Appendix J requires ILRTs to be performed at approximately equal intervals during each 10-year service period. The third test of each set must be conducted when the plant is shut down for the 10-year plant inservice inspections. In order to schedule the next ILRT (the third ILRT of this service period) such that it coincides with the 10-year inservice inspections, the licensee has requested a one-time exemption from the Appendix J requirements. The exemption would extend the 10-year service period by one refueling outage to permit the licensee to perform the next ILRT together with the 10-year inservice inspection that are scheduled during the thirteenth refueling outage in 1996.

The proposed action is in accordance with the licensee's application for exemption dated November 8, 1994.

*The Need for the Proposed Action*

If performed during the thirteenth refueling outage, the third ILRT will not be completed until after the end of the current 10-year service period. To comply with regulations as written, an ILRT would be required during the twelfth refueling outage in 1995 to satisfy the requirement for three ILRT's during the 10-year service period and another ILRT would be required during the thirteenth refueling outage in 1996 to satisfy the requirement for the third ILRT to be performed when the plant is shut down for the 10-year inservice inspection. Without the requested exemption and related technical specification changes, the licensee would be required to perform ILRT's during both the twelfth and thirteenth refueling outages. A requirement to perform ILRT's during two consecutive refuelings is clearly beyond the intent of the regulations and given the satisfactory results of previous tests at ANO–1, there is little, if anything, to gain from two closely spaced tests.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed action and concludes that granting of the one-time relief does not impact the environment. Six previous ILRT's performed at approximately three year intervals have not identified containment leakage concerns. An interval extension of one refueling outage (approximately 18 months) between the sixth and seventh ILRT is not likely to result in unidentified containment leakage during plant operations. There is minimal concern that the ILRT interval extension would increase the release of radioactive materials during normal operations or after an accident.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not significantly reduce the environmental impact of plant operation and would result in lost electrical generation capacity and other expenses to the licensee.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Arkansas Nuclear One, Unit No. 1.

*Agencies and Persons Consulted*

In accordance with its stated policy, the staff consulted with the State of Arkansas regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 8, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 27th day of January 1995.

For the Nuclear Regulatory Commission.

**George Kalman,**

*Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–2575 Filed 2–1–95; 8:45 am]

**BILLING CODE 7590–01–M**

## Notice of Issuance of Amendment to Facility Operating License, Correction

This notice corrects the notice issued in the Bi-Weekly Notices of Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Consideration for Illinois Power Company and Soyland Power Cooperative, Inc., on November 23, 1994 (59 FR 60392). The correct notice follows as Amendment No. 94 issued and effective on November 3, 1994:

The amendment modifies Technical Specification (TS) 3/4.3.1, ''Reactor Protection System Instrumentation,'' TS 3/4.3.2, ''Containment and Reactor Vessel Isolation Control System,'' TS 3/4.3.3, ''Emergency Core Cooling System Actuation Instrumentation,'' TS 3/4.3.4.2, ''End-of-Cycle Recirculation Pump Trip System Instrumentation,'' TS 3/4.3.5, ''Reactor Core Isolation Cooling System Actuation Instrumentation,'' TS 3/4.4.2.1, ''Safety/Relief Valves,'' and TS 3/4.4.2.2, ''Safety/Relief Valves Low-Low Set Functions.'' These TS contain requirements to perform manual testing of the associated solid state logic at least once every four fuel cycles on a staggered basis. This testing is in addition to the automatic testing performed by the self-test system. This amendment removes the requirement to perform manual testing of the solid state logic when the automatic testing is already performed.

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

For the Nuclear Regulatory Commission.

**Jack W. Roe,**

*Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–2574 Filed 2–1–95; 8:45 am]

**BILLING CODE 7590–01–M**

## 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 privately-owned 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

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.

Affidavit which refers to and incorporates the land use restrictions of 40 CFR 264.117(c) which controls post closure activities at the site.

