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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE PRESIDING OFFICER

In the Matter of	)	
	)	
UMETCO MINERALS CORPORATION	)	Docket No. 40-8681-MLA-2
	)	
(Materials License No. SUA-1358)	)	

NRC STAFF'S RESPONSE TO
REQUEST FOR HEARING FILED
BY ENVIROCARE OF UTAH, INC.

On May 20, 1993, Umetco Minerals Corporation ("Umetco") filed an application for an amendment to its materials license, which authorizes it to mill uranium at its White Mesa Mill in Blanding, Utah (Materials License No. SUA-1358), to allow it to receive and dispose of byproduct material generated at licensed in situ leach facilities. On August 2, 1993, the NRC issued the requested amendment (Amendment No. 33), in which it established a limit of 10,000 cubic yards per year from any single source.

On January 13, 1994, a request for an informal hearing on the amendment was filed by Envirocare of Utah, Inc. ("Envirocare"),[1] a private company engaged in the disposal of radioactive wastes elsewhere in the State of Utah. On February 2, 1994, the Commission

[1] "Request for an Informal Hearing and A Request for A Proceeding to Modify, Suspend, or Revoke Materials License Amendment" ("Request"), dated January 13, 1994. Therein, Envirocare requested (1) an informal hearing under 10 C.F.R. Part 2, Subpart L, and (2) institution of a separate proceeding by the Staff pursuant to 10 C.F.R § 2.206. Envirocare's § 2.206 request has been forwarded to the Director of the Office of Nuclear Materials, Safety and Safeguards for response.

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designated a Presiding Officer to rule upon the hearing request and, if necessary, to serve as the Presiding Officer in the event that an informal hearing is ordered. For the reasons stated below, the NRC staff ("Staff") opposes Envirocare's hearing request and recommends that it be denied.[2]

INTRODUCTION

In its license amendment application, dated May 20, 1993, Umetco sought authority to dispose of byproduct material as defined in § 11(e)(2) of the Atomic Energy Act of 1954, as amended (the "Act"),[3] in amounts of up to 5,000 cubic yards from any one licensee (licensed by the NRC and/or agreement states).[4] Umetco indicated that the first shipment of this material was anticipated to come from the Intercontinental Energy Company (IEC) in situ operation (licensed by the State of Texas, an Agreement State), near Three Rivers, Texas. Umetco provided various details concerning this initial proposed shipment, including the estimated volume, description, and radiological characterization of the materials, and the standard operating procedures which Umetco would utilize in documenting, receiving and disposing of third-party waste material at the Mill.

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[2] In addition, in the event that the Presiding Officer determines to conduct a hearing in this matter, the Staff hereby notifies the Presiding Officer and the parties, pursuant to 10 C.F.R. § 2.1213, that it wishes to participate as a party.

[3] The term "byproduct material" is defined in § 11(e) of the Act as:

> (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material or (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

[4] Letter from S. L. Schierman (Radiation Safety Officer, Umetco) to Ramon E. Hall (Director, Uranium Recovery Field Office, NRC Region IV), dated May 20, 1993.

On August 2, 1993, the NRC's Uranium Recovery Field Office (URFO) granted Umetco's license application.[5] In pertinent part, the amended license authorizes Umetco to possess unlimited amounts of natural uranium in any chemical and/or physical form (paragraphs 6-8); to possess byproduct material in the form of uranium waste tailings and other uranium byproduct waste generated by Umetco's milling operations authorized by the license (paragraph 10); to dispose of contaminated material and equipment generated at the mill site (paragraph 42); and, in response to this amendment request, to do as follows:

> 55. In accordance with the licensee's submittal dated May 20, 1993, the licensee is hereby authorized to dispose of byproduct material generated at licensed in situ leach facilities, subject to the following conditions:
>
> A. Disposal of waste in excess of 10,000 cubic yards per year from single sources shall require specific approval from the NRC. Information submitted in support of such a request shall address potential impacts to the composition of the tailings and shall include an environmental report or supplement to previously submitted environmental reports if impacts from the disposal exceed those previously evaluated.
>
> B. All contaminated equipment shall be dismantled, crushed, or sectioned to minimize void spaces. Barrels containing waste other than soils or sludges shall be emptied into the disposal area and the barrels crushed. Barrels containing soil or sludges shall be verified to be full prior to disposal. Barrels not completely full shall be filled with tailings or soil.
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> C. All waste shall be buried in Cell No. 3 unless prior written approval is obtained from the NRC for alternate burial locations.

