

NUCLEAR REGULATORY COMMISSION

DOCKET NO. 040-0299

[NRC-2011-0054]

NOTICE OF OPPORTUNITY TO REQUEST A HEARING AND TO PETITION FOR LEAVE TO INTERVENE, LICENSE AMENDMENT REQUEST FROM UMETCO MINERALS CORPORATION FOR APPROVAL OF AN EROSION ENHANCEMENT DESIGN FOR THE GAS HILLS RECLAMATION PROJECT
SOURCE MATERIAL LICENSE NO.SUA-648

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of receipt of a license amendment request and opportunity to request a hearing.

DATES: Requests for a hearing must be filed by May 16, 2011.

ADDRESSES: You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209,

301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for the documents related to this notice are: ML1036402653, and ML110340384.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Senior Project Manager, Special Projects Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-415-6749; fax number: 301-415-5369; e-mail: Dominick.Orlando@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Umetco Minerals Corporation (Umetco) uranium mill site is located in the East Gas Hills area of central Wyoming, 50 miles (80 km) southeast of Riverton, and west of East Canyon Creek. The Umetco site is licensed by the U.S. Nuclear Regulatory Commission (NRC) under Source Materials License SUA-648 to possess byproduct material in the form of uranium mill waste tailings, as well as other radioactive wastes generated by past milling operations.

The mill operated from 1960 to 1979 and has been dismantled. The current Umetco site consists of three primary tailings disposal areas on the 1,920 acre parcel - the 170 acre Above Grade Tailings Impoundment (AGTI), the 55 acre A-9 Repository, and the 60 acre Heap Leach area. In addition, the Gas Hills Pond No 2 area, adjacent to the AGTI and Heap Leach area, also contains waste from heap leach operations.

Monitoring and inspection activities performed by Umetco of the AGTI and A-9 Reclamation covers have identified isolated shallow incisions of the underlying cover soils in isolated locations on the AGTI and A-9 covers. Subsequent field investigations and review of approved design documents by Umetco has identified what Umetco believes is the cause of the sub-grade erosion. The cause identified by Umetco is an error in the calculation of the interstitial velocity for determining if a filter or bedding layer is necessary in the erosion

protection design. Umetco stated that they had completed a review of approved designs associated with all reclamation cover systems constructed at the site to ensure the design deficiency is confined to AGTI and A-9 and that other potential contributing factors are adequately addressed.

In a letter dated December 21, 2010, Umetco requested NRC approval of a design for various erosion protection enhancements for the AGTI, the A-9 Repository, the Launch Rock area located at the eastern toe of the AGTI, and an area located adjacent to the southeast corner of the reclamation cover toe (ADAMS Accession No. ML1036402653).

An administrative review, documented in an e-mail to Umetco dated January 31, 2011 (ADAMS Accession No. ML110340384), found Umetco's request acceptable to begin a formal technical review. If the NRC approves the request, the approval will be documented by amending NRC License No. SUB-648. The license will be revised by adding a license condition describing the erosion protection enhancements and any changes thereto or related requirements arising from the NRC's safety review. However, before approving Umetco's request and amending NRC License No. SUB-648, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. These findings will be documented in a Safety Evaluation Report and an environmental analysis.

II. Opportunity to Request a Hearing/Petition for Leave to Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject license. 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 Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is

available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland (or call the PDR at 800-397-4209 or 301-415-4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC website at <http://www.nrc.gov>.

If a request for a hearing and a petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, 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 must provide the name, address, and telephone number of the petitioner and 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 decision or order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends

to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Atomic Safety and Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

A State, county, municipality, Federally-recognized Indian tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by May 16, 2011. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be

granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Atomic Safety and Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by May 16, 2011.

III. Electronic Submissions (E-filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing rule requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the NRC's E-Filing system, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene.

Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at 866-672-7640. The NRC Meta System Help Desk is available between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention:

Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/EHD/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law required submission

of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dated at Rockville, Maryland, this 7th day of March, 2011.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION

/RA/

Keith I. McConnell, Deputy Director
Decommissioning and Uranium Recovery
Licensing Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs