



OFFICE OF THE  
GENERAL COUNSEL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

November 21, 1996

MGM  
CH  
3

Joe Egan, Esq.  
Egan & Associates, P.C.  
2300 N Street, N.W.  
Washington, D.C. 20037

Dear Mr. Egan:

This responds to your inquiry about NRC licensing authority under the Atomic Energy Act (AEA) and NRC regulations over a private entity disposing of Department of Energy (DOE) low level radioactive waste under DOE contract, on a non-DOE site. As we discussed, under NRC regulations the need for a license in this case would depend on whether DOE would exercise sufficient safety oversight over disposal activities so that the site could be regarded as a DOE controlled site. If the oversight were such that the site would be controlled by DOE, the disposal would be license exempt. E.g. 10 CFR 30.12. We express no opinion regarding how or whether DOE should choose to exercise such control but it seems conceptually feasible, from the standpoint of NRC regulations, for sufficient DOE control to be manifested by an agreement between DOE and a State whereby the State would exercise sufficient safety oversight on DOE's behalf without issuance of any State disposal license (in the case of an Agreement State) but with DOE assuming ultimate safety responsibility. Of course, we also express no view whether a State should enter into such an agreement with DOE or whether DOE could or should avail itself of such private disposal capacity.

In an Agreement State one would need to examine the State's statutes, regulations, and policies on licensing of low level radioactive waste disposal. However, as a general matter, Agreement States have regulations regarding DOE contractor licensing exemptions which are similar to those of NRC's. Were an Agreement State to reach an agreement with DOE along the lines of the above, there would be no problem, from NRC's viewpoint, about the adequacy or compatibility of the State's AEA section 274 program so long as the other aspects of the State's licensing and regulatory program are not unduly affected from the standpoint of resource availability or otherwise.

9703200382-XA

2611  
970617

J/K

This letter is not a formal opinion binding on the Commission within the meaning of the NRC regulations. E.g. 10 CFR 30.5.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a long, horizontal, slightly wavy line extending to the right.

Martin G. Malsch  
Deputy General Counsel

cc: Susan White, Texas Natural  
Resources Conservation Commission  
Marianne Sullivan, Department of  
Energy  
Richard Ratliff, Chief  
Texas Department of Health

*LLW Forum*

# *News Flash*

2:00 P.M. EST January 3, 1997

by facsimile transmission to Forum Participants/Alternates, Federal Liaisons/Alternates

*Anderson v. Semnani*

## **Former Utah Regulator Sues Envirocare**

**Owner Claims Ex-Official Extorted Money**

### **The Complaint**

On October 18, 1996, Larry Anderson and Lavicka, Inc. filed a lawsuit in the Third Judicial District Court of Salt Lake County, Utah, against Khosrow Semnani and Envirocare of Utah. The suit alleges that the defendants owe to the plaintiffs in excess of \$5 million for site application and consulting services related to the licensing and operation of the Envirocare low-level radioactive waste disposal facility.

According to the complaint, payment is due under an oral contract allegedly entered into between the parties in 1987 after Anderson approached Semnani about siting such a facility in Utah. At the time, Anderson served as director of the Utah Bureau of Radiation Control. Kenneth Alkema, who is the former Director of the Utah Division of Environmental Quality, was Anderson's immediate supervisor. Alkema currently serves as Envirocare's Director of Governmental Affairs.

The plaintiffs claim that, under the terms of the contract, Semnani agreed to pay a consulting fee of \$100,000 and ongoing remuneration of five percent of all direct and indirect revenues realized from the operation of the Envirocare facility, should siting prove successful. The plaintiffs contend that only a portion of the money owed has been paid to date.

### **Answer and Counterclaim**

Although Envirocare denies having paid or owing money to the plaintiffs, Semnani has stated in official court documents that he personally agreed to make payments to Anderson and that he personally gave Anderson cash, gold coins, and real property totaling approximately \$600,000 in value over an eight-year period. According to the documents, Semnani denies, however, that the payments were for consulting services and instead alleges that they were made in response to Anderson's ongoing practice of extorting monies from Semnani by using his official position with the state of Utah. Semnani contends that he made the payments because he feared that Anderson would otherwise use his regulatory authority to create problems for Envirocare.

In early November 1996, Semnani filed a counterclaim against Anderson seeking \$1.8 million in punitive damages plus the return of all monies and property that he had previously given to Anderson. In addition, Semnani and Envirocare together filed a counterclaim seeking an award of attorneys fees.

## Former Utah Regulator Sues Envirocare

### Background/Related Issues

During the time when Anderson claims to have worked as a consultant to Envirocare, the company's storage capacity was increased significantly. In addition, Envirocare's license has been amended several times over the years, substantially expanding the nature of the radioactive waste that the facility may accept for disposal. Anderson approved the majority of these amendments, and his signature appears on Envirocare's original license.

According to William Sinclair, who replaced Anderson as Director of Radiation Control, the Utah Department of Environmental Quality conducted an internal investigation into the relationship between Semnani and Anderson several years ago. The investigation, however, did not turn up any improprieties. The Attorney General's Office, from which Anderson claims to have previously obtained "informal advice," is now conducting a criminal investigation into the matter. In addition, it has been reported that Dianne Nielson, Executive Director of the Utah Department of Environmental Quality, is calling for Semnani's resignation from the Utah Board of Radiation Control.

Utah's ethics laws prescribe that

no public officer or public employee shall knowingly receive, accept, take, seek, or solicit, directly or indirectly, any gift, compensation, or loan, for himself or another if: (a) it tends to influence him in the discharge of his official duties; or (b) he recently has been, or is now, or in the near future may be involved in any government action directly affecting the donor or lender ...

State officials are in the midst of a regularly scheduled review of Envirocare's operating license, which comes up for renewal every five years. Envirocare submitted its renewal application in January 1996. According to Sinclair, the state is currently reviewing responses to the first set of interrogatories. Sinclair is uncertain as to how long the entire license review will take. In the meantime, Envirocare is operating under "timely renewal," meaning that its current license remains in effect until a final decision is made on the renewal application.

*Additional information will be provided at a later date.*

*—Todd Lovinger*

MEETING

SUBJECT: ALLEGATION REVIEW BOARD - UTAH

PARTICIPANTS: H. L. THOMPSON, DEDR  
R. BANGART, OSP  
P. LOHAUS, OSP  
F. CAMERON, OGC  
D. MURPHY, OI  
B. O'CONNELL, NMSS  
R. SCARANO, REGION IV (BY TELEPHONE/817-860-8106)

DATE AND TIME: JANUARY 10, 1997  
11:00 - 12:00

ROOM: TWFN - 10-A-1

CONTACT: RICHARD BANGART (415-3340)