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[5] Letter from Ramon E. Hall (NRC) to Scott L. Schierman (Umetco), dated August 2, 1993, attaching License No. SUA-1358, Amendment No. 33, dated August 2, 1993.

D. All disposal activities shall be documented. The documentation shall include descriptions of the waste and the disposal locations, as well as all actions required by this condition. An annual summary of the amounts of waste disposed of from off-site generators shall be sent to the NRC.

License SUA-1358, as amended August 2, 1993, at 12-13.[6]

DISCUSSION

In its request for hearing dated January 13, 1994, Envirocare identified itself as the holder of Byproduct Material License No. SMC-1559, which authorizes the receipt, storage and disposal of § 11(e)(2) byproduct material at a site near Clive, Utah (Request at 5). Envirocare identifies eight areas of concern which it states are germane to the subject matter of the Umetco amendment proceeding (*Id.* at 2-4),[7] asserts that it has standing to request a hearing on Umetco's amendment (*Id.* at 5-7), and asserts that its hearing request was timely filed (*Id.* at 7-8). For the reasons set forth below, the Staff submits that Envirocare has not demonstrated

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[6] The Staff notes that the license also specifically authorizes Umetco to receive, process and dispose of byproduct material from Mobil's Crownpoint in situ uranium recovery facility (paragraph 49) (Amendment 13, issued May 25, 1988); to conduct plant testing of source materials from the Teledyne Wah Chang Albany facility in accordance with a license amendment request of January 18, 1989 (paragraph 54) (Amendment 30, issued June 22, 1992); and to receive and process source material from Allied Signal Corporation's Metropolis, Illinois facility (paragraph 56) (Amendment 34, issued October 1, 1993).

[7] Envirocare's concerns include questions concerning the NRC's grant of this amendment, "creating a new commercial facility," without public notice, opportunity for comment, or "meaningful or significant environmental review"; the NRC's compliance with statutory requirements and NEPA standards; the purported lack of environmental analyses and evaluations; the absence of limits or conditions on the materials and packages to be received; the lack of sampling and verification of materials to be received; the lack of analyses or monitoring of transportation impacts; and the compaction and stability of the waste pile (Request at 2-4). In view of Envirocare's failure to demonstrate standing to request a hearing or the timeliness of its hearing request, the Presiding Officer need not determine whether each of these concerns is germane to the proceeding.

standing to request a hearing on the Umetco license amendment, that Envirocare's request for hearing was not timely filed, and that its request should therefore be denied.

A. Envirocare Lacks Standing To Request A Hearing In This Matter, In That It Has Failed To Demonstrate A Cognizable Interest In This Proceeding.

In its Request, Envirocare states that both it and Umetco are licensed and authorized by the NRC to receive and dispose of § 11(e)(2) byproduct materials generated by third parties and to conform to identical environmental standards. *Id.* at 5. Envirocare asserts that the NRC has approved Umetco's license amendment "without a meaningful environmental analysis and, possibly, without requiring Umetco's facility to conform to applicable EPA and NRC environmental standards." *Id.* Envirocare complains that the NRC "has inconsistently and possibly unfairly applied the environmental and engineering standards to the two disposal facilities." *Id.* Envirocare further asserts that the license amendment would permit Umetco "to dispose of an essentially unlimited amount of § 11(e)(2) byproduct material generated at licensed in situ leach facilities," subject only to a requirement that it report to the NRC when it has placed 600,000 tons of material in the authorized disposal cell, *Id.* at 6; it complains that it was required to prepare "an exhaustive EIS" in order to secure its license, whereas the only EIS for Umetco's operation was prepared 14 years earlier in connection with the disposal of Umetco's own byproduct material, *Id.*; it complains that "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," *Id.*; and it asserts that the amendment would allow Umetco "to become

a commercial disposal facility that does not have to comply with current environmental protection standards." *Id.*[8]

With respect to its "interest" in the proceeding, Envirocare states as follows (*Id.* at 7):

> 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 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. [Citation omitted.]

