. Anderson (hereinafter "Anderson"), although presently residing outside of the State of Utah, did reside in Utah County during the course of the activities herein alleged, and by filing this action in the above-entitled court does hereby submit to the jurisdiction of this court.

2. Plaintiff Lavicka, Inc., is a Utah corporation doing business in the state of Utah with its principal place of business in Utah County.

3. Defendant Khosrow B. Semnani (hereinafter "Semnani") resides in Salt Lake County, State of Utah,

4. Envirocare of Utah Inc., the corporate defendant, has its principal place of business in Salt Lake County, State of Utah.

5. The agreement set forth herein was created in Salt Lake County, with its provisions to be fulfilled in Salt Lake County.

6. The matter in controversy exceeds $20,000.

7. This matter is properly before the jurisdiction of this Court.

RECITAL OF FACTS

8. The Plaintiffs reallege the allegation set forth in Paragraphs 1 through 7 as though set forth herein in their entirety.

9. On or about 1987, Anderson who was working at the time with the Utah State Division of Environmental Quality, recognized the need for a low level radioactive waste site in the state of Utah.

10. Upon informal advice from members of the Utah State Attorney General's office, Anderson incorporated Lavicka, Inc., the corporate plaintiff on or about February 2, 1987 for the express purpose of developing a plan for siting such facility in the State of Utah.

11. During the course of the next few months, Anderson approached the Defendant Semnani to inquiry of his interest to undertake the siting procedures.

12. Anderson approached Semnani because the two of them had become familiar through Semnani's involvement previously in seeking a site to process industrial waste.

13. Shortly after the initial conversation, the parties agreed to enter into a business relationship wherein Anderson would provide Semnani site application and consulting services through the corporate plaintiff Lavicka, Inc.

14. Under the terms of the agreement, Semnani agreed to pay a consulting fee of $100,000, in advance, and an ongoing remuneration of five percent (5%) of all direct and indirect revenues that Semnani would realize from such a facility, if siting was successful.

15. Anderson agreed to provide Semnani with such expertise as was necessary for the application process, together with Anderson's business plan as to the operations of such a facility.

16. Over the next several months, Plaintiff provided such expertise and information as was necessary for Semnani to create a formal application for such a site and facility.

16. On or before December 1987, Semnani caused the corporate Defendant to be organized for the express purpose of filing a formal application for a license to operate a facility designed to receive and process naturally occurring radioactive materials ("NORM license").

17. The corporate defendant submitted the formal application, which for the greater part had been completed through the information and services of the Plaintiffs, as had been agreed by the parties.

18. In February 1988, Envirocare was granted a NORM license to operate the waste facility and immediately commenced operations by receiving a contract to process waste materials from the Environmental Protection Agency, Denver, Colorado

19. Again, the agreed consulting services allowed Envirocare to know about, and appropriately solicit the contract from Denver.

20. During the course of the application process and up to the grant of the license, Defendants paid only a portion of the originally agreed initial advance compensation.

21. During the course of the next eight years, Defendants have paid only portions of the agreed fees during the operations of the facility.

22. Such payments have been in the form of cash, real property, gold coins and other accounts.

23 In the same period of time, Defendants have received over $125 million in revenues from the operations of the facility.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT

24. Plaintiffs reallege the allegation set forth in Paragraphs 1 through 23 as though set forth herein in their entirety.

25 The parties entered into a binding agreement for the services of the Plaintiff Anderson

26. Although Anderson made several attempts to embody this agreement in writing, Defendant Semnani refused to execute such written agreement, not because there was no agreement between the parties, but for the express reason that he did not desire to have any paperwork which could later be held against him or his operation.

27. The agreement between the parties called for the specialized knowledge and information held by the Plaintiff, which the plaintiff did in fact impart to the defendants in reliance upon the Defendants' promise to pay the agreed compensation.

28. Defendants used such information, skill and knowledge of the Plaintiff to receive the site license and continue to this day to operate such site commercially.

29. Without the express involvement of the Plaintiff, Defendants would not have been able to create such business operation.

30. The parties' agreement included mutual promises, one for the rendering of knowledge and skill for the completion of a specific task, the other for payment for such knowledge and skill.

31. Defendants have not denied the existence of such contract, rather they have been delinquent in the payment of agreed sums.

32. Plaintiffs have done nothing to cause such delays in payment.

33. The non-payment of agreed sums by the Defendants have breached the terms of the agreement between the parties.

34. The Plaintiffs have been damaged because of such breach.

SECOND CAUSE OF ACTION
QUANTUM MERUIT - "QUASI-CONTRACT/ UNJUST ENRICHMENT"

24. Plaintiffs reallege the allegation set forth in Paragraphs 1 through 34 as though set forth herein in their entirety.

25. Plaintiffs have provided information and specialized knowledge to the Defendants for the specific purpose of receiving a license for a site to process waste materials as hereinbefore set forth.

26. Defendants have received the benefit of such knowledge and information to receive the NORM licensing as contemplated by the parties.

27. Defendants have received revenues in excess of $125 million from the operation of such sited facility.

28. Under the circumstances it would be unjust for the Defendants to have such benefit of information and knowledge without adequate compensation to the Plaintiffs.

29. Plaintiffs' knowledge is unique in nature, and therefore has value to the extent utilized by the Defendants to receive revenues in excess of $125 million.

30. Such value should not be less than five percent (5%) of such revenues.

THIRD CAUSE OF ACTION
QUANTUM MERUIT - "CONTRACT IMPLIED IN FACT"

31. Plaintiffs reallege the allegation set forth in Paragraphs 1 through 30 as though set forth herein in their entirety.

30. The Plaintiffs have acted in good faith towards the Defendants throughout the period of time from the first date of discussion through the date of this Complaint.

31. Plaintiffs have performed the work which was requested of them by the Defendants, to-wit: provided such information and knowledge as was necessary for the grant of the NORM license.

32. In accordance with the conversations and terms of the understanding between the parties, the Plaintiffs expected compensation in the amount of $100,000 in advance and five percent (5%) of the on-going revenues of the Defendants for the facility.

33. The Defendants knew that Plaintiffs expected the compensation, and acknowledged that fact by paying a portion thereof during the course of the last eight years.

34. Under the circumstances the Plaintiffs should receive the expected and agreed amounts.

FOURTH CAUSE OF ACTION
FRAUD

35. Plaintiffs reallege the allegation set forth in Paragraphs 1 through 34 as though set forth herein in their entirety.

36. Defendant Semnani, on more than one occasion prior to the work done by Anderson, made representations to Plaintiffs that he would pay the sum of $100,000 plus five percent (5%) of the revenues of the facility developed through the efforts of Plaintiffs.

37. On information and belief at this time, and further evidenced by Defendants lack of payments to date, Plaintiffs allege that such representations, at the time they were made were false, that Defendant Semnani had no intention to fulfill the promised representations, but made such representations for the sole purpose to induce Anderson to provide the skill and knowledge.

38. Defendant Semnani knew such representation was false, or in the least made the representation with recklessness as to his true commitment to pay.

39. Plaintiff Anderson reasonably and innocently relied on the representations made by Semnani, provided the requisite information, knowledge and skill, and in so doing foreclosed for him any other possible avenues to develop a site, inasmuch as a license for a facility of this type would be granted to another only after the showing there was still an unfilled need.

40. The knowledge and skill which was provided by Anderson, after he relied on Semnani's representations, did in fact result in the grant of the NORM license to Envirocare.

41. Because of the actions of the Defendants, Anderson has not received the promised benefit of the represented amounts.

WHEREFORE, the Plaintiffs pray the Court for judgement as against the Defendants, jointly and severally as follows:

1. For an amount equal to not less than $5,000,000, representing the unpaid compensation agreed by the parties, such actual and final amount to be determined at time of trial; Together with an order directing the Defendants to continue with such compensation for the Plaintiffs as the Defendants realize revenues; or,

2. For an amount equal to not less than $5,000,000, representing the value of the services which Plaintiffs rendered to Defendants, who will remain unjustly enriched, unless this Court equitably intervenes; Together with an order directing the Defendants to continue with such compensation for the Plaintiffs as the Defendants realize revenues. Such actual and final value shall be established at time of trial; or,

3. For an amount equal to not less than $5,000,00 representing the amount agreed for the services of the Plaintiffs as implied through the actions of the parties; Together with an order directing the Defendants to continue with such compensation for the Plaintiffs as the Defendants realize revenues. Such actual and final amount to be established at time of trial; or,

4. For an amount equal to not less than $5,000,000 representing the damages incurred by the Plaintiffs by the fraudulent behavior of the Defendants;

5. Together with an amount equal to $2,500,000 representing exemplary and punitive damages for the egregious actions of the Defendants;

6. Together with interest on such amounts, both before and after judgment, as the Court deems just;

7. Together with the costs and expenses incurred herewith; and,

8. Such other relief as the Court may deem just and proper in the circumstances.

Dated this 12 day of October, 1996

James C. Haskins,
Attorney for Plaintiffs

Attachment 2
Filings

HASKINS & ASSOCIATES
James C. Haskins
Attorney At Law

5085 South State Street
Murray, Utah 84107
Telephone: (801) 268-3994
Facsimile: (801) 268-4031

May 16, 1996

Gary A. Weston, esq.
Nielson & Senior
Suite 1100
60 East South Temple
Salt Lake City, UT 84111

Re: Anderson et al v. Semnani et al

Dear Gary:

Please find enclosed the final draft of the complaint which our client has authorized us to file. As you can see, this complaint embodies the issues which have become the central focus of our client's repeated demands against Mr. Semnani and Envirocare. As you can see from the information contained herein, we believe that Mr. Anderson has an actionable case. We would seek to resolve this matter between our clients through some kind of meaningful input from your client as to his intentions or a proposal which would be mutually beneficial.

If we can not otherwise resolve the issues, I have been authorized to proceed with the Complaint which I will file in the Third District Court not later than June 3, 1996. The sole reason that this complaint has not been filed at this time is to allow a the good faith effort to otherwise finalize an understanding. I have informed my client of the rigors and inherent public nature of a demanding suit. He has prepared himself and engaged this office to respond to level necessary to bring your client to finalize the outstanding issues.

I would request that you inform your client of his options, so that he might govern himself and the course of action on these issues. I would hope that you would explain the impact of the formal suit, regardless of any judicial outcome.

I will proceed absent your input as set forth above.

Sincerely,

James C. Haskins,
Attorney for Larry Anderson

EXHIBIT "A"

Attachment 1
News Stories

"Copyrighted Records"

James C. Haskins (1406)
HASKINS & ASSOCIATES
5085 South State Street
Murray, Utah 84107-4840
Telephone: (801) 268-3994
Facsimile: (801) 268-4031

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

LARRY F. ANDERSON, an individual, and LAVICKA INC., a Utah corporation,

Plaintiffs

v.

KHOSROW B. SEMNANI, an individual, and ENVIROCARE OF UTAH, INC., a Utah corporation,

Defendants

COMPLAINT

Civil Number 960907211 CN

COME NOW, the Plaintiffs, by and through their counsel, James C. Haskins, and allege the following claims as against the Defendants as follows:

JURISDICTION

1. The individual Plaintiff, Larry F. Anderson (hereinafter "Anderson"), although presently residing outside of the State of Utah, did reside in Utah County during the course of the activities herein alleged, and by filing this action in the above-entitled court does hereby submit to the jurisdiction of this court

2. Plaintiff Lavicka, Inc., is a Utah corporation doing business in the state of Utah with its principal place of business in Utah County.

3. Defendant Khosrow B. Semnani (hereinafter "Semnani") resides in Salt Lake County, State of Utah.

4. Envirocare of Utah Inc., the corporate defendant, has its principal place of business in Salt Lake County, State of Utah.

