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40-8681-MLA-2

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USNRC

'94 FEB -2 P3:01

BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of Umetco Minerals Corporation)	REPLY OF UMETCO MINERALS CORPORATION TO RESPONSE OF ENVIROCARE OF UTAH TO UMETCO MINERALS' RESPONSE REGARDING ENVIROCARE'S REQUEST FOR INFORMAL HEARING
(Source Materials License No. SUA-1358))	
Docket No. 40-8681)	

UMETCO Minerals Corporation ("UMETCO"), by and through its undersigned attorneys, hereby files this Reply to the Response of Envirocare of Utah, Inc. ("Envirocare") to UMETCO's Response Regarding Envirocare's Request for Informal Hearing.

In its Response, Envirocare asserts that it is not time barred from seeking an informal hearing because of a January 12, 1994 letter from Mr. Ramon E. Hall of the Region IV Uranium Recovery Field Office of the United States Nuclear Regulatory Commission (the "NRC"). A copy of Mr. Hall's letter is attached as Exhibit A. For the reasons set forth below, Envirocare's assertion must be rejected.

FACTS

For purposes hereof, the following facts should be emphasized:

1. On August 2, 1993, the NRC issued an amendment (the "August 2, 1993 Amendment") to UMETCO's Source Materials

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License. The August 2, 1993 Amendment authorized UMETCO "to dispose of by-product materials generated at licensed in situ leach facilities," subject to several restrictions set forth in the August 2, 1993 Amendment.

2. On October 1, 1993, the NRC granted to UMETCO another amendment authorizing the receipt and processing of source material from Allied Signal Corporation's Metropolis, Illinois facility (the "Allied Amendment").

3. Envirocare filed a Request for an Informal Hearing and a Request for a Proceeding to Modify, Suspend, or Revoke Materials License Amendment, dated January 13, 1994, with respect to the August 2, 1993 Amendment. Envirocare has not requested a hearing or filed any other action with respect to the Allied Amendment.

4. As more fully described in UMETCO's response to Envirocare's request for an informal hearing, Envirocare had actual notice of the August 2, 1993 Amendment more than 30 days before it filed its request for a hearing as evidenced by various meetings in November and early December of 1993 between Envirocare representatives and officials of the Utah Department of Environmental Quality and the Utah Division of Radiation Control.

DISCUSSION

In its Response, Envirocare does not dispute the fact that it met on several occasions with officials of the State

of Utah concerning the August 2, 1993 Amendment more than thirty days prior to filing its request for an informal hearing. Nor does Envirocare challenge the clear requirement of 10 C.F.R. § 2.1205(c)(2) that a request for an informal hearing concerning an amendment be filed no later than the earlier of (i) thirty days after receipt of actual notice of the grant of the amendment or, (ii) one hundred eighty days after the grant of the amendment. Instead, Envirocare argues that Mr. Hall's letter states that the letter constitutes "actual notice" and that Envirocare had thirty days from the date of receipt of the letter to file a request for a hearing.

In its attempt to salvage its time barred request for a hearing, Envirocare appears to have engaged in a rather selective reading of Mr. Hall's letter. Mr. Hall stated: "With respect to the opportunity for hearing under 10 CFR 2.1205(c)(2)(i), on the October 1, 1993, amendment, you should consider this letter the actual notice of an agency action granting an application, and therefore, have 30 days from the date of this letter to file a request for hearing." The reference to the "October 1, 1993 amendment" refers to the Allied Amendment, which was issued on that date. As stated above, Envirocare has not requested a hearing or filed any other action with respect to the Allied Amendment.

With respect to the August 2, 1993 Amendment, Mr. Hall's letter merely notes that the 180 day period under

10 C.F.R. 2.1205(c)(2)(ii) for filing a hearing request on the August 2, 1993 Amendment is "closing," but does not address the critical issue of Envirocare's actual notice of the August 2, 1993 Amendment and the associated 30 day limitation under 10 C.F.R. 2.1205(c)(2)(i). Even assuming, arguendo, that Mr. Hall's letter established the date of actual notice with respect to the Allied Amendment, there is nothing in Mr. Hall's letter which waives the key 30 day limitation with respect to the August 2, 1993 Amendment.