In essence, Envirocare's complaint is that the NRC has required Envirocare to comply with environmental standards but has allegedly allowed Umetco, a potential competitor, to avoid compliance with those same standards. Envirocare states, "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." This,

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[8] Contrary to Envirocare's assertions, the Staff considered Umetco's procedures for receipt and disposal of the subject material, the nature and characteristics of that material, and the environmental impacts of Umetco's application, prior to issuance of the license amendment. The environmental impacts of the amendment were determined by the Staff to be covered by a categorical exclusion (10 C.F.R. § 51.22(c)(11)), not to be significant, and to be bounded by the environmental impacts of Umetco's original license application. An additional EIS was therefore not required. *See* Memorandum from Dana C. Ward (NRC URFO Project Manager) to Docket File No. 40-8681, dated August 2, 1993, at 2-3 (Attachment 1 hereto). Further, the Staff notes that the amendment is consistent with 10 C.F.R Part 40, Appendix A, Criterion 2, under which byproduct material from in situ extraction operations is to be disposed of at existing large mill tailings disposal sites (like Umetco's White Mesa Mill), to avoid the proliferation of small waste disposal sites and thereby reduce perpetual surveillance obligations. *Id.* at 3.

according to Envirocare, gives it a "real stake" in the outcome of the proceeding, which, it claims, falls within the "zone of interest" protected by statute. *Id.* at 7.

Envirocare's assertions notwithstanding, an analysis of Commission and judicial precedent demonstrate that Envirocare has failed to establish an interest within the zone of interests protected by the Atomic Energy Act or the National Environmental Policy Act (NEPA), since the alleged injury described by Envirocare is solely an injury to its economic interest, caused by an alleged competitive advantage afforded to its competitor. This is not an interest within the zone of interests protected by statute, and does not confer standing upon Envirocare to request a hearing, as discussed below.

It is fundamental that any person or entity that wishes to request a hearing (or intervene in a Commission proceeding) must demonstrate that it has standing to do so. Section 189a(1) of the Atomic Energy Act, 42 U.S.C. § 2239(a), provides that:

> In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license . . ., the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

In addition, pursuant to 10 C.F.R. § 2.1205(d), where a request for informal hearing is filed by any person other than the applicant, in connection with a materials licensing action under 10 C.F.R. Part 2, Subpart L, the request for hearing must describe in detail:

> (1) The interest of the requestor in the proceeding;
>
> (2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in [§ 2.1205(g)];

> (3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
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> (4) The circumstances establishing that the request for a hearing is timely in accordance with [§ 2.1205(c)].

Pursuant to 10 C.F.R. § 2.1205(g), the Presiding Officer must determine "that the requestor meets the judicial standards for standing," and shall consider, among other factors, "(1) [t]he nature of the requestor's right under the Act to be made a party to the proceeding; (2) [t]he nature and extent of the requestor's property, financial, or other interest in the proceeding; and (3) [t]he possible effect of any order that may be entered in the proceeding upon the requestor's interest."

The Commission has long held that contemporaneous judicial concepts of standing will be applied in determining whether a petitioner for leave to intervene has sufficient interest in a proceeding to be entitled to intervene as a matter of right under Section 189a of the Act. *See, e.g., Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 332 (1983); *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976); *Envirocare of Utah, Inc.* (Byproduct Material Waste Disposal License), LBP-92-8, 35 NRC 167, 172 (1992); *Babcock and Wilcox* (Apollo, PA Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 80-81 (1993); *Sequoyah Fuels Corp.* (Source Material License No. SUB-1010), LBP-91-5, 33 NRC 163, 164-65 (1991); *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-89-30, 30 NRC 311, 312-13 (1989).