5. The agreement set forth herein was created in Salt Lake County, with its provisions to be fulfilled in Salt Lake County.

6. The matter in controversy exceeds $20,000.

7. This matter is properly before the jurisdiction of this Court.

RECITAL OF FACTS

8. The Plaintiffs reallege the allegation set forth in Paragraphs 1 through 7 as though set forth herein in their entirety.

9. On or about 1987, Anderson who was working at the time with the Utah State Division of Environmental Quality, recognized the need for a low level radioactive waste site in the state of Utah.

10. Upon informal advice from members of the Utah State Attorney General's office, Anderson incorporated Lavicka, Inc., the corporate plaintiff on or about February 2, 1987 for the express purpose of developing a plan for siting such facility in the State of Utah.

11. During the course of the next few months, Anderson approached the Defendant Semnani to inquiry of his interest to undertake the siting procedures.

12. Anderson approached Semnani because the two of them had become familiar through Semnani's involvement previously in seeking a site to process industrial waste.

13. Shortly after the initial conversation, the parties agreed to enter into a business relationship wherein Anderson would provide Semnani site application and consulting services through the corporate plaintiff Lavicka, Inc.

14. Under the terms of the agreement, Semnani agreed to pay a consulting fee of $100,000, in advance, and an ongoing remuneration of five percent (5%) of all direct and indirect revenues that Semnani would realize from such a facility, if siting was successful.

15. Anderson agreed to provide Semnani with such expertise as was necessary for the application process, together with Anderson's business plan as to the operations of such a facility.

16. Over the next several months, Plaintiff provided such expertise and information as was necessary for Semnani to create a formal application for such a site and facility.

16. On or before December 1987, Semnani caused the corporate Defendant to be organized for the express purpose of filing a formal application for a license to operate a facility designed to receive and process naturally occurring radioactive materials ("NORM license").

17. The corporate defendant submitted the formal application, which for the greater part had been completed through the information and services of the Plaintiffs, as had been agreed by the parties.

18. In February 1988, Envirocare was granted a NORM license to operate the waste facility and immediately commenced operations by receiving a contract to process waste materials from the Environmental Protection Agency, Denver, Colorado.

19. Again, the agreed consulting services allowed Envirocare to know about, and appropriately solicit the contract from Denver.

20. During the course of the application process and up to the grant of the license, Defendants paid only a portion of the originally agreed initial advance compensation.

21. During the course of the next eight years, Defendants have paid only portions of the agreed fees during the operations of the facility.

22. Such payments have been in the form of cash, real property, gold coins and other accounts

23 In the same period of time, Defendants have received over $125 million in revenues from the operations of the facility.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT

24 Plaintiffs reallege the allegation set forth in Paragraphs 1 through 23 as though set forth herein in their entirety.

25 The parties entered into a binding agreement for the services of the Plaintiff Anderson

26. Although Anderson made several attempts to embody this agreement in writing, Defendant Semnani refused to execute such written agreement, not because there was no agreement between the parties, but for the express reason that he did not desire to have any paperwork which could later be held against him or his operation

27. The agreement between the parties called for the specialized knowledge and information held by the Plaintiff, which the plaintiff did in fact impart to the defendants in reliance upon the Defendants' promise to pay the agreed compensation.

28. Defendants used such information, skill and knowledge of the Plaintiff to receive the site license and continue to this day to operate such site commercially.

29. Without the express involvement of the Plaintiff, Defendants would not have been able to create such business operation.

30. The parties' agreement included mutual promises, one for the rendering of knowledge and skill for the completion of a specific task, the other for payment for such knowledge and skill

31. Defendants have not denied the existence of such contract, rather they have been delinquent in the payment of agreed sums.

32. Plaintiffs have done nothing to cause such delays in payment.

33. The non-payment of agreed sums by the Defendants have breached the terms of the agreement between the parties.

34. The Plaintiffs have been damaged because of such breach.

SECOND CAUSE OF ACTION
QUANTUM MERUIT - "QUASI -CONTRACT/ UNJUST ENRICHMENT"

24. Plaintiffs reallege the allegation set forth in Paragraphs 1 through 34 as though set forth herein in their entirety.

25. Plaintiffs have provided information and specialized knowledge to the Defendants for the specific purpose of receiving a license for a site to process waste materials as hereinbefore set forth.

26. Defendants have received the benefit of such knowledge and information to receive the NORM licensing as contemplated by the parties.

27. Defendants have received revenues in excess of $125 million from the operation of such sited facility.

28. Under the circumstances it would be unjust for the Defendants to have such benefit of information and knowledge without adequate compensation to the Plaintiffs.

29. Plaintiffs' knowledge is unique in nature, and therefore has value to the extent utilized by the Defendants to receive revenues in excess of $125 million.

30. Such value should not be less than five percent (5%) of such revenues.

THIRD CAUSE OF ACTION
QUANTUM MERUIT - "CONTRACT IMPLIED IN FACT"

31. Plaintiffs reallege the allegation set forth in Paragraphs 1 through 30 as though set forth herein in their entirety.

30. The Plaintiffs have acted in good faith towards the Defendants throughout the period of time from the first date of discussion through the date of this Complaint.

31. Plaintiffs have performed the work which was requested of them by the Defendants, to-wit: provided such information and knowledge as was necessary for the grant of the NORM license.

32. In accordance with the conversations and terms of the understanding between the parties, the Plaintiffs expected compensation in the amount of $100,000 in advance and five percent (5%) of the on-going revenues of the Defendants for the facility.

33. The Defendants knew that Plaintiffs expected the compensation, and acknowledged that fact by paying a portion thereof during the course of the last eight years.

34. Under the circumstances the Plaintiffs should receive the expected and agreed amounts.

FOURTH CAUSE OF ACTION
FRAUD

35. Plaintiffs reallege the allegation set forth in Paragraphs 1 through 34 as though set forth herein in their entirety.

36. Defendant Semnani, on more than one occasion prior to the work done by Anderson, made representations to Plaintiffs that he would pay the sum of $100,000 plus five percent (5%) of the revenues of the facility developed through the efforts of Plaintiffs.

37. On information and belief at this time, and further evidenced by Defendants lack of payments to date, Plaintiffs allege that such representations, at the time they were made were false, that Defendant Semnani had no intention to fulfill the promised representations, but made such representations for the sole purpose to induce Anderson to provide the skill and knowledge.

38. Defendant Semnani knew such representation was false, or in the least made the representation with recklessness as to his true commitment to pay.

39. Plaintiff Anderson reasonably and innocently relied on the representations made by Semnani, provided the requisite information, knowledge and skill, and in so doing foreclosed for him any other possible avenues to develop a site, inasmuch as a license for a facility of this type would be granted to another only after the showing there was still an unfilled need.

40. The knowledge and skill which was provided by Anderson, after he relied on Semnani's representations, did in fact result in the grant of the NORM license to Envirocare.

41. Because of the actions of the Defendants, Anderson has not received the promised benefit of the represented amounts.

WHEREFORE, the Plaintiffs pray the Court for judgement as against the Defendants, jointly and severally as follows:

1. For an amount equal to not less than $5,000,000, representing the unpaid compensation agreed by the parties, such actual and final amount to be determined at time of trial; Together with an order directing the Defendants to continue with such compensation for the Plaintiffs as the Defendants realize revenues; or,

2. For an amount equal to not less than $5,000,000, representing the value of the services which Plaintiffs rendered to Defendants, who will remain unjustly enriched, unless this Court equitably intervenes; Together with an order directing the Defendants to continue with such compensation for the Plaintiffs as the Defendants realize revenues Such actual and final value shall be established at time of trial; or,

3. For an amount equal to not less than $5,000,00 representing the amount agreed for the services of the Plaintiffs as implied through the actions of the parties; Together with an order directing the Defendants to continue with such compensation for the Plaintiffs as the Defendants realize revenues. Such actual and final amount to be established at time of trial; or,

4. For an amount equal to not less than $5,000,000 representing the damages incurred by the Plaintiffs by the fraudulent behavior of the Defendants;

5. Together with an amount equal to $2,500,000 representing exemplary and punitive damages for the egregious actions of the Defendants;

6. Together with interest on such amounts, both before and after judgment, as the Court deems just;

7. Together with the costs and expenses incurred herewith; and,

8. Such other relief as the Court may deem just and proper in the circumstances.

Dated this 12 day of October, 1996

James C. Haskins,
Attorney for Plaintiffs

Gary A. Weston, USB #3435
NIELSEN & SENIOR
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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

LARRY F. ANDERSON, an individual, and LAVICKA INC., a Utah corporation, Plaintiffs, v. KHOSROW B. SEMNANI, an individual, and ENVIROCARE OF UTAH, INC., a Utah corporation, Defendants.	**ANSWER AND COUNTERCLAIM** Civil No. 960907271 Judge Frank G. Noel

Defendants, Khosrow B. Semnani and Envirocare of Utah, Inc., answer the Complaint of the Plaintiffs as follows:

FIRST DEFENSE

The Complaint fails to state a cause of action against Defendants upon which relief may be granted.

SECOND DEFENSE

1. Admit the allegations of paragraph 1.

2. Admit the allegations of paragraph 2.

3. Admit the allegations of paragraph 3.

4. Admit the allegations of paragraph 4.

5. Deny the allegations of paragraph 5 and affirmatively allege that neither of the Plaintiffs has had any agreement with either of the Defendants enforceable under principles of either law or equity.

6. Admit the allegations of paragraph 6.

7. Admit the allegations of paragraph 7.

8. Answering paragraph 8, Defendants incorporate herein their answers to paragraphs 1 through 7 of the Complaint.

9. Answering paragraph 9, Defendants admit that, in 1987, Larry Anderson was working as an employee of the Utah State Bureau of Radiation Control, but deny the balance of the allegations of said paragraph and do affirmatively allege that, at all times subject of the Complaint, Anderson was a director of said division and responsible by law for the fair and unbiased performance of his duties as director and as an officer and employee of the State of Utah.

10. Answering paragraph 10, Defendants admit that Larry Anderson incorporated Lavicka, Inc. on February 2, 1987 as a Utah corporation, but deny the balance of the allegations of said paragraph.

11. Answering paragraph 11, Defendants admit that Anderson did approach Khosrow Semnani, but deny the balance of the allegations of said paragraph, and do affirmatively allege that Anderson made no inquiry of Mr. Semnani, but rather requested Mr. Semnani to pay monies to Anderson.

12. Answering paragraph 12, Defendants admit that Khosrow Semnani became acquainted with Larry Anderson incident to Mr. Semnani's application to the State of Utah and the State of Utah's subsequent licensing and permitting of an industrial waste disposal facility at Grassy Mtn., Tooele County, Utah, but do deny the balance of the allegations of said paragraph.

13. Deny the allegations of paragraph 13 and do affirmatively allege that at no time did Larry Anderson advise Khosrow Semnani that either Anderson or Lavicka, Inc. would provide any services or assistance to Mr. Semnani or to Envirocare of Utah, Inc.

14. Deny the allegations of paragraph 14 and affirmatively allege that Larry Anderson requested Mr. Semnani to make payment to him, in advance, of an amount of $100,000.00 and to thereafter make payment to him of an amount equal to five percent of any revenues that Mr. Semnani would receive incident to the operation of a proposed radioactive waste disposal facility at Clive, Tooele County, Utah, for which Mr. Semnani was then seeking licensing and permitting from the Utah State Bureau of Radiation Control. Defendants further affirmatively allege that Mr. Semnani advised Anderson that Mr. Semnani would pay the amounts requested by Anderson.

