

2. By June 30, 1997, provide the NRC with technical justification as to the safety of the devices and as to why they should remain in the public domain. If the NRC determines that the technical justification is inadequate, Apgee shall recall all devices within 15 days of the NRC's notification or by July 31, 1997, whichever is the later date.

F. With respect to the LB 330 Belt Scale devices with increased diameter of the source capsule and spacers in the source rod, within seven months of the date of this Order, Apgee shall:

1. If an amended SSD Registry Certificate is issued to allow for the 7mm diameter source and spacers and other changes to the devices, complete any actions needed to ensure the devices conform to the amended Registry Certificate; or
2. Recall the devices; or
3. Bring the devices into compliance with the current SSD Registry Certificate.

G. Apgee shall provide, in writing, the following information to the Director, Division of Nuclear Materials Safety, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406:

1. Within 30 days of the date of this Order, the schedule for performance of the required quarterly audits. The NRC shall be notified at least 30 days in advance of any change of the scheduled audit dates.

2. Within 30 days after the completion of each audit, for a period of one year from the date of this Order, a report describing the results of the quarterly audits. In cases where the audit identifies deficiencies in which devices do not comply with the Registry Certificate, the report shall include a description of corrective action planned to ensure that commitments or requirements are met, a schedule for completion of the corrective action, and a basis as to why the NRC should not take further enforcement action for the continued failure to comply with NRC requirements.

3. Monthly status reports that include the status of all actions required by this Order.

H. If, for any reason, a date specified in the above conditions cannot be met, Apgee shall contact, in writing, Mr. A. Randolph Blough, Director, Division of Nuclear Materials Safety, at the address in Provision G above.

The Regional Administrator, Region I, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the

Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 26th day of June, 1997.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 97-17294 Filed 7-1-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040-8989, License No. SMC-1559, EA 97-303]

Envirocare of Utah, Inc., Salt Lake City, UT; Confirmatory Order (Effective Immediately)

I

Envirocare of Utah, Inc., (Envirocare) is the holder of Utah License No. UT2300249 issued by the State of Utah. The State license authorizes Envirocare to transfer, receive, possess and use designated radioactive material as specified therein. The State license was most recently amended on August 16, 1996, and is currently under timely renewal status. Envirocare is also the holder of NRC License No. SMC-1559, issued by the Nuclear Regulatory Commission (NRC or Commission). The NRC license authorizes Envirocare to possess and dispose of source material as defined in 10 CFR Part 40, but does not authorize possession of Special Nuclear Material (SNM). The NRC license was issued on November 19, 1993; was most recently amended on August 7, 1996; and is due to expire on November 30, 2003.

II

NRC requirements in 10 CFR 150.10 state, in part, that any person in an Agreement State who receives or possesses SNM in quantities not sufficient to form a critical mass is exempt from the requirements for a license contained in Chapters 6, 7, and 8 of the Atomic Energy Act. 10 CFR 150.11(a) states, in part, that special nuclear material in quantities not sufficient to form a critical mass means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235.

On June 9-10, 1997, the NRC conducted an inspection of Envirocare's facility near Clive, Utah. During the inspection, the NRC identified that Envirocare had received, and had caused to be present on site, SNM in excess of the 350 gram limit defined by the formula in 10 CFR 150.11. Specifically, the inspection revealed that Envirocare had caused to be present on site more than 2,400 grams of uranium-235 that had not been disposed of.

Based on further review of Envirocare's procedures, the NRC concluded that Envirocare did not correctly account for all SNM under its control that is awaiting disposal as being in its possession, which resulted in possession of SNM in excess of the

quantities specified in 10 CFR 150.10 and 10 CFR 150.11(a), a violation of the requirement for an NRC license.

III

As a result of the NRC findings, the NRC issued to Envirocare a Confirmatory Action Letter (CAL) on June 12, 1997, which confirmed that Envirocare would take certain actions. These actions included: (1) Discontinuing receipt of SNM at its facility, except in clearly defined circumstances, until receipt of written approval by the NRC; and (2) submitting a plan to the NRC for removal, or disposal at its site by June 25, 1997, of waste materials such that the sum of all SNM remaining on site would not exceed the formula quantity prescribed by 10 CFR 150.11 and Envirocare's Agreement State license.

Envirocare submitted a plan on June 16, 1997, to NRC in accordance with these commitments. In addition, in a letter dated June 18, 1997, Envirocare requested an extension of the June 25, 1997 deadline, to August 1, 1997, with respect to achieving compliance with NRC requirements.

On June 19, 1997, representatives of Envirocare met with representatives of the NRC staff during a management meeting at the NRC headquarters office in Rockville, Maryland. During the meeting, the NRC discussed the commitments described in the CAL and proposed that Envirocare not receive any shipments of SNM pending written NRC approval, except for shipments in transit as of June 11, 1997, as provided in Paragraph IV.2 of this Order. In addition, by letter dated June 23, 1997, the NRC described to Envirocare the NRC's understanding of Envirocare's commitments, and proposed incorporating those commitments into a Confirmatory Order.

Envirocare subsequently consented to issuing this Order with the conditions, as described in Section IV below, in a waiver signed on June 25, 1997. Envirocare also agreed to waive its hearing rights. The NRC has reviewed the above conditions and concludes that implementation of these actions would provide enhanced assurance that Envirocare's program for disposal of radioactive material will be conducted safely and in accordance with NRC requirements.

I find that Envirocare's commitments as set forth in Section IV are acceptable and necessary to provide for the public health, safety, and interest. In view of the foregoing, I have determined that Envirocare's commitments should be confirmed by this Order. Based on the

above and Envirocare's consent, this Order supersedes the CAL dated June 12, 1997, and is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 70 and 150, *It is hereby ordered, effective immediately, That:*

1. Effective immediately, Envirocare shall not receive Special Nuclear Material (SNM) at its facility until four business days after compliance with Condition 4, except as described in Condition 2 below, unless Envirocare has received written authorization from the NRC. Such authorization will be based on review and approval by the NRC of Envirocare's submittal of a compliance plan for meeting the terms of the exemption granted in 10 CFR 150.10 and 150.11 relating to possession of SNM. NRC and Envirocare will meet on or before July 3, 1997, to discuss the issue of SNM possession limits. Envirocare shall submit its compliance plan no later than July 7, 1997. This condition applies to mixed and non-mixed low-level radioactive waste containing SNM.

2. Shipments of SNM enroute to the Envirocare facility as of June 11, 1997, may be received at the facility. In addition, any shipment, whether or not enroute by June 11, 1997, containing one gram or less of SNM per conveyance (single rail car or truck) may be received.

3. All SNM within the restricted area at the site, other than SNM placed within the disposal cell, shall be included in determining application of the exemption granted in 10 CFR 150.10. This condition is an interim condition and will be replaced by the compliance plan required by condition 1 above, after written approval of the compliance plan by the NRC.

4. Envirocare will submit to the NRC no later than August 4, 1997, written confirmation, under oath or affirmation, that the actions described in the disposal plan dated June 16, 1997, have been completed.

5. Any written communication submitted by Envirocare in connection with this Order shall be provided to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011-8064.

The Regional Administrator, NRC Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by Envirocare of good cause.

V

Any person adversely affected by this Confirmatory Order, other than Envirocare, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, DC. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011-8064, and to Envirocare. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 25th day of June 1997.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 97-17293 Filed 7-1-97; 8:45 am]

BILLING CODE 7590-01-P