* Envirocare is required under License Condition 36 to provide ''as built'' drawings every six months. Because of Envirocare's construction techniques, each generator's waste is segregated from other waste, and site records to be provided after closure will be detailed.

* The transfer of site records is specifically directed by UAC R313–25–33, particularly subparagraph (4).

* To be licensed, radioactive waste disposal facilities must meet siting criteria established in UAC R313–25–3, previously R447–25–3.

* Utah regulations require that after closure there be a 5-year post closure and maintenance period by the licensee until the site is transferred to the site owner for institutional control.

* Utah's regulations require licensees to establish a financial surety in the form of a trust agreement which gives the State exclusive control of the trust fund. The State requires that ''financial or surety arrangements shall remain in effect until the closure and stabilization program has been completed * * * and the license has been transferred.'' Until a transfer of the license occurs, the surety arrangement remains in effect and will continue to be reviewed to determine the amount necessary to protect public health, safety, and property.

* The State and Envirocare entered into an Agreement Establishing Covenants and Restrictions which identifies the site and the purpose of the licensed operations at the site.

The license ''Transfer and Termination'' sections of the State regulations indicate that the site operator will transfer and/or terminate its license and turn over the site to a governmental agency for the active institutional control period. The exemption in controversy here is an exemption from those sections of the regulations. Since Envirocare is the site owner and operator and no governmental agency is or has been authorized to take title to the site, transfer and termination of the Envirocare license would not occur prior to the active institutional control period. Therefore, Envirocare would remain responsible for the site under the license and the institutional control phase would be implemented by Envirocare.

In order to determine the adequacy of the Utah regulatory framework for protecting the public health and safety, the NRC staff analyzed the control of the disposal site for the three major phases in the life of a low-level waste disposal site (operations, closure, and post-closure observation and maintenance; active institutional control; and passive institutional control). This analysis was conducted to determine which mechanisms, if properly constructed, could provide adequate control in lieu of Government ownership of the land. In addition, the NRC staff considered the special circumstances posed by the Envirocare site.

*Operations, Closure, and Post-Closure Observation and Maintenance Period*

Envirocare has title to the land and, therefore, is responsible for all activities on the site. The licensee has provided a Trust Agreement with the State of Utah that provides funds for closure and the post-closure period and the active institutional control period in the event the licensee is financially incapable of closing the site or abandons the site. The license limits the accumulation of undisposed waste to a specific amount that can be disposed of through the use of the trust funds.

*One Hundred-Year Active Institutional Control Period*

The State proposed that it is exercising control and can continue to exercise control of the site in such a manner that land ownership is not necessary to protect the public health and safety from the material that is being disposed of at the site. In particular, the State points to its control of the trust fund that includes the money for the active institutional control period. If the site owner is not capable of conducting the activities required during the active control period, the State will carry out the activities by using the money in the trust fund. Under the control mechanisms, the State would not need to own the site to carry out these activities.

*Passive Institutional Control Period*

The State proposed the use of deed annotation as a method of informing individuals who may wish to use the site in the future that the land was used for waste disposal and should not be disturbed.

The staff found that the mechanism submitted by the State lacked specificity needed to implement the requisite degree of control because the land annotation did not provide sufficient restrictions on the future use of the site. As a result of this deficiency, the staff suggested a proposed ''restrictive covenant'' that the State of Utah could use to implement the requisite degree of control.

In brief, the provisions of the restrictive covenant suggested by the NRC staff were in addition to any restrictions on the title already recorded in the Tooele County records, and, *inter alia,* proposed to restrict Envirocare and its successors and assigns with respect to the property as follows: (1) No excavation or construction, except as necessary to maintain the premises, shall be allowed after the LLRW is disposed of and the facility closed; (2) No uses of the property shall be made which may impair its integrity; (3) Any change in use of the property following closure of the facility shall require the prior written consent of the Utah Department of Environmental Quality; (4) Envirocare and its successors or assigns, shall erect and continuously maintain monuments and markers, approved by the Department, to warn of the presence of radioactive material at the site; (5) Envirocare shall not convey the property without the prior written approval of the Department, nor shall Envirocare consummate any conveyance of any interest in the property without adequate and complete provision for continued maintenance of the property; and (6) Any State or Federal governmental agency affected by any violations of these restrictive covenant may enforce them by legal action in the District Court for Tooele County. As the proposed restrictive covenant made clear, the State of Utah will have the power to control the ownership, use, and maintenance of the Envirocare property after closure of the facility to a degree equivalent to ownership of the site. Moreover, both Utah and the NRC, in particular, would have the right to enforce the covenant.