15. Deny the allegations of paragraph 15 and affirmatively allege that Anderson did not offer to provide, nor did Mr. Semnani agree to receive, any services or assistance from Anderson or Lavicka, Inc.

16. Deny the allegations of paragraph 16.

16. [sic] Answering the second numbered paragraph 16 [sic], admit that Khosrow Semnani caused Envirocare of Utah, Inc. to be incorporated under the laws of the State of

Utah, but deny the balance of the allegations of said paragraph, and do affirmatively allege that Envirocare of Utah was incorporated on December 4, 1987.

17. Deny the allegations of paragraph 17.

18. Admit the allegations of paragraph 18, except insofar as it is therein alleged or implied that the first waste materials delivered to the waste disposal facility were from the Environmental Protection Agency, Denver, Colorado, which allegation or implication these Defendants do deny.

19. Deny the allegations of paragraph 19.

20. Answering paragraph 20, Defendants deny that there was any agreement to pay any of the amounts as alleged by Plaintiffs, and do deny that Envirocare of Utah has at any time made any payment of any amount to either of the Plaintiffs, but do affirmatively allege that Khosrow Semnani made payment to Larry Anderson of only a portion of the amount requested by Anderson, and do deny the balance of the allegations of said paragraph.

21. Answering paragraph 21, Defendants deny that there was any agreement to pay any of the amounts as alleged by Plaintiffs, and do deny that Envirocare of Utah has at any time made any payment of any amount to either of the Plaintiffs, but do affirmatively allege that Khosrow Semnani made payment to Larry Anderson of only a portion of the amount requested by Anderson, and do deny the balance of the allegations of said paragraph.

22. Answering paragraph 22, Defendants admit that the payments made by Khosrow Semnani have been in cash and on one occasion, real property and on one or more other occasions, gold coins, but do deny the balance of the allegations of said paragraph, and

do affirmatively allege that Envirocare of Utah has not made any payments of any amounts to either of the Plaintiffs.

23. Deny the allegations of paragraph 23.

24. Answering paragraph 24, the Defendants incorporate herein their answers to paragraphs 1 through 23 of the Complaint.

25. Deny the allegations of paragraph 25.

26. Deny the allegations of paragraph 26.

27. Deny the allegations of paragraph 27 and affirmatively allege that neither of the Plaintiffs had any agreement with either of the Defendants and that the responsibilities of Larry Anderson with regard to the Defendants was that same responsibility which Anderson owed to the general public pursuant to his official duties as an officer and employee of the State of Utah.

28. Deny the allegations of paragraph 28.

29. Deny the allegations of paragraph 29.

30. Deny the allegations of paragraph 30.

31. Deny the allegations of paragraph 31. Khosrow Semnani affirmatively alleges that he has not made payment of all of the amounts as requested and demanded by Larry Anderson.

32. Answering paragraph 32, Defendants admit that Larry Anderson has requested and demanded payment of the amounts which he has received from Khosrow Semnani and has demanded other and additional amounts which have not been paid by Mr. Semnani and that neither of the Plaintiffs have advised or directed Mr. Semnani not to make payments to

Anderson of the amounts demanded by Anderson, but do deny the balance of the allegations of said paragraph.

33. Deny the allegations of paragraph 33 and do affirmatively allege that there is not now nor has there ever been a valid agreement which either of the Plaintiffs had with either of the Defendants.

34. Deny the allegations of paragraph 34.

THIRD DEFENSE

24. [sic] Answering paragraph 24 [sic] of the Second Cause of Action of the Complaint, Defendants incorporate herein their answers to paragraphs 1 through 34 of the Complaint.

25. [sic] Deny the allegations of paragraph 25 [sic].

26. [sic] Deny the allegations of paragraph 26 [sic].

27. [sic] Deny the allegations of paragraph 27 [sic].

28. [sic] Deny the allegations of paragraph 28 [sic] and affirmatively allege that neither of the Plaintiffs have provided services or assistance to either of the Defendants.

29. [sic] Deny the allegations of paragraph 29 [sic].

30. [sic] Deny the allegations of paragraph 30 [sic] and affirmatively allege that Lavicka, Inc. has not provided anything of value to either of the Defendants and that the only value, if any, that may have been provided by Larry Anderson was limited to such information as he was required by law to provide to the general public relative to his duties as an officer and employee of the State of Utah.

FOURTH DEFENSE

31. [sic] Answering paragraph 31 [sic] of the Third Cause of Action of the Complaint, Defendants incorporate herein their answers to paragraph 1 through 30 [sic] of the Complaint.

30. [sic] Defendants deny the allegations of paragraph 30 [sic] of the Third Cause of Action. Khosrow Semnani does affirmatively allege that Larry Anderson has engaged in an ongoing felonious practice of extortion of monies from Mr. Semnani.

31. [sic] Deny the allegations of paragraph 31 [sic] and more particularly deny that either of the Defendants has requested any service or assistance from either of the Plaintiffs and that either of the Plaintiffs have provided any assistance or service to Defendants, excepting the providing of information by Larry Anderson as he was required to provide to the general public relative to his duties as an officer and employee of the State of Utah.

32. [sic] Answering paragraph 32 [sic], Defendants deny that either Plaintiff could reasonably have had any understanding that Plaintiffs were legally entitled to payment of any amounts from either of the Defendants. Khosrow Semnani does admit that Larry Anderson believed and expected that he would receive payment of the amounts which he illegally demanded and was extorting from Khosrow Semnani. Defendants deny the balance of the allegations of said paragraph.

33. [sic] Answering paragraph 33 [sic], Khosrow Semnani admits that Larry Anderson expected payment of the amounts which he was illegally demanding and extorting from Mr. Semnani and that Mr. Semnani paid a portion of the amounts demanded by Anderson over a

period of approximately eight years. Defendants deny the balance of the allegations of said paragraph.

34. [sic] Deny the allegations of paragraph 34 [sic].

FIFTH DEFENSE

35. Answering paragraph 35, Defendants incorporate herein their answers to paragraph 1 through paragraph 34 [sic] of the Third Cause of Action of the Complaint.

36. Envirocare of Utah, Inc. is without information sufficient to form a belief as to the truthfulness of the allegations of paragraph 36 and, therefore, does deny the same. Khosrow Semnani, in answer to the allegations of 36, admits that on more than one occasion he told Larry Anderson that he would make payment to Larry Anderson of the $100,000.00 demanded of him by Anderson and of the five percent of revenues as demanded of him by Anderson, but does deny the balance of the allegations of said paragraph and does affirmatively allege that the demands made by Anderson constituted a felonious extortion of monies from Mr. Semnani.

37. Envirocare of Utah, Inc. is without information sufficient to form a belief as to the truthfulness of the allegations of paragraph 37 of the Complaint and, therefore, does deny the same. Khosrow Semnani denies the allegations of paragraph 37 and does affirmatively allege that he did tell Larry Anderson that he would make payment of amounts demanded by Larry Anderson, but that the demands made by Anderson were illegal and unlawful and he was not entitled to rely on statements made to him by Mr. Semnani in response to said illegal and unlawful demands.

38. Envirocare of Utah, Inc. is without information sufficient to form a belief as to the truthfulness of the allegations of paragraph 38 and, therefore, does deny the same. Khosrow Semnani, in answer to the allegations of paragraph 38, admits that he intended to not make payment to Larry Anderson of all of the amounts which Anderson had illegally and unlawfully demanded, that it was his hope and purpose that Anderson would not continue to demand payment of said amounts and would cease and desist in his illegal and unlawful practices. Mr. Semnani denies the balance of the allegations of said paragraph.

39. Deny the allegations of paragraph 39.

40. Deny the allegations of paragraph 40.

41. Deny the allegations of paragraph 41.

SIXTH DEFENSE

(Illegality and Violation of Public Policy)

42. At the time that the subject requests and demands were made by Larry Anderson for payment from Khosrow Semnani, Anderson was an officer and employee of the State of Utah and a director of the Utah State Bureau of Radiation Control, which Bureau was further responsible for the processing, review and determination of Mr. Semnani's application for a license and permit for the operation of a waste disposal facility. Said Bureau was responsible for all supervision and oversight of said facility by the State of Utah in the event of and upon the granting of a license and permit. Anderson was duty bound as said officer and employee to provide accurate, fair and unbiased information and services to members of the general public whose business interests fell within the review, determination and supervision of the Utah State Bureau of Radiation Control. Anderson was precluded by law

from requesting, demanding or accepting payment for his services as a State officer and employee other than his salary as paid by the State of Utah. Anderson's requests and demands from Khosrow Semnani of the amounts subject of Plaintiffs' Complaint were illegal and against public policy and, consequently, his supposed and alleged contract with Mr. Semnani was illegal and void as against public policy, which illegality bars the claim of right and entitlement which he makes for payment from Mr. Semnani or Envirocare of Utah, Inc. In particular:

(a) Section 67-16-5, Utah Code Ann., prohibited Anderson from soliciting, receiving and accepting any compensation if he recently had been, then was, or in the future may be involved in any governmental function with respect to Mr. Semnani's application, or if said amount would tend to influence Anderson in the discharge of his official duties. Section 67-16-12, Utah Code Ann., provides that such solicitation and/or acceptance constitutes a felonious act.

(b) Section 67-16-6, Utah Code Ann., prohibited Anderson from receiving or agreeing to receive compensation for assisting any person or business entity in any transaction involving the Utah State Bureau of Radiation Control unless Anderson first files a sworn written statement with the head of the Bureau and with the Utah Attorney General identifying the specifics and purpose of such agreement or understanding. No such written statement was filed.

(c) Pursuant to § 76 6 406(2)(g), Utah Code Ann., Larry Anderson is guilty of theft by extortion by implicitly threatening, as a public official, to take an action or withhold an official action or cause such action or withholding of such action

regarding Mr. Semnani's application and regarding the supervision and oversight of the subject waste disposal facility absent Mr. Semnani making payment of the amounts demanded by Anderson. Pursuant to § 76-6-406(2)(c), he is so guilty for thereafter threatening to reveal that payments were made by Mr. Semnani.

SEVENTH DEFENSE

(Duress)

43. All statements which Khosrow Semnani made to Larry Anderson that Mr. Semnani would pay to Anderson the amounts demanded by Anderson and all amounts so paid by Mr. Semnani were statements made and amounts paid by Mr. Semnani upon his reasonable understanding and belief that if he did not so declare to Anderson that said amounts would be paid and that if he did not in fact pay said amounts, that Anderson would use his official position and capacity as an officer and employee of the State of Utah, and the resources available to him incident to his employment, to deny Mr. Semnani a fair consideration, review, hearing and determination on Mr. Semnani's application and thereby assure the absence of a fair consideration, review, hearing and determination which would predictably cause the application to not be granted and the subject waste disposal facility not licensed or, if licensed, an unfair and biased oversight and supervision of the operation of the facility under said license. The claims of Plaintiffs are barred by the doctrine of duress in the inducement of the subject statements and payments.

EIGHTH DEFENSE

(Waiver)

44. By way of a separate affirmative defense to the claims enumerated in the Complaint, the Defendants do reallege the allegations of their Sixth Defense. The said conduct of Larry Anderson was illegal and contrary to law and known by him to have been illegal and contrary to law, and the claims of the Plaintiffs therefore are barred by the doctrine of waiver.

NINTH DEFENSE

(Statute of Frauds)

45. The supposed verbal agreement, as alleged by the Plaintiffs, was for the payment of monies for a term in excess of one year and constitutes an agreement that by its terms was not to be performed within one year from the making of the agreement and, therefore, is barred by the provisions of Section 25-5-4(1). Utah Code Annotated.