To show an interest in the proceeding sufficient to establish standing, the requestor must show that the proposed action will cause "injury in fact" to its interest and that its interest is arguably within the "zone of interests" protected by the statutes governing the proceeding.

Georgia Power Co. (Vogtle Electric Generating Plant. Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993); *Three Mile Island, supra,* 18 NRC at 332-33; *Pebble Springs, supra,* 4 NRC at 613-14. Further, it has been held that in order to establish standing, the petitioner (or requestor) must establish (a) that he personally has suffered or will suffer a "distinct and palpable" harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding. *Dellums* v. *NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988); *Vogtle, supra*, 38 NRC at 32; *Babcock and Wilcox, supra*, 37 NRC at 81; *Envirocare, supra*, 35 NRC at 173. A petitioner (or requestor) must have a "real stake" in the outcome of the proceeding to establish injury in fact for standing. *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48 (1979). While the petitioner's stake need not be a "substantial" one, it must be "actual," "direct" or "genuine." *Id.* at 448.

It has long been established that purely economic concerns are not within the "zone of interests" sought to be protected by the Atomic Energy Act or NEPA. *Public Service Co. of New Hampshire* (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984); *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-789, 20 NRC 1443, 1447 (1984); *Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit No. 1), ALAB-424, 6 NRC 122, 128 (1977); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-423, 5 NRC 1418, 1420-1421 (1977); *Detroit Edison Co.* (Greenwood Energy Center, Units 2 and 3), ALAB-376, 5 NRC 426, 428 (1977); *Pebble Springs, supra,* 4 NRC at 614;

Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 105-07 (1976); *Consumers Power Co.* (Palisades Nuclear Power Facility), LBP-81-26, 14 NRC 247, 251 (1981).

The question of injury to a competitor's competitive interest was explicitly addressed by the Appeal Board in *Jamesport*. *Long Island Lighting Co.* (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 638-43 (1975). There, the Appeal Board stated that an interest in avoiding competition is "wholly foreign to the policy underlying the Atomic Energy Act" and "the Act and its history are barren of the slightest manifestation of a possible legislative concern (in other than an antitrust context) for the protection of the competitive position of commercial entities". The Appeal Board also made it clear that:

> [A]lleged economic harm comes with the ambit of the NEPA "zone of interests" if it is *environmentally* related; *i.e.*, if it will or may be occasioned by the impact that the federal action under consideration would or might have upon the environment. . . . Here, however, we are not faced with allegations of economic harm which have environmental relationship.

Id. at 640 (emphasis in original). The conclusion reached by the Appeal Board in *Jamesport* applies here, as well: An "asserted economic competition interest does not come within the 'zone of interests' protected or regulated by either the Atomic Energy Act or NEPA." *Id.* at 643.[9]

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[9] In its Request, Envirocare questioned whether the Staff had considered the environmental impacts of its licensing action, including potential transportation impacts (Request at 3-4). While Envirocare did not specify these concerns as grounds for standing, and they therefore need not be evaluated in this regard, the Staff notes that Envirocare's listing of these concerns fails to confer standing, in that Envirocare has not even suggested, let alone particularized, any relationship between itself and any such impacts. *See generally, Envirocare of Utah, Inc.* (Byproduct Material Waste Disposal License), LBP-92-8, 35 NRC 167, 174 (1992); *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 43 (1990).

Further, like the petitioner in *Jamesport*, Envirocare has not alleged or shown that it would suffer any economic "injury" as a result of any environmental harm that might be caused by the issuance of this amendment. This is fatal to its hearing request. The Commission has emphasized that injury to an economic interest can establish injury-in-fact under NEPA only when it flows from environmental damage:

> It is true that NEPA does protect some economic interests; however, it only protects against those injuries that result from environmental damage. For example, if the licensing action in question destroyed a woodland area, those persons who would be deprived of their livelihood in a local timber industry could assert a protected interest under NEPA. . . .

Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992).

