

the exemption provision at 10 CFR 61.6, which states:

The Commission may, upon application by any interested person, or upon its own initiative, grant any exemption from the requirements of the regulations in this part as it determines is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.

In September 1990, Envirocare of Utah, Inc. (Envirocare) requested the State to amend its license to authorize receipt of LLRW for disposal. On March 21, 1991, Utah granted the request authorizing LLRW disposal. In granting this authorization, the State extended a previously-granted exemption from the State's land ownership requirements for Naturally Occurring Radioactive Material (NORM) and Naturally-Occurring and Accelerator-Produced Radioactive Material (NARM) disposal to LLRW disposal at the Envirocare facility. (NORM and NARM are outside the NRC's regulatory authority.) Utah issued the exemption pursuant to its regulations, which provide that the State may grant "such exemptions or exceptions from the requirements of these regulations as it determines are authorized by law and will not result in undue hazard to public health and safety or property."

On September 21, 1992, US Ecology, Inc. filed this petition with the NRC requesting that the Commission revoke or suspend the Utah agreement program for regulating the commercial disposal of LLRW because of Utah's failure to require State or Federal government land ownership. The petitioner requested the NRC to review the adequacy and compatibility of Utah's Agreement State program in light of this failure and alleged that the State had not adequately justified the granting of an exemption from the land ownership requirement.¹ In a letter of October 26, 1992 acknowledging receipt of the petition, Mr. Carlton Kammerer, Director, Office of State Programs, informed the petitioner that the NRC staff was in the process of reviewing the licensing action of Utah as it related to the granting of the exemption in the course of NRC's periodic review of the Utah Agreement State program pursuant to Section 274j. of the AEA. Furthermore, the NRC staff's review of the Utah program would of necessity address the issues raised in the US Ecology petition. As will be set forth in greater detail below, the NRC has determined that the State of Utah's

rationale of exercising effective control of the waste disposal site without State or Federal ownership is not unreasonable and would not warrant revocation or suspension of the Utah agreement.

III. Discussion

The NRC staff has examined the petitioner's claim in the original petition of September 21, 1992 and the supplement dated December 8, 1992:

Petitioner requests that the NRC begin proceedings to revoke or suspend Utah's Agreement State status under section 274 of the Atomic Energy Act because of alleged flaws in Utah actions on the licensing of Envirocare of Utah, Inc., to receive LLRW for disposal.

Pursuant to Section 274 of the AEA, NRC relinquished its regulatory authority over the licensing of LLRW to Utah and therefore has no direct authority over licensing of LLRW facilities in Utah. However, NRC does have authority to terminate or suspend Utah's Agreement State program under Section 274j. of the AEA. Section 274j. states:

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection b. [of this section] has become effective, or upon request of the Governor of such State, may terminate or suspend all or part of its agreement with the State and reassert the licensing and regulatory authority vested in it under this Act, if the Commission finds that (1) Such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to insure [sic] compliance with the provisions of this section.²

Based upon these periodic reviews, or upon special reviews conducted for cause, the Commission must find that (1) Termination or suspension of a State's program is required to protect the public health and safety or (2) that the State has not complied with one or more requirements of Section 274 of the AEA (e.g., the requirement for the State program to be compatible with the NRC program).

The revocation of Utah's Agreement State status, as requested by the petitioner, hinges on whether Utah's

regulatory scheme of providing an exemption from State or Federal ownership of the site was compatible with NRC's regulatory requirements and whether Utah's action in granting the exemption provided for adequate protection of the public health and safety. The NRC regulations contain an exemption provision in 10 CFR 61.6 that allows the Commission to grant any exemption from the requirements in Part 61 provided that the exemption is authorized by law, will not endanger the public health and safety or the common defense and security and is otherwise in the public interest. The land ownership provision in Section 61.59 is subject to this exemption provision. Although NRC has not exercised its authority under the exemption provision in Part 61 as Utah has exercised, Utah's regulatory scheme contains an exemption provision similar to the NRC's. Although NRC has not granted (nor has any person requested) any similar exemption, it has not adopted any particular policy or practice precluding this that might be identified to the States as a matter of strict compatibility. In this regard, Utah's regulatory program is not incompatible with the NRC.

The issue then becomes whether the exercise of the exemption provision poses a sufficient safety problem as to require the NRC to revoke or suspend Utah's Agreement State program. The reasons for the exemption Utah issued for LLRW originally were derived in part from the reasons for the exemption it had issued for NORM and NARM, which the NRC staff found not to be sufficient. Upon the NRC's request, Utah provided additional explanation of the reasons for the exemption with regard to LLRW (described below), and also imposed deed restrictions on Envirocare's title to the site, as explained below. Specifically, the State of Utah provided the following justifications for its concept of providing for a degree of State control of the disposal site that would be equivalent to the control provided by the requirement in the regulations for the disposal site to be located on State or Federal land:³

* Tooele County has zoned the area that the Envirocare site is in as heavy manufacturing-hazardous (MGH) designation. * * *

* Because of the mixed waste licenses held by Envirocare, Envirocare has recorded in the public records of Tooele County an

¹ On December 8, 1992, the petitioner also submitted a supplemental legal analysis in support of the petition.

² As required by this section, the NRC staff has conducted periodic reviews of the Utah Agreement State program since Utah became an Agreement State in 1984. The purpose of these periodic reviews is to determine the adequacy of the State's program to protect the public health and safety and the compatibility of the State's program with that of the NRC.

³ From a letter dated February 12, 1993 from Dianne R. Nielson, Ph.D., Executive Director, Utah Department of Environmental Quality, to Mr. Carlton Kammerer, Director, Office of State Programs, U.S. Nuclear Regulatory Commission.