TENTH DEFENSE

(Absence of Consideration)

46. No service, assistance or information was provided by Lavicka, Inc. either pursuant or in response to the supposed agreement as alleged by the Plaintiffs, and any information and service as may have been provided by Larry Anderson was limited to that which Anderson was required by law to provide to the general public within the scope of his official duties as an officer and employee of the State of Utah and was not provided pursuant to any alleged contract with either of the Defendants. There is an absence of consideration for the supposed contract as alleged by Plaintiffs.

ELEVENTH DEFENSE

(Directed at Second and Third Causes of Action -- No Implied Contract)

47. By way of an affirmative defense to the allegations of the Second and Third Causes of Action of the Complaint, Defendants allege that no services were provided to or received by them from either of the Plaintiffs and that there was no contract, implied either in law or in fact, that will support either a claim for *quantum meruit* or unjust enrichment.

WHEREFORE, Defendants pray that the Complaint of Plaintiffs be dismissed, with prejudice, and that Defendants be awarded relief pursuant to the prayer of their Counterclaim herein.

COUNTERCLAIM

By way of counterclaim, the Defendants, Khosrow B. Semnani ("Mr. Semnani") and Envirocare of Utah ("Envirocare"), complain of the Plaintiffs, Larry F. Anderson ("Anderson") and Lavicka, Inc. ("Lavicka"), and allege:

1. Mr. Semnani is, and at all times herein mentioned was, a resident of Salt Lake County, Utah.

2. Anderson is currently a resident of the State of Nevada, but resided in Utah County, State of Utah, between 1986 and 1996.

3. Lavicka is a Utah corporation with its principal place of business in Utah County, Utah.

4. During the period between 1986 and 1994, Anderson was an officer and employee of the State of Utah and served as a director of the Utah State Bureau of Radiation Control.

5. In 1987, Mr. Semnani submitted an application to the Utah State Bureau of Radiation Control to obtain licensing and permitting for the establishment and operation of a radioactive waste disposal facility at Clive, Tooele County, Utah.

6. On a date between mid-1987 and early 1988 and while Mr. Semnani's application was before the Utah State Bureau of Radiation Control, Anderson came to Mr. Semnani's office, both unexpected and unannounced. There and on that occasion, Anderson requested that Mr. Semnani make payment to him of an amount of $100,000.00 and, in addition, an amount of $5.00 per ton for all waste material received at the disposal facility if and when licensing of the facility was obtained. Previous to this occasion, Anderson had requested that Mr. Semnani loan to Anderson amounts of money which Anderson represented were to be used for the medical expenses of Anderson's mother, then living in the State of Idaho. Semnani had loaned the amounts to Anderson, pursuant to a verbal agreement, as Anderson had requested.

7. At the time that Anderson made the loan requests of Mr. Semnani and at the time of Anderson's request for the $100,000.00 and the payment of $5.00 per ton for waste material, Mr. Semnani's requests and submissions were pending before the Utah State Bureau of Radiation Control. Mr. Semnani understood that the requests made of him were wrongful. Notwithstanding, he recognized that Anderson's official position with the State of Utah and the nature of his duties and responsibilities regarding the Bureau's review and determination

of Mr. Semnani's requests and submissions, and the subsequent supervision and oversight by the Bureau of any disposal facility as licensed and permitted by the Bureau, made predictable that Anderson would unduly encumber, if not prejudice, the review and determination of the pending application, perhaps preclude a fair and unbiased review and determination and further prejudice Mr. Semnani's dealings with the Bureau with regard to the Bureau's supervision and oversight of the facility, if licensed and approved.

8. At the time of Anderson's demand for monies from Mr. Semnani, Mr. Semnani further believed that, if he reported the demand to Anderson's superiors or to any other authority, Anderson would deny that the demand had been made and would encumber and prejudice Mr. Semnani's application and efforts with the Utah State Bureau of Radiation Control. Mr. Semnani believed that Anderson intended that Mr. Semnani should understand that such application and efforts would be encumbered and prejudiced if the requested amounts were not paid. In reliance upon that understanding and in response to the duress imposed by Anderson's official position, Mr. Semnani told Anderson that he would pay the $100,000.00 and would make a payment on a percentage basis on waste delivered to the facility

9. Mr. Semnani made payment to Anderson of the $100,000.00 requested by Anderson and, on a number of occasions over subsequent years, made payments to Anderson in varying amounts. Mr. Semnani believes that the last payment of monies to Anderson was made in January of 1995.

10. In 1989, Anderson advised Mr. Semnani that he was interested in acquiring a residential condominium unit and requested Mr. Semnani to purchase the condominium for

Anderson. Mr. Semnani was reluctant to deliver to Anderson the sizable amount which the value of the condominium unit would have represented. Consequently, he persuaded Anderson to permit the condominium unit to be purchased by Mr. Semnani and retained in his name, but with Anderson to have virtually an unrestricted use of the condominium unit.

11. Anderson advised Mr. Semnani that the condominium unit could be purchased and retained in Mr. Semnani's name, conditional upon Anderson being given a deed to the condominium unit which Anderson would hold and not record until such date as was mutually agreeable. Mr. Semnani requested, and Anderson agreed, to provide Mr. Semnani with an unsecured promissory note representing that Anderson would repay to Mr. Semnani the amount which Mr. Semnani paid for the purchase of the condominium unit.

12. On October 27, 1989, Mr. Semnani executed and delivered to Anderson a quit-claim deed therein describing the condominium unit, commonly known as 2468 Fairway Village, Park City, Utah, Summit County, Utah ("the Condominium Property") and more particularly described as follows:

> LOT 14, THE FAIRWAY VILLAGE NO. 2 SUBDIVISION, A PLANNED UNIT DEVELOPMENT, AS THE SAME IS IDENTIFIED IN THE RECORD OF SURVEY MAP RECORDED IN SUMMIT COUNTY, UTAH, AS ENTRY NO. 180617, AND IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND BY-LAWS OF THE FAIRWAY VILLAGE NO. 2 SUBDIVISION, A PLANNED UNIT DEVELOPMENT AS ENTRY NO. 180616, IN BOOK M190, AT PAGE 52, OF THE OFFICIAL RECORDS. TOGETHER WITH ANY EXCLUSIVE RIGHT AND EASEMENT OF USE IN ANY LIMITED COMMON PARKING STRUCTURE IDENTIFIED WITH THE LOT ABOVE REFERRED AND TOGETHER WITH A RIGHT AND EASEMENT USE AND ENJOYMENT IN AND TO THE COMMON AREAS DESCRIBED ON THE PLAT, AND AS PROVIDED FOR, IN SAID DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.

Anderson, without the knowledge of Mr. Semnani, recorded the deed on December 1, 1994, but represented to the office of the Summit County, Utah, Recorder that the deed was being

recorded at the request of Mr. Semnani's company, S.K. Hart Engineering. Said representation was false.

13. On the same said date of October 27, 1989, Anderson executed and delivered to Mr. Semnani a promissory note in the face amount of $295,090.79, declaring that Anderson would make payment to Mr. Semnani of said amount, together with interest accruing at the rate of 11 percent per annum from November 1, 1989 until paid, and with the entire balance of principal and interest to be paid on November 1, 1990.

14. On December 14, 1989, Anderson executed and delivered to Mr. Semnani a second promissory note, declaring that he would pay to Mr. Semnani on or before July 30, 1990, the sum of $12,900.00, together with interest thereon at the rate of 10½ per annum.

15. The two promissory notes were requested by Mr. Semnani to evidence amounts paid and/or which he had told Anderson he would pay. Mr. Semnani understood that, although Anderson had executed and delivered said promissory notes, Anderson had no intention of making payment of the same or returning to Mr. Semnani the amounts previously received from him.

16. Anderson's employment by the State of Utah terminated in 1993. Following said termination, Anderson continued to come to Mr. Semnani, demanding that Mr. Semnani make payments to him. In response to those demands, and with the desire that Anderson not reveal to others that Anderson had been demanding and receiving payment from Mr. Semnani, Mr. Semnani continued to pay to Anderson various amounts from time to time. Mr. Semnani hoped that Anderson would eventually abandon his felonious practice of extorting monies from Mr. Semnani.

17. In January of 1995, Mr. Semnani advised Anderson that he would no longer pay any amounts to Anderson. Anderson responded that he had an attorney who would file suit against Mr. Semnani and that such suit would constitute a substantial embarrassment to Mr. Semnani which Mr. Semnani should want to avoid. Anderson told Mr. Semnani that he would make no further demands upon Mr. Semnani if he would pay him an amount of five million dollars. Mr. Semnani continued his refusal to pay further amounts, and no additional amounts have been paid since January 1995.

18. The total amounts paid by Mr. Semnani to Anderson, including the value of the condominium unit now held by Anderson and which Anderson received as a consequence of his ongoing felonious practice of extortion, totals not less than $600,000.00.

19. On May 16, 1996, Anderson was represented by Mr. James C. Haskins, attorney at law. Anderson and Lavicka caused said attorney on said date to prepare a letter addressed to Mr. Semnani's attorney of record and to place said letter in the United States mails addressed to said attorney. A copy of said letter is attached as Exhibit "A" to this Counterclaim and by this reference incorporated herein. The concluding paragraph of said letter reads:

> I would request that you inform your client of his options, so that he might govern himself and the course of action on these issues. I would hope that you would explain the impact of the formal suit, regardless of any judicial outcome

Accompanying said letter was a copy of the Complaint which the Plaintiffs have now filed in this action.

20. Said Complaint and letter of May 16, 1996 constituted an additional act of extortion and was part and parcel of Anderson's ongoing felonious practice of extortion of monies from Mr. Semnani.

FIRST CLAIM FOR RELIEF

(By Mr. Semnani Against Anderson for Wrongful Conversion)

21. Defendant, Mr. Semnani, realleges and incorporates by refernce the allegations of paragraphs 1 through 20 of his Counterclaim.

22. Anderson has received the monies and property demanded of and paid by Mr. Semnani and has continued to retain the same. Anderson was not entitled to said money and property, all of which belonged to and constituted the property of Mr. Semnani. Anderson has refused to return to Mr. Semnani the money and property received from him, and has declared and continues to declare that he is entitled to retain the same and, pursuant to his Complaint in this action, demands additional amounts to be paid by Mr. Semnani. Anderson intentionally received and continues to retain said monies and property, without lawful justification and with the intention to exercise dominion and control thereof, and to continue to deprive Mr. Semnani of its use, possession and value. Mr. Semnani demands that said monies and property be forthwith returned to him.

23. As a consequence of the wrongful conduct of Anderson, Mr. Semnani has sustained damages in an amount not less than $600,000.00, together with interest thereon accruing at the rate of 10 percent per annum from date received by Anderson.

24. The demand by Anderson for the payment of said monies and delivery of said property and his refusal to pay over and return the same to Mr. Semnani was and is done

willfully and maliciously, with a reckless disregard for the rights, entitlement and interest of Mr. Semnani in and to said monies and property and was intended to damage Mr. Semnani, for which reason Mr. Semnani is entitled to an award of punitive damages against Anderson in the amount of $1.8 million, in addition to the actual damages sustained as a result of said wrongful conversion.

SECOND CLAIM FOR RELIEF

(By Both Defendants Against Both Plaintiffs For Attorney Fees)

25. Defendants reallege and incorporate the allegations of paragraphs 1 through 20 of their Counterclaim.

26. Defendants allege, against each Plaintiff, that the Complaint filed by said Plaintiffs in this action constitutes an action within the contemplation of and precluded by Section 76-6-406(2)(e), Utah Code Ann., and is a felonious attempt to extort monies from said Defendants and that the said Complaint and the claims therein made against these Defendants is without merit and was neither brought nor asserted against these Defendants in good faith, and that Defendants should be awarded, pursuant to Section 78-27-56, Utah Code Ann. and against said Plaintiffs, reasonable attorney fees incurred by Defendants in defending against the Complaint.