The Commission, after careful consideration, came to the conclusion that the institutional controls, such as the proposed restrictive covenant, could be used in this case to achieve the same safety result as site ownership by State or Federal authorities. The Commission's decision was conveyed to the State in a June 28, 1993 letter from Mr. Kammerer to Dr. Nielson. The purpose of the Federal or State government land ownership requirement is to provide a higher degree of assurance that through State or Federal government ownership of the site, institutional control of the site will continue to exist for longer periods of time than under private ownership. Regarding the similarity between land ownership and a restrictive covenant, in each case there is an entity in existence to take action to remedy any on site difficulty. With land ownership, the State can take action with regard to its ownership of the land, and with a restrictive covenant, the State can take action to enforce the restrictive covenant. The State of Utah executed a restrictive covenant with the terms

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, 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].

[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.

## 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

protection of the public health and safety. Moreover, the NRC's governmental site ownership provision is directed at assuring control over potential releases over very long periods of time (in excess of 100 years), and the Utah program, especially the restrictive covenant and remedial action powers, should likewise achieve an adequate level of control. NRC staff recognizes that, under other circumstances, a State's ownership of a site as contrasted with private land ownership of the site might, in theory, carry with it some greater legal or ''moral'' obligation by the State to take affirmative action to assure safety. However, given the nearby presence of the RCRA facility, the proximity of two other radioactive waste disposal activities under Federal land ownership requirements, and the remoteness of the site, the Commission does not believe private site ownership poses a sufficient real safety issue to warrant revocation or suspension of the Utah regulatory program.

**V. Conclusion**

The NRC has carefully reviewed the issues raised by the petitioner in the staff's review of the Utah program. For the reasons discussed above, I find no need for taking such action. Rather, on the basis of the review efforts by the NRC staff, I concluded that the petitioner has not raised a sufficient issue of Utah's compliance with one or more requirements of Section 274 of the AEA or any substantial health and safety issues to warrant the action requested. Accordingly, the petitioner's request to suspend or revoke the Utah Agreement State program for failure to require State or Federal site ownership at the Envirocare of Utah, Inc. LLRW disposal site is denied.[5] A copy of this decision will be placed in the Commission's Public Document Room, Gelman Building, 2120 L Street, NW, Washington, DC 20555. A copy of this decision will also be filed with the Secretary for the Commission's review as stated in 10 CFR 2.206(c) of the Commission's regulations. The decision will become the final action of the Commission twenty-five (25) days after issuance unless the Commission on its own motion institutes 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.*

[FR Doc. 95–2578 Filed 2–1–95; 8:45 am]

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[5] In a letter of July 8, 1993 to NRC Chairman Ivan Selin, the petitioner claimed that the Commission's decision of June 28, 1993 denied the petitioner an opportunity for a hearing on its petition for the revocation of Utah's Agreement State status to argue the policy issues associated with the land ownership exemption. Neither the AEA nor the Commission's regulations provides for a hearing on the evaluation of an Agreement State program. The Commission's review of the Agreement State program incorporated a review of the issues raised in the petition.

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**[Docket No. 50–213]**

## Connecticut Yankee Atomic Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would modify the Technical Specification (TS) 3.4.5, ''Steam Generators,'' surveillance requirements 4.4.5.3.a and 4.4.5.3.b. These surveillance requirements pertain to the inservice inspection of the steam generator tubes and are being modified to support a 24 month fuel cycle.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 6, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, CT 06457. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these