

complies with controlling NRC rules and with the standards promulgated by the Environmental Protection Agency (the "EPA"), as required under 42 U.S.C.A. § 2114(a)(2).

I. REQUEST FOR AN INFORMAL HEARING

A. Envirocare's Areas of Concern are Germane to the Subject Matter of the Amendment Proceeding.

Envirocare has significant questions regarding the August 2, 1993 approval of the amendment to Umetco's source materials license for the White Mesa Mill by NRC's Region IV Uranium Recovery Field Office located in Denver, Colorado (the "Field Office"). The NRC's own regulations, specifically at Appendix A of 10 C.F.R. Part 40, have been ignored. A limited, but by no means exclusive, list of significant questions is as follows:

1. The license amendment, which has the effect of creating a new commercial disposal facility, was granted without public notice, without opportunity for public comment, and without any meaningful or significant environmental review.
2. It is unclear whether the Field Office has complied with 42 U.S.C.A. § 2114 and conditioned the amended license to require that the byproduct materials subject to the license amendment will be disposed of in compliance with the current general environmental standards promulgated by the EPA under 42 U.S.C.A. § 2022, and found at 40 C.F.R. Part 192, and in compliance with the current standards of 10 C.F.R. Part 40.
3. There have been no meaningful or significant analyses to support a conclusion that the activities authorized by the amended license will not have a significant impact on the human environment. The August 2, 1993 documentation supporting the Field Office's

approval of the amended license baldly states that authorizing the disposal of byproduct material at the Umetco facility will not result in significant impacts to the environment or the public health and safety. There is no reference to, or tiering from, previous environmental studies or documentation. The Field Office's conclusions are without factual support. Apparently, there have not even been order-of-magnitude calculations.

4. The amended license contains no limits on radioisotope identity, concentration, or total activity, and contains no conditions on waste packaging and the physical forms of wastes to be received.

5. The amended license fails to adequately address the potential of significant impacts on the human environment if a spill of ion exchange resins, pond sludge, or other radioactive materials occurs.

6. The amended license requires no sampling or on-site verification of the character of the material as received at the disposal site, and thus, provides no safeguard against shipment of materials other than byproducts. Further, there have been no analyses of waste characteristics of the materials to be disposed of at the White Mesa Mill facility and the impact of those characteristics on the environment. Such wastes are not necessarily chemically, physically, or radiologically the same as mill tailings for which the Umetco holding ponds were designed. The White Mesa Mill tailings holding ponds were not designed as disposal cells, their present design does not meet the requirements of the NRC's own regulations at 10 C.F.R. Part 40, Appendix A, and will not provide necessary early warning of cell liner leakage.

7. The potential impacts and risks to the human environment of the transportation of the radioactive materials contemplated by the amended license are nowhere adequately or meaningfully addressed. While transportation vehicles are required to be surveyed prior to leaving White Mesa, the amended license does not establish release levels that must be attained. The amended license also lacks an adequate monitoring scheme to assure against public exposure during transportation of waste to the site.

8. The amended license fails to ensure stability of the waste pile. Single pass construction equipment compaction is rarely, if ever, sufficient to ensure adequate compaction. Moreover, there is no limitation on the size of non-soil equipment which can be disposed of at Umetco's facility, and no specific requirement that disposed debris be sectioned and smashed so that it is smaller than a maximum size.

Envirocare believes the Field Office seriously overstepped and possibly abused its authority when it authorized the significant amendment to Umetco's license so as to allow disposal of substantial quantities of off-site byproduct material without a detailed review and analysis of potential environmental impacts, and, possibly, without requiring Umetco's facility to conform to applicable EPA and NRC standards. The amended license is significant in its scope and nature. It serves to create a new commercial disposal facility that appears to be operating under possibly out-dated "grandfathered" environmental and engineering standards, and Envirocare repeats that a hearing should be conducted to publicly address these important human health and environmental questions.