WHEREFORE, Defendants pray for judgment against the Plaintiffs as follows:

1. On his First Claim for Relief, Khosrow B. Semnani prays for judgment against Larry F. Anderson for the total amount of monies paid by Mr. Semnani to Anderson, said amount to be determined by the Court, but which amount is not less than $250,000.00, and for an order of the Court requiring Anderson to disgorge, reconvey and redeliver to Mr.

Semnani the condominium unit and other property received from Mr. Semnani and for a judgment in an amount equal to the fair market value of such property as not disgorged and reconveyed, together with interest on all said amounts accruing at the rate of ten percent per annum from date received by Anderson. Further, for punitive damages in an amount of $1.8 million and costs of court and such further relief as the Court may deem proper in the premises.

2. On their Second Claim for Relief, Defendants pray for judgment against the Plaintiffs in the amount of attorney fees incurred by Defendants in defending against the Complaint in this action, for costs of court and such further relief as the Court may deem proper in the premises.

DATED this 1st day of November, 1996.

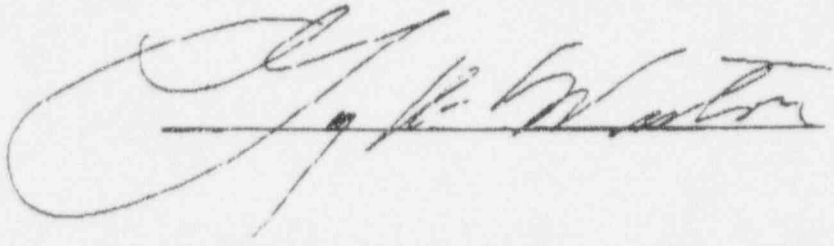
NIELSEN & SENIOR

Gary A. Weston
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November, 1996, I did cause a true and correct copy of the foregoing ANSWER AND COUNTERCLAIM to be mailed, United States mails, postage prepaid, addressed to the following:

James C. Haskins, Esq.
Haskins & Associates
5085 South State Street
Murray, Utah 84107-4840



James C. Haskins (1406)
HASKINS & ASSOCIATES
5085 South State Street
Murray, Utah 84107-4840
Telephone: (801) 268-7994
Facsimile: (801) 262-4031

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

LARRY F. ANDERSON, an individual, and LAVICKA INC., a Utah corporation, Plaintiffs v. KHOSROW B. SEMNANI, an individual, and ENVIROCARE OF UTAH, INC., a Utah corporation, Defendants	ANSWER TO COUNTERCLAIM Civil NO.960907271 Judge Frank G. Noel

COME NOW, the Plaintiffs, by and through their counsel, James C. Haskins, and respond to Defendants Counter Claim as follows:

FIRST DEFENSE

The Counterclaim fails to state a cause of action against Plaintiffs upon which relief can be granted.

SECOND DEFENSE

1. Plaintiffs admit the allegation set forth in Paragraphs 1 through 3 of the Counterclaim.

2. Plaintiffs deny the allegations set forth in Paragraph 4 of the Counterclaim.

3. Plaintiffs admit that Defendants filed applications as more fully described in Plaintiff's Complaint, but deny any other allegations or assertions of Paragraph 5 of the Counterclaim.

4. Plaintiffs specifically and adamantly deny the allegations set forth in Paragraphs 6 and 7 of the Counterclaim.

5. Plaintiffs specifically admit that Mr. Semnani agreed to making payments to Mr. Anderson as a basis of their agreement set forth in the Complaint, however, the Plaintiffs specifically deny any and all other allegations of Paragraph 8 of the Counterclaim.

6. Plaintiffs admit receiving, in accordance with the agreement of the parties, monies for services rendered by Mr. Anderson, however, specifically deny any and all other allegations set forth in Paragraph 9.

7. Plaintiffs deny the allegations contained in Paragraph 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Counterclaim.

8. Plaintiffs admit the allegations of the representation by counsel as is obvious through the filing of this action. However, the Plaintiffs allege that the letter speaks for itself and thus deny the balance of the allegations contained in Paragraph 19 of the Counterclaim.

9. Plaintiffs and counsel for Plaintiffs specifically and vehemently deny the allegations set forth in Paragraph 20 of the Counterclaim.

10. Plaintiffs deny the further allegations set forth in the claims of relief set forth by the Defendants in their Counterclaim, Paragraphs 21 through 26.

WHEREFORE, the Plaintiffs having responded to the claims made by the Defendants in their Counterclaim, do hereby pray the Court as follows:

1. For judgement as prayed in the Complaint;
2. For judgment against the Defendants such that they take nothing by their Counterclaim;
3. For dismissal, with prejudice, of the Counterclaim;
4. For costs, expenses and attorneys' fees for defending such Counterclaim, and
5. For such other relief that the Court shall deem just in the circumstances.

Dated this 3rd day of December, 1996

James C. Haskins,
Attorney for Plaintiffs

MAILING CERTIFICATE

I hereby certify that on this the 4th day of December, I did cause to be mailed, postage prepaid, a true and accurate copy of the foregoing Answer to Counterclaim to:

Gary A. Weston, esq.
NIELSEN & SENIOR
1100 Eagle Gate Tower
60 East South Temple Street
Salt Lake City, UT 84111

Attachment 3
Background Information

ENVIROCARE OF UTAH

Background

Envirocare of Utah, a private company, operates a radioactive waste disposal facility in Clive, Utah, 80 miles west of Salt Lake City in western Tooele County. Radioactive wastes are disposed of by modified shallow land burial techniques. The facility began operation in 1988, and over the years has expanded the types of radioactive waste that it can receive and dispose.

Envirocare is licensed to dispose the following different types of waste, licensed by the organizations identified below:

- Naturally occurring radioactive materials (NORM) and low-level radioactive waste (LLW) (certain isotopes and concentrations of radionuclides as defined in the license--all is less than Class A LLW). This license was issued by the State of Utah, Division of Radiation Control, Department of Environmental Quality. No NRC action was required for this license.

- 11e.2 byproduct material--License issued by NRC.

- Mixed waste (a combination of hazardous waste and LLW)--license issued by State of Utah.

Additionally, residual radioactive material (RRM) was disposed of in a cell adjacent to the northeast corner of the site by the Department of Energy (DOE) under Title I of the Uranium Mill Tailings Radiation Control Act of 1978.

Agreement State Authority

Utah became an Agreement State on March 29, 1984. In its original request, Utah did not request authority over 11e.(2) byproduct materials or disposal of LLW. On July 17, 1989, Utah filed a request to amend its agreement to include LLW disposal regulatory authority. An amended agreement became effective on May 9, 1990.

Low-Level Waste Disposal

In February, 1988, Utah issued a license to S.K. Hart Engineering (later, Envirocare of Utah) for the disposal of NORM waste. Prior to that time in November of 1987, Utah had granted an exemption to S.K. Hart Engineering from the State's government land ownership requirement. In September 1990, Envirocare requested amendment of its NORM license for disposal of LLW. An amended license was issued on March 21, 1991, authorizing disposal of LLW. Construction activities under the license, however, was conditioned on resolution of outstanding issues in the Envirocare groundwater discharge permit. These conditions were subsequently lifted by state actions dated March 20, and April 10, 1992, permitting site construction activities to begin. The amended license retained the existing land ownership exemption.

Land Ownership Exemption for Low-Level Waste Disposal

An issue identified by staff in review of Utah's request to amend their agreement to include LLW disposal authority related to the likelihood that Utah would grant a similar land ownership exemption to Envirocare for LLW disposal. Following review, staff found the proposed Utah program to be both adequate and compatible, and the Commission approved proceeding with the amended agreement. (For background, see SECY 90-073, and the April 11, 1990 Memo from Harold R. Denton to Samuel J. Chilk on SECY 90-073).

The LLW disposal license issued by the State of Utah to Envirocare in March 1991 retained the land ownership exemption. An April 1992 staff review of the Utah agreement program identified private land ownership of the site as a significant issue. The staff continued to interact with Utah through May of 1993 to resolve this issue. The issue was resolved through Commission action (SECY 93-136, and Staff Requirements Memorandum dated June 28, 1993) where the NRC found the state's exemption decision acceptable provided the State and Envirocare executed additional restrictive covenants providing additional controls on long term use of the land. The State confirmed the execution of the restrictive covenants on June 30, 1993.

2.206 Petition to Revoke Utah's Agreement

By letter dated September 21, 1992, U.S. Ecology filed a 2.206 petition requesting that NRC revoke Utah's agreement for failure to require federal or state ownership of the Envirocare site. Following publication and staff analysis, NRC issued a Director's decision on January 26, 1995, denying the petition on the basis that petitioner had not identified a sufficient issue with respect to Utah's compliance with Section 274 of the Atomic Energy Act, or any substantial health and safety issue, to warrant revocation of their agreement.

Title I Disposal Site

The Title I disposal site at Clive contains 4.3 million tons of RRM from the Vitro Processing site in Salt Lake City. DOE transported the material by rail to the Clive site from 1985 to 1987. The material was disposed of in an engineered cell, designed by DOE and concurred in by NRC. Construction of the cell was done by the State of Utah. As part of the remedial action, a rail spur to the site and rail car rollover facility were built. These were later sold to Envirocare by Utah for use at the commercial site. Construction work at the disposal cell has been substantially complete for several years. However, because of construction flaws, primarily in the erosion protection cover, NRC has not concurred in the completion of the cell. DOE has been working to remedy these defects.

NRC Licensed 11e.(2) Disposal Facility

On November 19, 1993, NRC issued License No. SMC-1559 to Envirocare authorizing the receipt, storage, and disposal of 11e.(2) byproduct material in cells to be constructed in the southwest corner of the site. An

Environmental Impact Statement (NUREG-1476) and Safety Evaluation Report (NUREG-1486) supported the licensing action. Envirocare applied for an NRC license in November 1989. The Envirocare facility is unique in that it is a commercial 11e.(2) byproduct material disposal facility. The 11e.(2) disposal facility is similar in some respects to the low-level waste facility regulated under the Utah equivalent to 10 CFR Part 61. However, because the waste accepted at the facility is classified as byproduct material under Section 11e.(2) of the Atomic Energy Act of 1954, disposal at this facility is regulated under 10 CFR Part 40. On January 25, 1991, a notice of receipt (NOR) was published in the *Federal Register*, that provided a Commission order on how the review of this facility would be conducted.

Region IV Inspection Activities at Envirocare

Region IV's Division of Nuclear Materials Safety conducts routine, announced inspections of NRC licensed operations twice a year. Areas examined during the inspections include management organization and controls, operations review, radiation protection, radioactive waste management, transportation, construction work, and environmental monitoring, including groundwater activities. The last inspection was conducted on November 18-22, 1996. Two apparent violations were identified. In the first instance, two examples were identified involving the failure to follow procedures. Both examples involved the inadequate performance of quality assurance (QA) audits. The second instance involves a failure to develop and implement site-specific standards for groundwater protection in a timely manner. (Inspection Report 40-8989/96-02 is pending.) In addition, the inspection identified areas of concern that has prompted a follow-up inspection scheduled for the week of January 27, 1997. Areas to be examined during this inspection include: 1) the licensee's QA/quality control program; 2) the licensee's review of changes made to the facility; 3) construction records for work completed by the licensee, and 4) contractor laboratory certification.