In view of the foregoing discussion, it is clear that Envirocare's assertion of economic harm from competition is outside the zone of interests protected by the Commission's governing statutes. Envirocare has failed to demonstrate that it has an interest which provides it with standing and a right to a hearing on the Umetco license amendment.[10]

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[10] It should be noted that just a short time ago, Envirocare took a similar position with respect to another company's request for hearing on Envirocare's application for a license to operate its byproduct waste disposal site. *See generally, Envirocare of Utah, Inc.* (Byproduct Material Waste Disposal License), LBP-92-8, 35 NRC 167, 172 (1992). There, Envirocare opposed a request for hearing filed by Kerr-McGee Chemical Corporation (a potential user of Envirocare's waste disposal site), on the grounds, *inter alia*, that the company lacked standing, stating that economic injury "is not within the zone of interests protected by the governing statutes," unless such injury "flows from" the environmental impacts of the contested action. "Applicant's Answer to Request for Hearing of Kerr-McGee Chemical Corporation," dated March 25, 1991, at 6-7. Envirocare further argued that the other company's interests were "purely financial," that it therefore "should be denied standing in this proceeding," and that "it should pursue its financial interests in the market place, and not through this licensing proceeding." "Applicant's Answer to Kerr-McGee's Contentions," dated January 24, 1992, at 3.

Moreover, it is apparent that the economic interest cited by Envirocare is, at best, speculative and remote, rather than "actual," "direct" or "genuine." Here, Envirocare essentially contends that if Umetco's license application was denied, Envirocare might be chosen to receive the in situ waste materials which otherwise would have been shipped to Umetco. Envirocare, however, presents no facts or information sufficient to support this inference. Indeed, the Commission's regulations contemplate that such in situ waste materials would be shipped to large uranium mill tailing sites like Umetco's -- and at least five such facilities exist which are authorized to receive such in situ wastes for disposal.[11] Thus, Envirocare has failed to show that any alleged injury to its interests is realistically threatened or immediate, or that such injury would be redressed by a decision in this proceeding denying Umetco's license application. Envirocare has therefore failed to demonstrate "injury in fact" to any interest cognizable under the governing statutes. *Dellums, supra*, 863 F.2d at 971; *Envirocare, supra,* 35 NRC at 178-79; *South Texas, supra*, 9 NRC at 447-48. For these reasons, too, Envirocare's request for hearing should be denied.

B. Envirocare's Request Was Untimely Filed.

In its Request, Envirocare states that it obtained actual notice of the issuance of the amendment in "late December, 1993". Petition at 7. The Staff has no direct knowledge of when Envirocare first learned of the amendment. However, documents prepared by the State of Utah's

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[11] *See* n. 8, *supra*. Criterion 2 of 10 C.F.R. Part 40, Appendix A provides for wastes from in situ extraction operations to be disposed of at large mill tailings disposal sites (unless the advantages of onsite burial clearly outweigh the benefits of reducing perpetual surveillance obligations). Presently, five sites licensed by the NRC are authorized to accept in situ leachate from other licensees, in accordance with the Commission's objective to avoid the proliferation of small waste disposal sites and thereby reduce perpetual surveillance obligations, as set forth in 10 C.F.R. Part 40, Appendix A, Criterion 2.

Division of Radiation Control, attached to Umetco's response to Envirocare, appear to show that Envirocare had actual notice of the amendment to Umetco's license as early as November 10, 1993, the date on which this matter was specifically discussed at a meeting between Envirocare and State officials.[12] Thus, Envirocare appears to have known of the August 2, 1993 license amendment over sixty days prior to January 13, 1994, the date it filed its request for hearing.

Under the Commission's regulations, where a Federal Register notice of action has not been published (as here), requests for hearing must be filed within the earlier of "(i) [t]hirty (30) days after the requestor receives actual notice of a pending application or an agency action granting an application; or (ii) [o]ne hundred and eighty (180) days after agency action granting an application." 10 C.F.R. § 2.1205(c).[13] Thus, as pertinent here, any request for hearing concerning the August 2, 1993 amendment to Umetco's license was required to be submitted within the earlier of (a) thirty days after it received actual notice of the application or amendment, or (b) 180 days after issuance of the amendment. In this case, since Envirocare had actual notice of the agency's action in granting the amendment at least as early as November 10,

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[12] *See* Note from Bill Sinclair (Utah Division of Radiation Control) to Envirocare File, dated November 16, 1993, attached to "Response of Umetco Minerals Corporation to Request for An Informal Hearing and A Request for a Proceeding to Modify, Suspend or Revoke Materials License Amendment", dated January 24, 1994.