B. Envirocare Meets the Judicial Standards
for Standing Before the NRC.

Envirocare is the holder of Byproduct Material License No. SMC-1559, which authorizes the receipt, storage, and disposal of 11e(2) byproduct material at a site near Clive, Utah. (See 58 Fed. Reg. 62,690 (1993)). As a byproducts materials licensee, Envirocare is subject to regulation and supervision by the NRC. Umetco's White Mesa Mill facility is also subject to the regulation and supervision by the NRC as well as the Field Office's regulation, because it is located in Utah, which is not an Agreement State with regard to byproduct facilities. Both facilities are licensed to receive and dispose of off-site byproduct materials generated by third parties, and, under the AEA, both facilities are required to conform to identical environmental standards. However, by approving the amended license without a meaningful environmental analysis and, possibly, without requiring Umetco's facility to conform to applicable EPA and NRC environmental and engineering standards, the Field Office has inconsistently and possibly unfairly applied the environmental and engineering standards to the two disposal facilities.

For example, the NRC has required Envirocare to invest considerable time and resources to ensure that its operations are in compliance with all applicable federal statutes and regulations. Before obtaining NRC approval of its application for a byproduct materials license, Envirocare was subjected to approximately four years of regulatory review by the NRC and its staff, including the preparation of an exhaustive Environmental Impact Statement ("EIS"). The EIS analyzed the expected impact of Envirocare's proposed disposal operations on the environment near its Clive, Utah disposal facility. In contrast, despite the fact the effect of the

amended license is to transform Umetco's uranium mill site and disposal facility for its own byproduct material into a new "for profit" commercial facility, the Field Office approved the August 2, 1993 amendment to Umetco's source materials license without requiring significant or meaningful environmental analysis or documentation.

The amended license authorizes Umetco to dispose of an essentially unlimited amount of 11e(2) byproduct material generated at licensed in situ leach facilities at its White Mesa Mill facility. The only limitation imposed by the amended license to the volume of byproduct material that can be disposed of at Umetco's facility is that no more than 10,000 cubic yards of byproduct material per year can come from a single source. The amended license does not limit the number of single sources. In fact, the amended license simply requires Umetco to contact the NRC when it has placed 600,000 tons of material in the authorized disposal cell. Thus, the amended license essentially creates a new unlimited commercial byproduct materials disposal facility in Utah that is in direct competition with Envirocare's facility without the preparation of an environmental assessment while, in contrast, Envirocare was required to prepare an exhaustive EIS before its byproduct disposal facility was approved. An EIS was apparently prepared in 1979 to support Umetco's original license, which allowed it to dispose of its own byproduct material. Apparently relying on this early EIS, prepared for a wholly different purpose, the NRC now plans to allow Umetco to become a commercial disposal facility that does not have to comply with current environmental protection standards. Umetco can apparently, to a significant extent, operate this new commercial disposal facility under the standards applied at the time the original inhouse byproduct disposal license was issued.

Envirocare's interests are directly affected when the NRC inconsistently applies identical environmental standards and regulations to the Envirocare and Umetco facilities by requiring Envirocare to conform its operations to more stringent environmental standards than is required of Umetco's operations. Moreover, Envirocare's interests also may be significantly affected by the Field Office's actions, because the failure to apply identical environmental standards to the Envirocare and Umetco facilities provides Umetco with a significant competitive advantage and places Envirocare at an economic disadvantage. Therefore, Envirocare has a "real stake" in the outcome of the proceeding, comes within the "zone of interest" protected by Section 189(a) of the Atomic Energy Act ("AEA"), and Envirocare meets the judicial standards for standing in NRC proceedings. (42 U.S.C.A. § 2239(a) (Supp. 1993)).¹

C. Envirocare's Request for an Informal Hearing is Timely.

In late 1993, Envirocare became aware that the Field Office had, in the late summer or early fall of 1993, approved a Umetco request to amend its source material license. On December 16, 1993, pursuant to applicable regulations, Envirocare sent a letter to the Field Office requesting additional information about the nature and extent of the amendment and copies of pertinent documents including any environmental assessment or environmental review that was conducted by the agency to support the NRC's authorization. (See the copy of the December 16, 1993 letter from Charles Judd to the NRC attached hereto and incorporated herein as Exhibit "A").

¹See *Umetco Minerals Corporation*, ASLBP No. 92-666-01-MLA, 1992 WL 203817, at *3 (N.R.C. Aug. 5, 1992); *Portland General Electric*, CLI-76-27, 4 NRC 610, 612-13 (1976).