CONCLUSION

Simply stated, the evidence establishes that Envirocare knew of the grant of the August 2, 1993 Amendment in early November 1993 and waited too long to file its hearing request. Therefore, UMETCO requests that Envirocare's request for an informal hearing be denied.

DATED this 1 day of February, 1994.

HOLME ROBERTS & OWEN LLC

By: Brian T. Hansen

Henry W. Ipsen
Brian T. Hansen
Holme Roberts & Owen LLC
1700 Lincoln, #4100
Denver, CO 80203

CERTIFICATE OF SERVICE

'94 FEB -2 P3:02

I hereby certify that on this 1 day of February, 1994, the original and two correct copies of the foregoing REPLY OF UMETCO MINERALS CORPORATION TO RESPONSE OF ENVIROCARE OF UTAH TO UMETCO MINERALS' RESPONSE REGARDING ENVIROCARE'S REQUEST FOR INFORMAL HEARING were mailed via Federal Express, addressed to the following:

Docketing and Service Branch
Office of the Secretary
Nuclear Regulatory Commission
One White Flint North
1155 Rockville Pike
Rockville, MD 20852

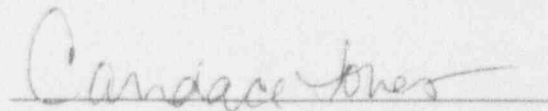
I also hereby certify that on this 1 day of February, 1994, a true and correct copy of the foregoing REPLY OF UMETCO MINERALS CORPORATION TO RESPONSE OF ENVIROCARE OF UTAH TO UMETCO MINERALS' RESPONSE REGARDING ENVIROCARE'S REQUEST FOR INFORMAL HEARING was deposited in the United States mail, postage prepaid, addressed to the following:

H. Michael Keller, Esq.
Matthew F. McNulty, III, Esq.
Thomas W. Clawson, Esq.
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Atomic Safety Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Adjudicatory File
Atomic Safety Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555





UNITED STATES

RECEIVED JAN 17 1994

NUCLEAR REGULATORY COMMISSION

REGION IV

URANIUM RECOVERY FIELD OFFICE
BOX 26326
DENVER, COLORADO 80226

JAN 12 1994

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Envirocare of Utah, Inc.
ATTN: Khosrow B. Semnani, President
American Towers Commercial
46 W. Broadway, Suite 240
Salt Lake City, Utah 84101

Dear Mr. Semnani:

It has come to our attention through discussions with the State of Utah that you have expressed concern over recent licensing actions taken at the Umetco Minerals Corporation White Mesa Mill in Blanding, Utah. The most recent amendment to this license was issued on October 1, 1993, to authorize the receipt and processing of source material from the Allied Signal Corporation's Metropolis, Illinois, facility. In addition, the Umetco license was amended on August 2, 1993, to authorize the disposal of byproduct materials generated at licensed in situ leach facilities, in accordance with several conditions. A copy of each of the license amendments is enclosed for your information.

NRC rules of practice in Subpart L of 10 CFR Part 2 provide an opportunity for a person to request a hearing on a materials license amendment even though no public notice of opportunity for a hearing has been issued. It is still possible for a person to request a hearing on the amendments to the Umetco license under 10 CFR 2.1205(c)(2). However, such a request on the August 2, 1993, amendment must be done promptly, since the 180 days specified in 10 CFR 2.1205(c)(2)(ii) is closing. With respect to the opportunity for hearing, under 10 CFR 2.1205(c)(2)(i), on the October 1, 1993, amendment, you should consider this letter the actual notice of an agency action granting an application, and therefore, have 30 days from the date of this letter to file a request for hearing. Any person requesting a hearing under Subpart L will have to show that its interest is an interest within the sphere of interests

Envirocare of Utah, Inc.

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protected by the Atomic Energy Act, and that the person may suffer injury in fact because of the agency action. The agency rules for such a hearing are provided in 10 CFR 2.1201-1263.

Sincerely,



Ramon E. Hall
Director

Enclosures:
As stated

cc: w/o encl.
W. Brice, Umetco
R. VanHorn, Umetco
W. Sinclair, RCPD, UT