[13] The Commission recently proposed to revise the language of § 2.1205(c), to require that requests for hearings on certain materials licensing actions must be filed within the earliest of (i) 30 days after receiving actual notice of a pending application, or (ii) 30 days after receiving actual notice of an agency action granting the application in whole or in part, or (iii) 180 days after the agency action has been taken. *See* Proposed Rule, "Informal Hearing Procedures for Materials Licensing Adjudications," 58 Fed. Reg. 50858 (Sept. 29, 1993). The Commission explained that the proposed revision is intended to "eliminate an ambiguous provision in the Commission's current regulations," and to "ensure that hearing requests are filed as promptly as possible in order to resolve any concerns or objections to the pending application in a timely manner." *Id.*

1993, its request for hearing should have been filed no later than December 10, 1993.[14] Envirocare's request for hearing, filed on January 13, 1994, is untimely without any explanation of good cause, and should be denied for failure to meet the requirements of § 2.1205(c)(2).

CONCLUSION

For the reasons stated above, the request for hearing submitted by Envirocare of Utah, Inc. should be denied both for failure to show standing to request a hearing, in that it has not shown an injury in fact to an interest protected by the governing statutes, and for failure to file its request for hearing in a timely manner.

Respectfully submitted,

Sherwin E. Turk
Colleen P. Woodhead
Counsel for NRC Staff

Dated at Rockville, Maryland
this 14th day of February, 1994

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[14] Envirocare has asserted that the timeliness of its hearing request is supported by a letter it received from Ramon E. Hall (NRC URFO Director), dated January 12, 1994. "Response of Envirocare of Utah to UMETCO Mineral's Response Regarding Envirocare's Request for Informal Hearing," dated January 28, 1994. This assertion is without merit. The statement in Mr. Hall's letter providing "actual notice" specifically referred to a subsequent amendment (dated October 1, 1993), and did not purport to provide actual notice of the license amendment at issue here. With respect to the amendment at issue here, Mr. Hall merely stated that the 180 day period, commencing from the date of the agency's action, "is closing". He did not (and could not) provide an opinion as to when Envirocare received actual notice of the application or of the agency's action granting the application, nor could he provide a legal opinion as to whether Envirocare's hearing request should be viewed as timely filed in light of when Envirocare received "actual notice" of those matters.

ATTACHMENT 1

UNITED STATES

NUCLEAR REGULATORY COMMISSION

REGION IV

URANIUM RECOVERY FIELD OFFICE
BOX 25325
DENVER, COLORADO 80225

AUG 02 1993

URFO:DCW
Docket No. 40-8681
SUA-1358, Amendment No. 33
X61090

MEMORANDUM FOR: Docket File No. 40-8681

FROM: Dana C. Ward, Project Manager

SUBJECT: AMENDMENT NO. 33 TO SOURCE MATERIAL LICENSE SUA-1358 FOR THE DISPOSAL OF 11 e. (2) BYPRODUCT MATERIAL AT UMETCO WHITE MESA FACILITY

By letter dated May 20, 1993, Umetco Minerals Corporation (Umetco) requested amendment of Source Material License SUA-1358 for the White Mesa Mill to authorize the receipt and disposal of byproduct material from NRC and agreement state licensed in situ leach (ISL) facilities. The licensee's proposal as well as the staff review of the proposal are discussed below.

Licensee Proposal

Umetco stated in their May 20th letter that the waste material to be accepted for disposal at the White Mesa Mill will meet the definition for byproduct material as specified in Section 11 e. (2) of the Atomic Energy Act, as amended. Materials to be shipped to the site will consist of organic resins, miscellaneous plumbing items, contaminated soils, contaminated concrete, pond sludge, and pond liner.