On December 27, 1993 the Field Office replied to Envirocare's December 15, 1993 letter, and confirmed that the agency had approved an amendment to Umetco's source materials license. The Field Office also indicated that, if Envirocare wanted to review the requested relevant documents, Envirocare would have to travel to the Field Office in Denver, Colorado, and conduct its own review of the docket file. (See the copy of the December 27, 1993 letter from the Field Office to Charles Judd attached hereto and incorporated herein as Exhibit "B"). To date, Envirocare has been unable to travel to Denver and review the docket file in this matter. Mindful of the applicable regulations at 10 C.F.R. § 2.1205(c)(2), Envirocare is hereby requesting an informal hearing to preserve its right to request an informal hearing under Section 189a of the AEA.

**II. REQUEST FOR PROCEEDING TO MODIFY, SUSPEND, OR
REVOKE UMETCO'S SOURCE MATERIALS LICENSE AMENDMENT PENDING
MEANINGFUL ENVIRONMENTAL EXAMINATION, ANALYSIS,
AND DOCUMENTATION**

In addition to Envirocare's Request for an Informal Hearing, Envirocare, pursuant to 10 C.F.R. § 2.206, requests that the NRC institute proceedings to modify, suspend, or revoke Umetco's source materials license amendment that authorizes the disposal of off-site byproduct material at the White Mesa Mill facility, pending a thorough and meaningful environmental examination and analysis of the obvious potential significant impacts of the amended license, together with the preparation of required and necessary environmental documentation, and a determination whether, pursuant to 42 U.S.C.A. § 2114(a)(2), the amended license complies with

current NRC standards and requires Umetco's facility to conform with the environmental standards promulgated by the EPA under the AEA.

The White Mesa Mill facility was designed as a mill site and not as a for-profit commercial disposal facility for a variety of offsite generated in situ waste. Umetco's "in-house" disposal operations were approved under standards now superceded. However appropriate it may be to permit an existing facility to continue operations in accordance with the standards in existence at the time of original licensing, expanded operations--particularly the creation of a "for profit" commercial disposal operation for off-site wastes--should be reviewed under current rules and standards. Yet, without any meaningful or current environmental analysis, the NRC has approved a plan converting the White Mesa Mill facility into a major commercial byproduct materials disposal facility. Given the reality that the Field Office has authorized Umetco to begin operation of a new commercial disposal facility, the Field Office's decision not to prepare an environmental assessment, based on a "categorical exclusion" determination violates the spirit, intent, and letter of NEPA. Because the Field Office has not prepared the necessary environmental analysis to support its conclusion that the action will not have a significant impact on the human environment, the Field Office violated NEPA and the NRC's own environmental regulations. In addition, it is unclear whether the amended license requires Umetco's White Mesa Mill facility to conform with current applicable NRC and EPA environmental and engineering standards as required by the AEA. Umetco's amended license should be modified, suspended, or revoked, because the operation of a facility under the terms of a license which violates the AEA also violates that Act. The facts in this matter clearly establish the basis for a proceeding

to modify, suspend, or revoke Umetco's source materials license amendment pending thorough meaningful environmental analysis and the preparation of supporting environmental documentation, and while a determination is made whether the amended license complies with current NRC and EPA standards.

A cursory examination of the facts reveals that the Field Office's decision not to require the type of environmental review contemplated by NEPA and the NRC's own regulations is unsupportable. Umetco, relying on an environmentally suspect amended license can now transport thousands of cubic yards of radioactive material across the nation's highways and dispose of those radioactive materials at a facility which was never designed as an offsite byproduct disposal facility. Such a plan clearly affects the human environment. Moreover, without a meaningful environmental review, it is unclear whether the plan can conform to EPA environmental standards, as is required by the AEA. Whether the health and environmental impacts of the amended license are significant can only be determined after adequate environmental examination, analysis, and documentation. The NRC should require that an environmental assessment be prepared, or that Umetco prepare an environmental report as required by 10 C.F.R. § 51.60(b)(2), and that a determination be made whether the amended license requires the Umetco disposal facility to conform with applicable EPA environmental standards.