TO: [illegible] FROM: LEGAL COUNSEL (~~ZT~~) [illegible]

EMA TRANSMITTAL - ONE PAGE ONLY

EA REQUEST & ENFORCEMENT STRATEGY FORM

Trial Case: ___ 1st Panel: ___ Post Board/Panel: ___ Re-Panel: ___ Post Caucus: ___ Re-Caucus: ___ Other: ✓

EA 97-014

EATS Data Entry Information

Today's Date: 1/8/97 Region: IV Case Type: WD Small Entity ☐ No [illegible]

Licensee: ENVIROCARE OF UTAH, INC. Facility (Unit)/Location: SALT LAKE COUNTY, UTAH

Docket No.: ~~V~~ License# SUC-1559 Last Day of Insp.: ~~12/20/96~~ * ID Date: 12/13/96 *

Date of OI Ref.: 1/3/97 OI Rpt No.: _____ OI Rpt Date: _____ Conference Open ?: ___

Summary of Facts: PRESS RELEASE AND COURT FILINGS INDICATE THAT ~~PRESS RELEASE AND COURT FILINGS INDICATE THAT~~ ENVIROCARE'S OWNER, KHOSROW SEMNANI, MAY HAVE PAID CONSULTING FEES TO A STATE OF UTAH OFFICIAL, LARRY ANDERSON, IN ORDER TO OBTAIN FAVORABLE LICENSING ACTIONS AND OVERSIGHT, IN A MANNER THAT WOULD CONSTITUTE A CONFLICT OF INTEREST (Bribe)

ES: LC

1. SL____ Supp____

Details: _____

SL____ Supp____

Details: _____

SL____ Supp____

Details: _____

2. Prior Escalated Action? ☐ No ☐ Yes EA: _____ Date: _____

3. Lic.ID? ☐ No ☐ Yes ☐ Lic. Credit ☐ No Credit ☐ Inad. Info ☐ NA Explain: _____

4. Corrective Action? ☐ Lic. Credit ☐ No Credit ☐ Inad. Info Explain: _____

5. Conference Needed? ☐ No ☐ Yes Explain: _____

6. CP? ☐ No CP ☐ Base CP ☐ Double Base CP ☐ Other: _____

7. Discretion or Order Needed? ☐ No ☐ Yes Explain: _____

8. Willfulness involved? ☐ No ☐ Yes ☐ OI Coordinated: _____ ☐ Needs OI Coordination

9. Program Office Represented? ☐ No ☐ Yes: _____ 10. OGC Represented? ☐ No ☐ Yes: _____

11. Action? ☐ No violation ☐ Re-panel ☐ Conference Letter ☐ Choice Letter ☐ SL IV NOV ☐ Re-Caucus ☐ Region Issues Esc. Action ☐ Submit to OE for Quick Review ☐ Submit to OE for Full Package Review ☐ DEDO Review ☐ Commission ☐ Disagreement ☐ Other: OI FOLLOWING WITH UTAH STATE ATTORNEY GENERAL

Comments: EA # ASSIGNED TO TRACK THIS HIGH-PROFILE CASE 13. Approved: _____ Date: 1/9/97

* Identifies the timing 12/20/96 ~~WEST REPORTER~~ news article

Rev. 11/96 **** NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF THE DIRECTOR, OE ****

H/25

(F)

RNS

Natural Resources Defense Council

1200 New York Ave., N.W.
Suite 400
Washington, DC 20005
202 289-6868
Fax 202 289-1060

January 8, 1997

James M. Taylor
Executive Director for Operations
Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Request for action pursuant to 10 CFR 2.206.

Dear Mr. Taylor:

In accordance with 10 CFR 2.206, I am writing on behalf of the Natural Resources Defense Council, Inc. (hereafter "NRDC") to request that the Nuclear Regulatory Commission (hereafter "NRC") take action to revoke all licenses held by Envirocare of Utah, Inc. (hereafter "Envirocare") for the possession and disposal of low-level radioactive and mixed waste and uranium mill tailings, and take other remedial steps. The basis for this request and the relief requested are set forth below.

Basis for Request

Envirocare accepts for disposal at its facility in Clive, Utah: a) low-level radioactive waste and mixed waste (a combination of radioactive and hazardous constituents that are subject to the Resource Conservation and Recovery Act) under an operating license issued by Utah (an agreement State with the NRC); and b) uranium mill tailings under an 11e.(2) byproduct material disposal license issued in November 1993 by the NRC. Envirocare is a private company owned by Khosrow Semnani, who also serves as its president. Mr. Semnani also is a member of Utah's Board of Radiation Control which oversees the activities of the Division of Radiation Control, which in turn has regulatory authority over Envirocare's license.

On December 28, 1996, *The Salt Lake Tribune* reported on page one that between 1987 and January 1995, Mr. Semnani made secret cash payments totaling $600,000 to a state official who regulated his facility, namely, to Larry F. Anderson, who was director of the Utah Bureau of Radiation Control from 1983 until 1993 (See attached article). According to the article there are

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New York, New York 10011
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Fax 212 727-1773

71 Stevenson Street
Suite 1825
San Francisco, CA 94105
415 777-0220
Fax 415 495-5996

6310 San Vicente Blvd.
Suite 250
Los Angeles, CA 90048
213 934-6900
Fax 213 934-1210

Visit us at:
http://www.nrdc.org

9700220305

RP

11/26

court records that substantiate this claim. There is also evidence that these payments were in violation of Utah state law. The Utah State Attorney General's Office has initiated a criminal investigation.

Envirocare stands to profit enormously by this illegal action. For example, the U.S. Department of Energy has placed a five-year Basic Ordering Agreement with Envirocare for disposal of its low-level mixed waste generated as a result of its cleanup activities. This agreement has an estimated market value of $350 million.

This issue is clear and straight forward. The president of this company illegally paid the regulator to get his license to store radioactive waste. The license was obtained through a totally corrupt process. Under these extreme circumstances, all of the company's licenses must be revoked. The public integrity of the NRC would be severely undermined if the Commissioners did nothing more than direct the staff to investigate whether errors of a technical nature were made in the license application, or whether the waste is currently stored in compliance with NRC technical requirements.

The burden should be on the applicant to obtain a license through a lawful process. Moreover, neither the NRC, nor any agreement state, should grant a license to, or continue to license, a company that is owned, managed or controlled by someone who has made illegal payments to Federal or state regulators responsible for the license. Nor should NRC permit a licensee to serve on a board that oversees the state agency responsible for regulating the conduct of the licensee.

Relief Requested

NRDC hereby petitions the 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 by Envirocare, Khosrow Semnani, or any entity controlled or managed by Khosrow Semnani.

4) Prohibit the future issuance 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 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, until the state of Utah can demonstrate that it can operate the Bureau of Radiation in a lawful manner, and without the participation of licensees, or employees of licensees, in Bureau of Radiation oversight roles.

Thank you for you consideration of these matters.

Sincerely,

Thomas B. Cochran, Ph.D.
Director
Nuclear Program

G970017
Paperiello, NMSS
Cys: Thompson
Jordan
Norry
Blaha
Cyr, OGC
Bangart, SP
Kennedy, NRR

NATURAL RESOURCES DEFENSE COUNCIL
1200 NEW YORK AVENUE, NW, SUITE 400
WASHINGTON, DC 20005
Tel: 202-289-6868
Fax: 202-289-1060
email: tcochran@nrdc.org

FACSIMILE TRANSMITTAL SHEET

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

FAX #: 301-415-2162

FROM: Thomas Cochran

DATE: January 9, 1997

TOTAL PAGES (including cover): 8

NOTE: The attached letter replaces a previously faxed version addressed to James M. Taylor, dated and faxed January 8, 1996, from Thomas B. Cochran of the Natural Resources Defense Council, re: Request for action pursuant to 10 CFR 2.206.

Natural Resources Defense Council

1200 New York Ave., N.W.
Suite 400
Washington, DC 20005
202 289-6868
Fax 202 289-1060

January 8, 1997

Hugh L. Thompson, Jr.
Acting Executive Director for Operations
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20555

RE: Request for action pursuant to 10 CFR 2.206.

Dear Mr. Thompson:

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court records that substantiate this claim. There is also evidence that these payments were in violation of Utah state law. The Utah State Attorney General's Office has initiated a criminal investigation.

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This issue is clear and straight forward. The president of this company illegally paid the regulator to get his license to store radioactive waste. The license was obtained through a totally corrupt process. Under these extreme circumstances, all of the company's licenses must be revoked. The public integrity of the NRC would be severely undermined if the Commissioners did nothing more than direct the staff to investigate whether errors of a technical nature were made in the license application, or whether the waste is currently stored in compliance with NRC technical requirements.

The burden should be on the applicant to obtain a license through a lawful process. Moreover, neither the NRC, nor any agreement state, should grant a license to, or continue to license, a company that is owned, managed or controlled by someone who has made illegal payments to Federal or state regulators responsible for the license. Nor should NRC permit a licensee to serve on a board that oversees the state agency responsible for regulating the conduct of the licensee.

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Thank you for you consideration of these matters.

Sincerely,

Thomas B. Cochran, Ph.D.
Director
Nuclear Program

ENVIROCARE OF UTAH, INC.

THE SAFE ALTERNATIVE

January 17, 1997

Dr. Diane Nielson
Executive Director
Utah Dept. of Environmental Quality
P. O. Box 144810
Salt Lake City, UT 84114-4810

Dr. Shirley Jackson, Chairperson
US Nuclear Regulatory Commission
OWFN, 27D1, 16 G15
11555 Rockville Pike
Rockville, MD 20852-20037

Jack McGraw
Acting Regional Administrator
US Environmental Protection Agency
Region VIII , MS 8HWM-HW
999 18th St., Suite 500
Denver, CO 80202-2405

The purpose of this letter is express our support for each of your staffs and your licensing and permitting processes and to invite and encourage any additional reviews or inspections that will help to verify the quality of Envirocare's licenses, permits, and operations.

Let me emphasize that Envirocare has full confidence in the Utah Department of Environmental Quality (DEQ) and its current staff who have participated and are participating in the licensing and permitting of our facility. The licenses and permits Envirocare has obtained from DEQ received excellent analyses and contain conditions developed in accordance with appropriate regulations that are protective of worker and public health, safety, and the environment. Envirocare has similar confidence in the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) and their staffs. However, if there is a need to allay any concern, we invite and encourage you to perform any additional reviews or inspections of Envirocare's licenses, permits, or operations you may find necessary.

Envirocare's confidence in the quality of the licenses and permits is based on two factors. First, our first-hand knowledge of the quality and integrity of the many DEQ, NRC, and EPA employees who participated in the licensing and permitting process. Second, the numerous reviews, audits, and inspections that have already taken place and that continue from all of the

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regulatory agencies. This confidence is further enhanced by the understanding Envirocare has of the actual processes DEQ, NRC, and EPA used in reviewing and issuing the licenses and permits. No one individual could have improperly influenced the process given the number of people and other agencies involved.