Prior to shipment, a certification of the contents of each shipment will be provided to Umetco for approval. Umetco will require the generator of the waste to supply the volume of waste to be disposed, description of the waste material, and radiological and chemical analysis sufficient to adequately characterize the material. Umetco stated that it would not accept other hazardous material as defined in RCRA, only byproduct material.

When the waste material is received onsite, Umetco will, as a minimum, compare the shipping manifest to the waste shipped, confirm the quantity shipped, and check the identification of any suspicious materials. Waste material may be spot surveyed for levels of alpha, beta, and gamma radiations. Umetco stated that any discrepancies will be resolved, and if not resolved to the satisfaction of Umetco personnel, the suspected material will be refused for disposal.

Material accepted from the generator will be placed in layers on the surface of Cell No. 3. Layers of waste material will be compacted and void spaces from equipment will be minimized by crushing, filling, or sectioning. Compacted layers will be covered with a 1-foot thick cover of native soil or formerly excavated impoundment material at the end of each shipment or end of the work day. All work practices will be done under appropriate radiological monitoring and proper safety supervision. A complete set of records concerning the waste disposal will be kept by Umetco.

The licensee's proposal contained a draft Standard Operating Procedure (SOP) for the disposal of byproduct material from generators. The SOP addressed pertinent aspects of shipping, receiving, disposal, and recordkeeping of the waste material.

Staff Review

The licensee provided an estimate of the volume and activity of the material to be placed into the tailings system. The total volume estimated by Umetco for the first contract would be about 2300 cubic yards. This material will be shipped from an ISL located in Texas. With the exception of about 300 cubic yards of organic resin, most of the material to be disposed of will have an activity range for natural uranium from 200 to 1000 pCi/g and for radium-226 from 20 to 200 pCi/g. The organic resin has a total activity range of 3000 to 8000 pCi/g.

Materials will be placed in Cell No. 3, which has been previously approved for disposal of contaminated mill equipment under License Condition No. 42. Umetco states that contaminated equipment will be crushed, filled, or sectioned to minimize void spaces during disposal. In addition, any barrels containing wastes other than contaminated soils or sludges shall be emptied in the disposal area and the drums crushed to further aid in minimizing void space within the disposal material. Also, any barrel containing sludge or contaminated soils shall be opened and checked for void. If any voids are found they must be filled.

The projected average composition and radiological characteristics of the off-site waste is very similar to that of the tailings and other waste generated at the site and will therefore not have a significant impact on the current tailings composition. However, large shipments with average concentrations higher than the expected average could change the composition of the current tailings pile. The staff will therefore require that disposal of wastes in excess of 10,000 cubic yards per year from single sources be specifically approved by the NRC, and that information submitted in support of such a request include an evaluation of the potential impact to the characteristics of the tailings pile.

Umetco has developed a set of Standard Operating Procedures which address the handling of the waste material. The procedures were reviewed and found to be

generally complete. However, the staff will require Umetco to report on an annual basis to the NRC the amount of waste placed into the tailings impoundment from off-site generators.

CONCLUSION

The staff concludes that the proposed license amendment to authorize the disposal of byproduct material from ISL operations, as modified by the staff, will not result in significant impacts to the environment or the public health and safety. Further, the staff concludes that the proposed action is in accordance with the intent of Criterion 2 of Appendix A to 10 CFR 40 to avoid the proliferation of small waste disposal sites which would be necessary if disposal in large tailings systems were not authorized.

In accordance with the categorical exclusion contained in paragraph (c)(11) of 10 CFR 51.22, an environmental assessment is not required for this licensing action. That paragraph states that the categorical exclusion applies to the issuance of amendments to licenses for uranium mills provided that (1) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, (2) there is no significant increase in individual or cumulative occupational radiation exposure, (3) there is no significant construction impact, and (4) there is no significant increase in the potential for or consequences from radiological accidents.

The licensing action discussed in this memorandum meets these criteria as the authorization to receive and dispose of byproduct waste material will not adversely impact any of these criteria as discussed below:

A. There will not be a significant change in the type or amount of effluents released offsite, as the proposed actions will not impact effluent releases.