Therefore, based on the foregoing, the NRC should initiate a proceeding to modify, revoke, or suspend Umetco's source materials license, as amended on August 2, 1993, until an environmental assessment under NEPA, or an environmental report under 10 C.F.R. § 51.60, is

completed, and a determination is made whether the amended license requires the Umetco facility to conform with the applicable EPA standards.

DATED this 13th day of January, 1994.

VAN COTT, BAGLEY, CORNWALL & McCARTHY

By: W
H. Michael Keller
Matthew F. McNulty, III
Thomas W. Clawson
Attorneys for Petitioner
50 South Main Street, Suite 1600
Salt Lake City, Utah 84144
Telephone (801) 532-3333

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the within and foregoing REQUEST FOR AN INFORMAL HEARING AND A REQUEST FOR A PROCEEDING TO MODIFY, SUSPEND, OR REVOKE MATERIALS LICENSE AMENDMENT, to be express mailed, return receipt requested, postage prepaid, this 3rd day of January, 1994, to the following:

Umetco Minerals Corporation
White Mesa Mill
Attn: Scott L. Schierman
P.O. Box 669
Blanding, Utah 84511



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UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
URANIUM RECOVERY FIELD OFFICE
BOX 25325
DENVER, COLORADO 80225

DEC 27 1993

Docket 40-8681

Envirocare of Utah, Inc.
ATTN: Charles A. Judd
Executive Vice President
46 West Broadway, Suite # 240
Salt Lake City, Utah 84101

Dear Mr. Judd:

This is in response to your letter to me, dated December 16, 1993, in which you requested "...information on action apparently taken by NRC's Regional Office in Denver, Colorado, to authorize UMETCO Minerals Corporation to dispose of byproduct material generated at its White Mesa Mill near Blanding, Utah." Based on discussions with Mr. Khosrow B. Semnani, we have interpreted your request to be applicable to the recent authorization to process alternative feed materials at the White Mesa Mill under their NRC license SUA-1358. To be responsive to your request, we are enclosing a copy of the most recent amendment to NRC License SUA-1358, dated October 1, 1993.

You also requested other general information and documents relative to the White Mesa Mill. The specific documents you desire are not apparent from your request; however all documentation relative to the licensing of the White Mesa mill is available for your inspection at the NRC Public Document Room (PDR) located at 2120 L Street, NW, Washington, D.C., telephone (202) 634-3273. Documents from the active docket files are also available for your review at the Uranium Recovery Filed Office in Denver for the next few months until they are physically transferred to NRC headquarters in Rockville, MD. Should you desire copies of specific documents, the PDR can make arrangements through a contractor to bill you directly for copies of your requested documents and shipping charges. The PDR should be contacted directly for current charges for this service.

It is suggested that you be specific in your request in order that the NRC can be responsive to your needs without unnecessary expense to you for the staff search and reproduction charges.

Sincerely,

Ramon E. Hall
Director

ENVIROCARE OF UTAH, INC.
THE SAFE ALTERNATIVE

December 16, 1993

Ramon E. Hall, Director
Uranium Recovery Branch
U.S. Nuclear Regulatory Commission
Box 25325
Denver, CO 80225

Re: UMETCO Minerals Corporation Source Material
License SUA-1358 White Mesa Facility,
Blanding, Utah

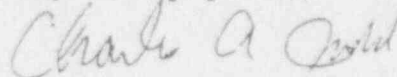
Dear Mr. Hall:

Envirocare of Utah, Inc. owns and operates permitted facilities in Tooele County, Utah, for disposal of low level radioactive waste. Following nearly four years of regulatory review by your agency, Envirocare recently received NRC License SMC-1559, to dispose of 11e(2) byproduct material.

We are writing to request information on action apparently taken by NRC's Regional Office in Denver, Colorado, to authorize UMETCO Minerals Corporation to dispose of byproduct material generated at its White Mesa Mill near Blanding, Utah. We request that we be given actual notice of the nature and extent of the NRC's authorization, and provided copies of pertinent documents, including any environmental assessment of other environmental review conducted by the agency. We are requesting this information so we can evaluate it and determine whether or not a protest is appropriate.

We look forward to hearing from you as soon as possible.

Very truly yours,



Charles A. Judd
Executive Vice President