The major licenses and permits Envirocare has received and the processes used can be briefly summarized:

- The Radioactive Material License for low-level waste issued by the Utah Division of Radiation Control (DRC) specifically followed requirements and regulations pursuant to Utah's "agreement" state program approved by the NRC. This license was prepared by the technical staff within the Division and received appropriate reviews by the Utah Attorney General's Office, the DEQ's Office, and the NRC. Comment responses were prepared on comments received during the public comment period. The NRC made a formal review of several questions raised during the comment period. The NRC unanimously approved Utah's actions on the questions. Since a new Director of Radiation Control was appointed in June of 1993, additional reviews have taken place for various modifications and licenses. The license is also being renewed as required every five years. This renewal process is well under way. Further, a Groundwater Quality Discharge Permit, vital to this license, was issued by the Utah Division of Water Quality.
- The Groundwater Quality Discharge Permit was developed by the Utah Division of Water Quality pursuant to water quality statutes and regulations. This permit was written by staff within the Utah Division of Water Quality and, was reviewed by several levels of management within the Division. Appropriate reviews were performed by the Attorney General's Office and the DEQ office, and was signed by the Director of the Utah Division of Water Quality. Copies of the draft permit were made available for public review.
- The Solid and Hazardous Waste Plan Approval (Permit) was issued by the Utah Division of Solid and Hazardous Waste under specific hazardous waste regulations. The Utah Division of Solid and Hazardous Waste followed requirements and regulations reviewed and approved by EPA. This permit was written and received internal review within the Utah Division of Solid and Hazardous Waste by technical staff and several levels of management. Further, the permit received appropriate reviews by the Attorney General's Office, the DEQ Office, and the EPA. This permit was signed by the Director of the Utah Division of Solid and Hazardous Waste.
- The U.S. EPA RCRA Permit was issued for those regulatory areas for which Utah had not received delegation. This permit was issued by the Region VIII EPA staff through the normal RCRA process involving a number of technical and management staff within the EPA, which included public participation.

- A Radioactive Material License for the disposal of 11e.(2) wastes was issued by the NRC after analyses and review under the requirements and regulations developed for evaluating licenses for the disposal of uranium and thorium mill tailings. This process required full public participation through an Environmental Impact Statement process as well as the normal licensing process.

For these major licenses and permits, three Divisions within DEQ, as well as two federal agencies, EPA, and NRC, issued independent permits and licenses to Envirocare. Further, both the EPA and NRC were involved with the review of the work performed by the DEQ. Additionally, since June of 1993, many amendments, modifications, inspections, and audits have provided further review of the licenses, permits, and operations. In addition to the regulatory agency reviews and inspections, numerous customers, including the Department of Defense and the Department of Energy, have audited the Envirocare facility and found it safe to receive wastes from each of their facilities.

Although Envirocare strongly believes that our licenses and permits are sound and that we meet or exceed state and federal requirements established to protect worker and public health and the environment, there may be a need to provide additional verification of the quality of Envirocare's licenses, permits, and operations. If, in your judgment, there is a need to allay any concerns involving Envirocare, we invite and encourage your agencies to perform any additional reviews and inspections of its licenses, permits, and operations which you may determine are necessary.

If you have any questions, please contact me at (801) 532-1330.

Sincerely,

Charles A. Judd
Executive Vice President

6909

ACNP

American College of Nuclear Physicians

California Chapter

Dorothy Duffy Price
Executive Director

Box 31
Los Altos, CA 94023

TEL (415) 949-1341
FAX (415) 949-1341

January 21, 1997

The Honorable Shirley Ann Jackson
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Petition to Conduct Expedited Agreement State Program Compatibility Review

Dear Chairman Jackson:

Attached is a petition submitted by the American College of Nuclear Physicians California Chapter ("California ACNP") to the Utah Radiation Control Board and Utah Department of Environmental Quality seeking reasonable and prudent protection from what we are concerned may be significant deficiencies in the state's regulation of the Envirocare disposal facility.

By copy of the petition, prepared consistent with 10 CFR Part 2, Subpart H, s.2802(c), California ACNP hereby petitions the NRC to conduct a timely review of Utah's Agreement State Program with respect to the issues raised to ensure that Agreement State compatibility requirements are properly implemented. Petitioner seeks your particular attention to implementation of financial assurance requirements.

With Utah in the midst of reviewing a license renewal application based on receipt of up to 10.5 million cubic feet of waste per year, California ACNP respectfully requests your personal involvement in resolving the nationally important issued raised by our petition. In our view, a thoughtful and substantive response to the situation in Utah is critical to maintaining NRC's credibility as the federal entity responsible for regulating the management of low-level radioactive wastes.

Sincerely,

Carol S. Marcus, Ph.D., M.D.
Director, Nuclear Med. Outpt. Clinic
Harbor-UCLA Medical Center
and
Professor of Radiological Sciences,
UCLA
and
President, American College of Nuclear Physicians, California Chapter

cc: Honorable Lauch Faircloth

JACK1197.ltr

9703060162

11/28

January 21, 1997

ACNP

American College of Nuclear Physicians

California Chapter

Dorothy Duffy Price
Executive Director

Box 31
Los Altos, CA 94023

TEL (415) 949-1341
FAX (415) 949-1341

Robert J. Hoffman, Chairman
and Members
Utah Radiation Control Board
Department of Environmental Quality
168 North 1950 West
P.O. Box 144850
Salt Lake City, UT 84114-4850

Subject: Petition for Rulemaking

Dear Mr. Hoffman:

The following petition is submitted to the Utah Radiation Control Board in accordance with the State of Utah's responsibilities as an Agreement State under Section 274 (b) of the federal Atomic Energy Act as amended. Petition format and content is based on the U.S. Nuclear Regulatory Commission's 10 CFR Part 2, Subpart H, section 2.802(c) rule. We request that you inform us immediately if Utah law or regulations require us to follow an alternate procedure so we may take the necessary steps to resubmit it. By copy of this letter, we request that the Department of Environmental Quality undertake any related actions which are reserved to it or the Division of Radiation Control consistent with its Agreement State responsibilities and authority. We further request, by copy of this letter, that the NRC appropriately consider all Agreement State compatibility questions including the posting of sufficient financial assurances.

I. General Problem Statement and Proposed Solution

1. Problem Statement: Envirocare is not currently required to post substantial financial assurances, a circumstance we consider directly inconsistent with the state's earlier decision to exempt Envirocare from 10 CFR Part 61 institutional control requirements for land ownership. This concern is compounded by Utah's recent authorization to dispose of non-containerized nuclear power plant ion exchange resin wastes.

   Envirocare is now actively pursuing a state license renewal based on acceptance of up to 10.5 million cubic feet of radioactive waste *per year* from combined private sector and government sources. (For comparison purposes, Ward Valley is licensed to receive a total of 5.5 million cubic feet of waste over the site's entire 30-year life). Of this total,

for Envirocare, more than 1 million cubic feet would be comprised of nuclear reactor-related low-level wastes, of which 80,000 cubic feet may comprise resin and other nuclear power plant cleaning wastes. An additional 3 million cubic feet of annual capacity is proposed for unspecified radioactive wastes containing naturally occurring and man-made isotopes falling within the 10 CFR Part 61.55 Class A concentration limits. When compared to the detailed source term analysis and related safety evaluation performed by California for Ward Valley, Envirocare's request to take an unidentifiable source term of 3 million cubic feet/year raises serious questions about the level of detail used for pathways analysis and performance assessment.

2. Proposed Solution: The following petition components are respectfully submitted in the interest of obtaining reasonable and prudent protection from liability which may arise as a result of what appear to be significant deficiencies or potential deficiencies in the State of Utah's regulatory program for the Envirocare facility.

(a) The California Chapter of the American College of Nuclear Physicians ("California ACNP"), whose members or member employers have shipped or will ship low-level radioactive waste to the Envirocare of Utah disposal facility in Tooele County, hereby file this petition for rulemaking with the Utah Radiation Control Board to obtain an indemnification from the State of Utah and/or its licensee for contingent environmental liability costs related to the disposal of low-level waste disposed at the Envirocare facility.

(b) California ACNP petitions the Board to consider promulgation of an emergency rule to prohibit the continued, non-containerized disposal of nuclear power plant ion exchange resins at the Envirocare facility. Petitioner does not understand why the Division of Radiation Control chose to authorize this apparently extraordinary practice in the midst of its ongoing review of Envirocare's radioactive materials license renewal application. Accordingly, an immediate order rescinding the Division's 1996 authorization pending Board action on this petition and completion of the Division's license renewal review process also appears to be appropriate.

(c) California ACNP petitions the Board to evaluate the potential need to order the timely removal, packaging and off-site disposal of such waste consistent with ALARA principles and other occupational radiation safety considerations.

The purpose of petition components (b) and (c) is to minimize the liability and related harms of practices we are concerned may be incompatible with the 10 CFR Part 61 regulatory framework and inconsistent with generally accepted worker radiation protection standards.

II. Petitioner's Grounds for and Interest in the Action Requested

Due to delays in the State of California's efforts to establish a commercial low-level waste disposal facility to service the four Southwestern Compact member states and California's loss of access to the Northwest Compact's low-level waste site in Washington State, certain members of California ACNP or member employers have utilized or may utilize the Envirocare disposal facility. In the context of the potential regulatory deficiencies described herein, such utilization gives rise to contingent liabilities for which our members now seek timely protection. As physicians with specialized expertise in radiation protection, we also have a professional concern with worker protection related to the safe handling of nuclear power plant ion exchange resins.

III. Statement and Analysis of Specific Issues:

1. <u>California ACNP believes that financial assurance requirements for closure and postclosure monitoring and maintenance at the Envirocare facility may be inadequate.</u> We understand that the funding levels now set aside to carry out these activities at the Envirocare facility are considerably less than those in place for South Carolina's Barnwell disposal facility and Washington's Richland disposal facility.

As envisioned by §61.63(a), NRC anticipated that no license would be issued prior to submittal of "a binding arrangement, such as a lease, between the applicant and the disposal site owner that ensures that sufficient funds will be available to cover the costs of monitoring and any required maintenance during the institutional control period." Utah's decision to exempt Envirocare from the 61.59(a) land ownership requirement and forgo the ability to

enforce funding adequacy through a revocable leasehold interest would be understandable had the state been fiscally conservative in establishing Envirocare's financial assurance requirements and otherwise stringently applied Part 61 requirements. As discussed below, this does not appear to be the case.

As of January 1997, the Washington Department of Ecology's dedicated accounts for Site Closure ($24.2 million) and Perpetual Surveillance/Maintenance (also $24.2 million) for its Richland low-level radioactive waste disposal site exceed $48 million. According to South Carolina officials, approximately $87 million is set aside for its Barnwell site. Of this amount, $12 million is designated for closure and stabilization and $75 million is available for long-term care. Based on a January 16, 1996 discussion with Dane Finerfrock of the Utah Radiation Control Division, only $5 million has been deposited with a custodian for both closure and long-term monitoring and maintenance of Envirocare's radioactive materials facilities.

We are quite concerned about this financial assurance differential within the overall context that Envirocare is operating on private land, accepts far greater waste volumes and more diverse waste types than either the Richland or Barnwell commercial sites, and carries out storage and processing operations in addition to disposal. Unlike the Washington and South Carolina facilities, Envirocare also disposes of "mixed wastes". Moreover, we understand that large volumes of undisposed waste are often present at the Envirocare site.

In the event this site were ordered closed prior to disposing of all of the wastes present at the facility and/or remedial actions involving buried wastes were required, it appears that very limited funds would be available. CERCLA experience teaches us that a private site owner/operator may be unwilling or unable to respond effectively necessitating government-funded actions which may later be recovered from the waste generators.

A final question, which we hope can be affirmatively answered, is whether the State of Utah (as in Washington and South Carolina) controls the $5 million closure and long-term monitoring and maintenance fund. In other words, does the state have the ability to access the fund over the licensee's potential objections? If not, there is added reason for concern about the comparatively meager available funds.

The liability exposure to petitioner's members and member employers appears to be magnified by Utah's 1996 authorization to dispose of unpackaged ion exchange resins, an authorization based on a unique practice under which radionuclide concentrations present in containerized waste arriving at the site are emptied and diluted with soil in the disposal trench to meet applicable license limits (see attached Utah Division of Radiation Control Information Notice). According to Appendix P (November 1996) of Envirocare's license renewal submittals, the company is now seeking state approval to dispose of up to 80,000 cubic feet a year of nuclear power plant resins and solidified cleaning agents.