B. There will not be a significant increase in occupational radiation exposures, as the changes should have a minimal effect on personnel exposures.

C. There will not be a significant impact on construction activities, as the current volume of material to be disposed of is small and will reduce the need for fill material to reach contours desired in final reclamation.

D. There will not be a significant increase in the potential for or consequences from radiological accidents. There will be a slight increase in the potential for accidents resulting from shipments of the waste material to the site. However, these accidents should not be radiologically significant and any spill of radioactive materials will normally be easy to clean up.

The staff therefore recommends that Source Material License SUA-1358 be amended to authorize the disposal of ISL wastes by adding a new license condition to read as follows:

55. In accordance with the licensee's submittal dated May 20, 1993, the licensee is hereby authorized to dispose of byproduct material generated at licensed in situ leach facilities, subject to the following conditions:

A. Disposal of waste in excess of 10,000 cubic yards per year from single sources shall require specific approval from the NRC. Information submitted in support of such a request shall address potential impacts to the composition of the tailings and shall include an environmental report or supplement to previously submitted environmental reports if impacts from the disposal exceed those previously evaluated.

B. All contaminated equipment shall be dismantled, crushed, or sectioned to minimize void spaces. Barrels containing waste other than soil or sludges shall be emptied into the disposal area and the barrels crushed. Barrels containing soil or sludges shall be verified to be full prior to disposal. Barrels not completely full shall be filled with tailings or soil.

C. All waste shall be buried in Cell No. 3 unless prior written approval is obtained from the NRC for alternate burial locations.

D. All disposal activities shall be documented. The documentation shall include descriptions of the waste and the disposal locations, as well as all actions required by this condition. An annual summary of the amounts of waste disposed of from off-site generators shall be sent to the NRC.

[Applicable Amendments: 33]

The issuance of this amendment was discussed via telephone with Mr. Scott Schierman of Umetco on July 28, 1993.

Dana C. Ward

Dana C. Ward
Project Manager

Case Closed: X61090

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

'94 FEB 15 P4:02

In the Matter of	)	
	)	
UMETCO MINERALS CORPORATION	)	Docket No. 40-8681-MLA-2
	)	
(Materials License No. SUA-1358)	)	ASLBP No. 94-688-01-MLA-2
	)	(in situ leach)

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with § 2.713(b), 10 C.F.R., Part 2, the following information is provided:

Name: Sherwin E. Turk

Address: Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Telephone: (301) 504-1575

Admissions: United States Supreme Court
State of New Jersey
District of Columbia

Name of Party: NRC Staff

Respectfully submitted,

Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 14th day of February, 1994.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of	)	
	)	Docket No. 40-8681-MLA-2
UMETCO MINERALS CORPORATION	)	
	)	ASLBP No. 94-688-01-MLA-2
(Materials License No. SUA-1358)	)	(in situ leach)

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with § 2.713(b) of 10 C.F.R. Part 2, the following information is provided:

Name:	Colleen P. Woodhead
Address:	U.S. Nuclear Regulatory Commission Office of the General Counsel Washington, D.C. 20555
Telephone Number:	(301) 504-1525
Admissions:	Supreme Court of Texas U.S. Court of Appeals in the District of Columbia The Supreme Court of the United States
Name of Party:	NRC Staff

Respectfully submitted,

Colleen P. Woodhead
Counsel for NRC Staff

Dated at Rockville, Maryland
this 14th day of February, 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of	)	
	)	Docket No. 40-8681-MLA-2
UMETCO MINERALS CORPORATION	)	
	)	ASLBP No. 94-688-01-MLA-2
(Materials License No. SUA-1358)	)	(in situ leach)

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF'S RESPONSE TO REQUEST FOR HEARING FILED BY ENVIROCARE OF UTAH, INC." and "NOTICE OF APPEARANCE" for Colleen P. Woodhead and Sherwin E. Turk in the above-captioned proceeding have been served on the following by deposit into the United States mail or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system this day of February 14, 1994:

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Colleen P. Woodhead
Counsel for NRC Staff