State of Utah; Agreement Pursuant to Section 274 of the Atomic Energy Act, as Amended; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of State Programs, has issued a decision concerning a Petition dated September 21, 1992, submitted by US Ecology, Inc. regarding the State of Utah Agreement State program. The Petition requested that the U.S. Nuclear Regulatory Commission (NRC) revoke or suspend the State of Utah's Agreement State program for failure to require Federal or State land ownership at the Envirocare of Utah, Inc. low-level radioactive waste (LLRW) disposal facility. Petitioner alleged that: Under both Utah's Agreement State program and the Federal LLRW regulatory program, LLRW may not be disposed of on privately-owned land unless the State in which the site is located or the Federal government has formally expressed a willingness to accept title to the facility at site closure; the Envirocare site is located on privatelyowned land; and neither Utah nor the U.S. Department of Energy has agreed to or expressed any willingness to accept title to the site.

By letter dated October 26, 1992, the NRC staff acknowledged receipt of the Petition and notified the Petitioner that this matter would be considered pursuant to 10 CFR 2.206. The NRC staff published a notice of receipt of the Petition in the **Federal Register** on November 13, 1992 (57 (FR 53941).

The Director of the Office of State Programs has denied the Petition. The reasons for this decision are explained in a Director's Decision Under 10 CFR 2.206 (DD–95–01), which is available for public inspection in the Commission's Public Document Room located at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 26th day of January, 1995.

For the Nuclear Regulatory Commission. **Richard L. Bangart**,

Director, Office of State Programs.

I. Introduction

By a letter dated September 21, 1992, and supplemented in a letter of

December 8, 1992, to James M. Taylor, Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC or Commission), US Ecology, Inc. (petitioner) filed a "Petition of US Ecology, Inc. for Review and Suspension or Revocation of Utah's Agreement State Program for Failure to Require State or Federal Site Ownership at the Envirocare of Utah, Inc. Low-Level Radioactive Waste Facility." Petitioner alleges that—

(1) Under both Utah's Agreement State program and the Federal low-level radioactive waste (LLRW) regulatory program, LLRW may not be disposed of on privately owned land unless the State in which the site is located or the Federal Government has formally expressed a willingness to accept title to the facility at site closure;

(2) The Envirocare site is located on privately owned land; and

(3) Neither Utah nor the U.S. Department of Energy has agreed to or expressed any willingness to accept title to the site.

The petitioner requested that in view of these allegations the NRC initiate appropriate proceedings, including relevant hearings, to suspend or revoke Utah's Agreement State status under Section 274j. of the Atomic Energy Act of 1954, as amended (AEA). The receipt of this Petition was noticed in the **Federal Register** on November 13, 1992 (57 Fed. Reg. 53941). For the reasons set forth below, petitioner's request is denied.

II. Background

Section 274 of the AEA, as amended, provides the statutory basis under which the NRC can relinquish portions of its regulatory authority to the States. This makes it possible for States to license and regulate the possession and use of byproduct material, source material, and special nuclear material in quantities not sufficient to form a critical mass.

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

The AEA was amended in 1978 to require, among other things, that the NRC periodically review Agreement State programs to determine the adequacy of the program to protect the public health and safety and compatibility with NRC's regulatory program. Section 274j. of the AEA provides that the NRC may suspend or terminate its agreement with a State if the Commission finds that such suspension or termination is necessary to protect the public health and safety. As mandated by the AEA, NRC conducts periodic, on site, in-depth reviews of each Agreement State program. The results of these reviews are documented in a report to the State. The report indicates whether the State's program is adequate to protect the public health and safety and also whether the program is compatible with NRC's regulatory program. (In some cases, the State is informed that the findings on adequacy and compatibility are being withheld pending further review by NRC and the resolution of outstanding issues.)

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

Part of the State's program involved the adoption of regulations compatible with the NRC regulations for the licensing of land disposal of radioactive waste (10 CFR Part 61), including § 61.59 (Institutional requirements). Section 61.59 states:

(a) Land ownership. Disposal of radioactive waste received from other persons may be permitted only on land owned in fee by the Federal or a State government.

As part of its regulation of LLRW, Utah also adopted a provision similar to