2. California ACNP is concerned that the Division of Radiation Control's authorization to dilute and dispose of non-containerized ion exchange resins may be contrary to the intent of the §61.55 waste classification system, invites violation of the §61.56(b) waste stability requirements, and may violate ALARA worker exposure principles. The §61.55 classification system for commercial low-level wastes is based on isotope concentration limits calculated on a per-unit-volume basis averaged across the size of the container. Utah's decision to base license compliance on isotope concentrations achieved within the disposal trench, after diluting the waste with soil at 9:1 ratio, appears inconsistent with §61.55 provisions for determining concentrations in the waste itself. In concept, it appears that Utah's approach allows Envirocare to accept waste at its gate which exceeds its license limits and may even exceed the §61.55 Class A limits. In the latter instance, §61.56(b) would require specified waste form stability measures which appear to be inconsistent with Utah's requirement regarding containerized waste. Moreover, we understand that Utah's regulatory authorization to accept the resins was based on existing license conditions applicable to debris waste posing little or no radiological hazard, and that no separate state-enforced license conditions exist to protect against the radiological hazards involved in emptying resin containers and mixing the waste within the trench.

Since the technical requirements of 10 CFR Part 61 are a matter of rather strict compatibility for Agreement States, we do not understand how Utah was apparently able to redefine the application of §61.55 without formally receiving approval from the NRC. Compatibility issues are also raised by the non-containerized disposal of commercial

low-level waste, a practice prohibited by all other commercial low-level waste sites and seemingly in conflict with the intent of the §61.56 waste characteristics requirements. How, for example, is the §61.56(a)(3) 1% volume limit on free-standing liquids currently enforced in the absence of containers? Is this requirement applied?

Utah's practices raise a series of practical concerns due to the inherent nature of ion exchange resin waste. Used to filter strontium-90, cesium-137, cobalt-60 and other fission products out of the reactor's primary coolant loop, discarded resins often require shielding to minimize worker radiation exposure. (Petitioner notes that license renewal application Appendix P makes no mention of Sr-90 and other fission products). Is the 80,000 cubic feet of resin and other cleaning wastes reflected in Appendix P an established limit? Was performance modeling performed prior to the authorization? What effect did the assumed source term increase have on the modeling? How were the resins assumed to be distributed within the disposal units?

Assuming for a moment that these matters have been fully and properly-resolved, it is difficult to understand why such potentially dangerous wastes were administratively approved under existing license conditions developed for relatively innocuous debris materials. How will Utah regulators and Envirocare ensure that applicable waste concentration limits and potential waste form stability requirements are met? How are shielding considerations during package unloading and solid mixing addressed? What measures are in place to prevent unintended dispersion of the uncontained, lightweight resin beads? Is the entire trench volume used to calculate concentration limit compliance? If so, how is this accomplished and how are potential "hot spots" accounted for? What quality assurance program requirements and facility operating procedures are in place to address each of these considerations? The import of these questions is underscored by the seemingly minimal regulatory review and public process which accompanied the state's approval of this major change in the facility's waste acceptance criteria.

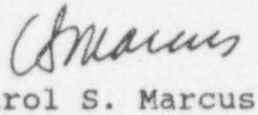
Beyond the site-specific regulatory and safety considerations noted, petitioner is also concerned that the availability of comparatively inexpensive disposal capacity for large volumes of commercial nuclear power plant residues and other commercial low-level wastes will have a lethal effect on current efforts to license and open new Compact

disposal facilities pursuant to the federal Low-Level Radioactive Waste Policy Act. Since the Barnwell site has a finite remaining capacity, and the Richland site is only open to the Northwest and Rocky Mountain Compact states, Envirocare seems poised to emerge as the nation's main disposal site.

Perhaps our greatest fear is that Envirocare's cheap prices, expanding waste acceptance criteria and vast unused capacity will lead to abandonment of the new facility siting efforts now underway, and that Envirocare will indeed become the main national disposer just long enough to develop problems which force its unexpected closure. This scenario would leave our members and many other waste producers across the nation with no place to take their waste and an undesired share of potentially significant environmental restoration costs. In many ways, this fear lies at the crux of the issue.

We look forward to the State of Utah's formal reply and stand ready to help answer any questions you, the Department of Environmental Quality, or other state officials may have in considering this petition.

Sincerely,



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and
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Attachment: May 7, 1996 Information Notice (Subject: ion exchange resin disposal)

cc w/ attachment:

Governor Michael O. Leavitt
Shirley Ann Jackson, Chairman, U.S. Nuclear Regulatory Commission
Dianne R. Nielson, Executive Director, Utah Department of Environmental Quality
William Sinclair, Executive Secretary, Radiation Control Board and Director, Radiation Control Division
Don Womeldorf, Executive Director, Southwestern Compact
Members, California ACNP Board

APPENDIX P - PROJECTED WASTE STREAMS

1 Determination of Types, Kinds, and Quantities of Waste

Waste to be received will consist of naturally occurring and accelerator produced radioactive material (NARM), source material, special nuclear material and byproduct [11e.(1)] material. The nature of remediation activities has changed with time and it is expected that this pattern will continue. Envirocare has researched the currently-known sources of radioactive and mixed waste and has developed the following waste characterization. The radioactivity and volumes are the best estimates at this time, but may very well change over the period of the license. ~~Envirocare's original license was based on modeling which established upper limits to the concentrations of specific radionuclides in waste. After excluding unrealistic scenarios, the controlling factor was dose to the on-site worker. The conclusion being that annual average concentrations in waste received should not the calculated concentrations. For a mixture of radionuclides, the sum-of-fractions rule applies. Envirocare does not believe that any changes~~Envirocare believes that any changes to the nature of individual waste streams received for disposal will have a significant impact on the overall nature of the waste disposed or on the environment.

Envirocare's original license was based on modeling which established upper limits to the concentrations of specific radionuclides in waste. After excluding unrealistic scenarios, the controlling factor selected for most nuclides was dose to the on-site worker, assuming no respiratory protection and full-time exposure to resuspended particulate radioactivity and external gamma radiation at the center of the disposal cell without consideration for shielding provided by equipment. The maximum concentrations for several nuclides were based on groundwater protection levels. Subsequently, additional radionuclides were added to the license with concentration limits determined to provide the same level of radiation exposure control as that established by the original model. Groundwater transport modeling was used to confirm that these concentrations were also protective of groundwater. The conclusion of the original modeling was that annual average concentrations in waste received should not exceed the calculated concentrations based on either worker exposure or groundwater protection standards. For a mixture of radionuclides, the sum-of-fractions rule was applied in order to control worker exposure.

Because Envirocare does provide respiratory protection to workers and controls gamma exposure by limiting the time spent in close proximity to waste material, worker doses can be controlled to ALARA goals without specifically controlling annual average concentrations, through such processes as use of radiation work permits. However, in Among the types order to ensure groundwater protection, average concentrations of individual radionuclides within a lift area will not exceed the concentration limits of Table 4. A lift area is defined as the volume of material within the 100 foot square lift from bottom liner to top of the waste.

Materials being considered for disposal include:

1. Naturally occurring radioactive material (NORM) waste - contaminated soils and building debris, less than 100 pCi/g ~~average~~ weighted average concentration with Uranium, Thorium-230, and Radium-226 considered to be in equilibrium.

   200,000 cubic feet per year (cf/y)

2. Radium waste (NORM) - contaminated soils with scrap metal, glass, wood and masonry rubble. Weighted average concentration approximately 40 pCi/g. ~~However, with~~ small amounts ~~are as high as~~ up to 10,000 pCi/g.

   3,000,000 cf/y

3. Sludges, tailings, or residues from industrial waste streams containing various NORM materials. Uranium and thorium decay chain nuclides 50 - 5,000 pCi/g with weighted average concentration approximately 500 pCi/g.

   160,000 cf/y

4. Soils from decommissioning of reactor facilities contaminated with any of the byproduct materials associated with such operations. Major radionuclides are Fe-55, Co-58, Co-60 and Cs-137 with weighted average concentrations of approximately 100 pCi/g ~~but~~ with some small quantities up to 40,000 pCi/g of each nuclide.

   400,000 cf/y

5. Non-compactible debris from decommissioning of reactor facilities contaminated with any of the byproduct materials associated with such operations. Major radionuclides are Fe-55, Co-58, Co-60 and Cs-137 with weighted average concentrations of approximately 100 pCi/g ~~but~~ with some small quantities up to 40,000 pCi/g of each nuclide.

   200,000 cf/y

6. Dry active waste from cleanup and maintenance of nuclear reactors, fuel processing and D&D operations. May contain any source, special nuclear or byproduct material nuclides. Most nuclides are in the range of a few tens of pCi/g, but C-14 and tritium may be as high as 100,000 pCi/g in some wastes and Co-58, Co-60, Cs-137 or Fe-55 may reach 40,000 pCi/g.

   350,000 cf/y

7. Resins and solidified cleaning agents containing byproduct materials from nuclear power plants. Most nuclides are at a few tens of pCi/g, but Co-60 and Cs-137 will be as high as 60,000 pCi/g in some waste streams.

80,000 cf/y

8. Sludges, tailings, slag or residues from industrial waste streams containing various source, byproduct or special nuclear materials. AWeighted average concentrations less than 50 pCi/g.

2,500,000 cf/y

9 Smelter fine dust contaminated by introduction of sealed sources or uranium metal. Depleted uranium ~~averaging~~weighted average 1,000 pCi/g, maximum 200,000 pCi/g. Cs-137 averaging 500 pCi/g; maximum 20,000 pCi/g. Some may contain Ra-226 at approximately 100 - 1,000 pCi/g.

60,000 cf/y

10. Depleted uranium from the Department of Defense target area cleanups or from Department of Energy gaseous diffusion plants. Target area concentrations weighted average about 400 pCi/g; gaseous diffusion plant wastes as high as 280,000 pCi/g.

400,000 cf/y

11. Cleanup of industrial areas with trace quantities of fission products or fallout from past above ground testing.

20,000 cf/y

12. Accelerator-produced radioactive materials from D&D projects. May contain any activation products, primarily Co-60 and tritium with concentrations approximately 100 pCi/g.

60,000 cf/y

13. Treated mixed waste containing any source, special nuclear or by-product materials in concentrations approximately 100 pCi/g.

60,000 cf/y

14. Site-generated waste including material removed from haul roads and from building sites. Includes a small amount annually of laboratory wastes. Weighted average concentrations 10 pCi/g for the uranium and thorium decay chain nuclides, less than one pCi/g for all others.

25,000 cf/y

145. Because of the nature of Envirocare's operations, it is anticipated that unforeseen waste streams will be identified in the future as remediation, waste treatment and waste-generating processes develop. Radioactivity could include any of the naturally occurring or manmade radionuclides. Concentrations would will not exceed Class A limits and the average concentrations in a cell/lift area would will not be greater than those of Table 4.

3,000,000 cf/y

166. Any of the above waste streams may contain some hazardous materials and, therefore, be classified as mixed waste.

500,000 cf/y

At the termination of disposal activities at the site, it is reasonable to assume there will be some contaminated soils with trace quantities of radioactivity that will need to be recovered and placed in the embankment. Also, dismantling of existing facilities will generate considerable waste consisting of haul road materials, asphalt paving, concrete structures, steel debris, building debris and pond liners.

2 Composite Projection of Waste Inventories

2.1 "Initial" Inventory

The inventory of all nuclides in storage or disposed at the end of 1995 is shown in Table 1. The uranium and thorium decay chain nuclides comprise the majority of radioactivity in inventory. This reflects the importance of Envirocare as a NORM disposal facility, as well as the remediation of large projects involving various source material waste streams. This inventory also demonstrates the low overall concentration of radioactivity in waste received by