

described above with Envirocare on June 29, 1993.

In addition, the NRC is required by law to continue to review the Utah Agreement State program for adequacy and compatibility. If at any time in the future during these reviews the NRC determines that the public health and safety is not being protected, the Commission will begin proceedings for taking necessary action, including, if appropriate, the suspension or termination, of the Utah program.

In summary, the requirement in 10 CFR 61.59(a) regarding land ownership specifies that disposal of radioactive waste received from others may only be permitted on land owned in fee by the Federal or a State government. The State of Utah issued an exemption from its State or Federal land ownership requirement pursuant to Utah's regulations, which provides 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." This Utah exemption provision is similar to the Commission's exemption in 10 CFR 61.6. One June 28, 1993, the Commission approved this approach as acceptable, with the proper implementing mechanisms put in place. On the day of the Commission's decision, the State was informed that the Commission decided that the State's rationale of exercising effective control of the waste disposal site without State or Federal land ownership was acceptable and was equivalent to the control that would be provided by State or Federal ownership. The letter to the State also attached a suggested restrictive covenant intended to provide sufficient restrictions on the future use of the site. On June 30, 1993, the State of Utah provided the NRC with a recorded copy of the executed restrictive covenant between Envirocare of Utah, Inc. and the Utah Department of Environmental Quality.

A follow up review of State actions and documentation was performed by the NRC staff during a review visit of the Utah Agreement State program on August 30 through September 2, 1993. The question of control of the site after the period of post-closure observation and maintenance was addressed by the State's extension of the license term through the institutional control periods. The authorization to receive and dispose of waste will expire at closure of the disposal facility, but the responsibility of the licensee to maintain the site will continue through these control periods. As a result, the

trust funds required for the license now and in the future will not be released to the licensee until the licensee has satisfied the license termination requirements. The amount of surety as of September 30, 1994 was approximately \$4.1 million. The surety is reviewed and adjusted annually. The Commission expects that Utah will require an amount of funds necessary to ensure protection of the public health and safety through the active control period.

An additional issue identified as part of the NRC staff review of this petition relates to liability for remediation and corrective measures in the event of an off site release of radioactive materials from the disposal facility. The NRC staff requested the State of Utah to identify actions that the State could take to identify and compel a responsible party to perform remediation and necessary corrective measures in the event that no licensee exists and significant off site releases occur. The State responded that it has the authority to identify and compel responsible parties to perform remediation and, in defined circumstances, the State may perform cleanups. Specific measures identified by the State were:⁴

*The Radiation Control Board has the authority to establish rules and issue orders to enforce laws and rules [Utah Code Annotated (UCA) Section 19-3-104(9)]. Additionally, the Executive Secretary of the Board is authorized to enforce rules through the issuance of orders [UCA Section 19-3-108(2)(c)(iii)].

*To the extent that the release is of a "hazardous substance (under CERCLA) or hazardous material" as defined in UCA Section 19-6-302, the Executive Director of the Department of Environmental Quality may issue an abatement order if there exists a direct and immediate threat to the public health or the environment and may use environmental mitigation fund monies established by the Utah legislature to investigate and abate the release (UCA Section 109-6-309).

*The Executive Director of the Department of Environmental Quality may issue mitigation orders where conditions exist which create a clear and present hazard to the public health or the environment and which requires immediate action [UCA Section 19-1-202(2)(a)].

*The Attorney General or the county attorney has authority to bring any civil or criminal action requested by the Executive Director of the Department of Environmental Quality or the Utah Radiation Control Board to abate a condition which exists in violation of or for enforcement of laws or standards,

⁴ From a letter dated September 6, 1994 from Dianne R. Nielson, Ph.D., Executive Director, Utah Department of Environmental Quality, to Mr. Richard L. Bangart, Director, Office of State Programs, U.S. Nuclear Regulatory Commission.

orders, and rules of the Department [UCA 19-1-204].

*The Governor is authorized to respond to technological hazards which include radiation incidents under the Disaster Response and Recovery Act [UCA 63-5a-1 to 11].

IV. Special Considerations

The Envirocare LLRW disposal facility (co-located with the NORM disposal facility) is located in Clive, Tooele County, Utah, approximately 85 miles west of Salt Lake City, Utah. This facility is located adjacent to: (1) The U.S. Department of Energy's (DOE) South Clive disposal cell containing uranium mill tailings from the former Vitro South Salt Lake facility that was cleaned-up and moved to this site pursuant to the Uranium Mill Tailings Radiation Control Act of 1978; (2) an NRC-licensed facility operated by Envirocare to receive, store, and dispose of uranium and thorium byproduct material [as defined by Section 11e.(2) of the AEA, as amended]; and (3) Envirocare facility licensed under the State of Utah's authority for disposal of Resource Conservation and Recovery Act (RCRA) material as delegated by the U.S. Environmental Protection Agency (EPA) for those radioactive wastes which have been mixed with, or contain, hazardous material. These facilities are located within the Tooele County Hazardous Waste Zone, approximately 20 miles from any residents. On January 12, 1988, the Tooele County Commission established the West Desert Hazardous Industry Area, which limits the future uses of land in the vicinity of the site by prohibiting residential housing. The facilities are located in the extreme eastern margin of the Great Salt Lake Desert which is part of the Basin and Range Province of North America. The groundwater quality at these disposal sites is extremely poor due to a very low annual precipitation, high evaporation, low infiltration, and an abundance of evaporate materials in the near surface sediments in the Great Salt Lake Desert. According to EPA classifications, the two aquifers beneath the site are considered Class III since they both have a total dissolved solids content in excess of 10,000 mg/L. The NRC staff has concluded that the groundwater in the disposal site area is of a poor quality and is not suitable for most known uses without significant treatment.

Under these circumstances, it cannot be said that the Utah regulatory program for the Envirocare site, including the control periods, surety provision, restrictive covenant, and Utah remedial action powers fails to provide adequate