

PREDECISIONAL- LIMITED DISTRIBUTION

10 CFR 2.206 PETITION REVIEW BOARD MEETING SUMMARY

EDO Control Number: G2000108
G2000138
NMSS Control Number: 200000106
200000136
Facility/Licensee Name: EnviroSafe of Idaho, Unlicensed persons possessing or disposing
of FUSRAP 11 (e) (2) material
Petitioner: Snake River Alliance, Envirocare of Utah
Dates of Petitions: February 24, 2000; March 13, 2000

1. NMSS Petition Review Board met on April 11, 2000 at 2:00 p.m. in Room T7A1
2. Present at the meeting were:

PRB Members

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| M. Virgilio NMSS, Chairman | J. Lusher, Petition Mgr. (PM), NMSS/DWM |
| T. Essig, DWM | J. Lubinski, OE |

Other NRC Staff

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|------------------------|-----------------------|
| J. Goldberg, OGC | J. Euchner, OGC |
| J. Greeves, NMSS/DWM | J. Holonich, NMSS/DWM |
| P. Goldberg, NMSS/IMNS | J. Kinneman, NMSS |
| J. Kennedy, NMSS/DWM | S. Treby, OGC |

Petitioner Representatives

Leonard Bickwit, Miller and Chevalier (Envirocare)
Jonathan Carter, Miller and Chevalier (Envirocare)
David Adelman, NRDC (Snake River Alliance)
Steve Hopkins, Snake River Alliance (by phone)
Gary Richardson, Snake River Alliance (by phone)
Pamela Allister, Snake River Alliance (by phone)
Beatrice Brailsford, Snake River Alliance (by phone)

Organizations Subject to Petition

U.S. Army Corps of Engineers

Kip Huston
Noelle Simpson
Julie Peterson
Ann Wright

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Envirosource of Ohio (in person)

Douglas E. Roberts, Vice President - Regulatory and External Affairs

Patrick J. Petty, The Renkes Group

Scott Slesinger, Environmental Technology Council

David Case, Environmental Technology Council

Jon Kyte, Black, Kelly, Scruggs, and Healey (Safety Kleen and Waste Control Technologies)

PUBLIC

State of Idaho, Department of Environmental Quality, INEEL Oversight (via telephone)

Doug Walker, Senior Health Physicist, NRC liaison

Environmental Protection Agency, Office of Radiation (by phone)

Betsy Foranash

Dan Schultheisz

Jon Wright, DOE

Greg Sullivan, Environmental Careers Organization

3. Scope of the Petitions:

Snake River Alliance and Envirocare of Utah request that NRC take action to enforce the Atomic Energy Act (AEA) and NRC's regulations governing possession and disposal of 11e.(2) byproduct material whether or not it was generated after 1978 in order to regulate disposal of mill tailings resulting from the Formerly Utilized Sites Remedial Action Program (FUSRAP), and to take action to ensure that workers and the public are fully protected from radiation exposure due to the disposal of this material. Snake River Alliance cites in particular the Envirocare facility in Grand View, Idaho. Envirocare also asks the NRC to take appropriate action to license disposal sites which are currently disposing, or intend to dispose, of FUSRAP materials.

Both petitions assert that the Commission's interpretation is in conflict with the express statutory language of UMTRCA, the Act's legislative history, and the Commission's UMTRCA regulations. The petitioners indicated, with respect to the statutory language, that the Commission properly observed that Section 83a. imposes requirements on the NRC that apply only to source material licenses in effect on the effective date of section 83 or thereafter. However, the petitioners believe the Commission has not acknowledged that Section 81 and Section 84 of the AEA impose additional requirements on the Commission beyond those imposed by section 83. Most notably, Section 84, in their view, requires the Commission to "insure that the management of any byproduct material, as defined in Section 11e.(2), is carried out in such a manner as ... **the Commission deems appropriate to protect the public health and safety ...**" (emphasis Petitioners). In light of this Section -- as well as Section 81, which imposes prohibitions on unauthorized activities relating to any byproduct material -- the Commission, in the view of the petitioners, is required to regulate FUSRAP mill tailings, notwithstanding the fact that

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the majority of those tailings are not covered by the requirements of Section 83a.

4. Discussion:

The petitioners and organizations subject to the petition accepted the NRC staff's offer to make a presentation to the Petition Review Board to present any relevant additional information and support for the petition. PRB Chairman Marty Virgilio discussed the ground rules for the meeting attendees and presenters and the 2.206 petition process. David Adelman of the Natural Resources Defense Council made a presentation on behalf of the Snake River Alliance. Leonard Bickwit made a presentation on behalf of Envirocare of Utah. Both petitioner representatives responded to questions from PRB members and other NRC staff. Ann Wright of the Army Corps of Engineers (ACE) presented a letter from Robert M. Anderson, Chief Counsel, ACE to William F. Kane, Director, NMSS, dated April 11, 2000, addressing the requests of the two petitioners and reserving the opportunity to provide more detailed information. Douglas Roberts, Vice President for Regulatory and External Affairs of Envirosource of Ohio, a sister company of Enviro-safe of Idaho, made a brief presentation in response to the petitions and responded to questions from NRC staff. He also presented a letter faxed to Dr. William Traver, EDO on April 10, 2000, as a preliminary response to the petitions. Following the public portion of the meeting, Marty Virgilio explained that the meeting would recess and the PRB would reconvene without members of the public present to consider whether to accept the requests as a 2.206 petition and to take other decisions required by Management Directive (MD) 8.11. He explained that these decisions would be communicated to the petitioners and the organizations subject to the petition and would also be made public. Attendees were offered copies of the letters from Envirosource and ACE and copies of MD 8.11.

The PRB agreed that that the two petitions would be consolidated and that the petition would be accepted under 10 CFR 2.206. The PRB considered the 2.206 petition filed in 1998 by Thomas Cochran of the Natural Resources Defense Council, which was similar to the current petitions, and the Director's Decision on that petition during its deliberations. The PRB saw no need for referral to OI or OIG and left for future consideration the question of whether to hold additional PRB meetings. The PRB agreed that there was a need for OGC participation. NMSS, with assistance from OGC, will conduct the review of the petition and draft the Director's Decision. The staff will establish the review schedule and organization, based on the schedule requirements in the MD. The PRB considered the Snake River request for action concerning the Enviro-safe of Utah facility a request for immediate action but found that no immediate action was required to protect public or worker health and safety or the environment.

5. Additional Actions/Schedule.

The PM has advised the petitioners by phone that the petition has been consolidated and accepted as a 2.206 petition. An acknowledgment letter has been drafted and will be sent to the petitioners shortly.

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6. Prepared by:

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| <u>Paul Goldberg /RA/</u> | <u>5/5/00</u> |
| P. Goldberg, NMSS Petition Coordinator | Date: |

7. Approved by:

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| <u>John Lusher /RA/</u> | <u>5/8/00</u> |
| J. Lusher, Petition Manager | Date: |

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| <u>Martin Virgilio /RA/</u> | <u>5/5/00</u> |
| M. Virgilio, PRB Chair | Date: |

Copies to all participants

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