

SHAW, PITTMAN, POTTS & TROWBRIDGE

A PARTNERSHIP HOLDING PROFESSIONAL CORPORATION

2300 N STREET, N.W.
WASHINGTON, D.C. 20037-1128
(202) 663-8000
FACSIMILE
(202) 663-8007

600 THIRD AVENUE
NEW YORK, NEW YORK 10022-4728

1801 FARM CREDIT DRIVE
MCLEAN, VIRGINIA 22102-8000

118 SOUTH UNION STREET
ALEXANDRIA, VIRGINIA 22314-2281

201 LIBERTY STREET, S.W.
LEESBURG, VIRGINIA 22076-2721

February 22, 1996

JOFF J. THOMPSON, P.C.
(202) 663-8100

ms-16
P5

Mr. Ronald Bellamy
Chief
Decommissioning and Lab Branch
Division of Nuclear Materials Safety
Nuclear Regulatory Commission
Region 1
475 Allendale Road
King of Prussia, Pennsylvania 19406-1415

Re: Heritage Minerals, Inc. - Mail Control No. 120594

Dear Mr. Bellamy:

I am writing this letter on behalf of Heritage Minerals, Inc. in response to your letter to me dated January 24, 1996 regarding the application of the Nuclear Regulatory Commission's (NRC) final rule requiring the timely decontamination and decommissioning of nuclear material facilities, 10 C.F.R. § 40.42 (the timeliness rule), to the Heritage site near Lakhurst, New Jersey.

As an initial matter, Heritage does not agree that NRC has been given final notification of Heritage's intention to *permanently* cease operations and decommission the site. Under the terms of the timeliness rule, licensees must notify NRC in writing within 60 days if (1) the license expires, (2) a decision is made to permanently cease principal activities or (3) no principal activities have been conducted at the site for 24 months. 10 C.F.R. § 40.42(d).

Your letter references two pieces of correspondence that NRC considers to have provided notification that a decision had been made to permanently cease operations. The August 23, 1990 letter from Heritage to NRC Region 1, however, notes only that operations have ceased and that "the plant will be placed on standby status pending improvements in market conditions." This letter, while it does speak in terms of decontaminating the plant and equipment, does not state or indicate that Heritage had made a decision to "permanently cease principal activities." Similarly, the September 27, 1990 letter also does not provide notification that Heritage had permanently ceased activities at the site. It is a follow-up to the

SECTION COPY

FEB 23 1996

~~██████████~~
MISS ABON ██████████

B-3

Mr. Ronald Bellamy

February 22, 1996

Page 2

August letter, which noted that the plant was on standby status, and merely discusses the decontamination and decommissioning of the plant and equipment so that while it was on standby Heritage would not have to continue to comply with the NRC regulations applicable to an operating site. This did not mean that Heritage had made the decision to irrevocably cease operations. Indeed, if market conditions had improved, the plant could have been made operational again.

The final timeliness rule notes that "licensees that currently have unused facilities at the time of publication of the final rule would not need to submit notification required by this rule earlier than 2 years after the rule becomes effective. This provides licensees with the same period of time (2 years) in which to determine whether the unused facility would be put into use again or to submit notification as required by the rule." 59 Fed. Reg. 36026, 36033 (July 15, 1994). Thus, Heritage believes that it does not need to submit the required notification to NRC until August 15, 1996.

Setting aside for a moment the issue of whether Heritage previously gave the required notification of cessation of principal activities to NRC, since active operations at the site have been put on standby, Heritage, of course, has properly maintained the site in accordance with its license requirements, including placing a new cover on the monazite pile and mending the fence around it. NRC's inspection of the site on August 31, 1995, found no violations and concluded that Heritage "has an adequate radiation safety program." (Letter from John D. Kinneman to Anthony J. Thompson, November 20, 1995).

Heritage is presently exploring its options for disposing of the monazite pile. These options include the Malaysian option discussed with NRC in the past and using the material as an alternate feed for uranium production under NRC's "Final Position and Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores" (August 15, 1995). Heritage is evaluating the relocation costs, benefits, time frames, and certainty associated with these options.

As noted above, Heritage does not concede that decommissioning of its site must be completed by August 1996. Indeed, it is Heritage's position that, under the timeliness rule, decommissioning activities must be completed 24 months from the date of formal notice of permanent cessation of activities which has not yet occurred.⁴ We would like to discuss this issue with you as soon as possible to clarify the timetables.

⁴ Heritage agrees with NRC that a decommissioning plan is not necessary since the site can be decommissioned under current license conditions.

Mr. Ronald Bellamy
February 22, 1996
Page 3

Let me conclude by stating that Heritage intends to cooperate with NRC in the decommissioning process and would be pleased to meet with you at your convenience to give you a tour of the site and/or to discuss any of the issues raised in this letter or other concerns or questions you may have.

Sincerely,

Anthony J. Thompson

Anthony J. Thompson

AJT/clc
cc: Ms. Edele Hovnanian

371388-01 / DOCSDCI

120594