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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges
James P. Gleason, Presiding Officer
Thomas D. Murphy, Special Assistant

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In the Matter of

UMETCO MINERALS CORPORATION

(Source Materials License
No. SUA-1358)

Docket No. 40-08681-MLA-2

ASLBP No. 94-688-01-MLA-2

March 4, 1994

MEMORANDUM AND ORDER
(Request for Hearing)

This Order deals with the January 13, 1994 request of Envirocare of Utah, Inc. (Envirocare) for an informal hearing on a license amendment approved by the Nuclear Regulatory Commission staff on August 2, 1993. The amendment, to a source materials license possessed by the UMETCO Minerals Corporation (UMETCO), authorizes that organization to receive byproduct materials from other licensed in situ operations and dispose of them at its White Mesa Mill near Blanding, Utah. UMETCO and the Staff oppose Envirocare's hearing request on timeliness and standing grounds.¹

¹ UMETCO Response to Request for Hearing, January 24, 1994; NRC Staff Response to Request for Hearing, February 14, 1994. In addition to opposition based on an alleged failure to meet timeliness requirements, the Staff also argues that allegations by Envirocare of economic injury as a result of the license amendment are beyond the zone of interests protected by the Atomic Energy Act.

Timeliness

Under the Commission's informal hearing rules, where no notice of opportunity for hearing has been published in the Federal Register, 10 C.F.R § 2.1205(c)(2) provides that requests for hearing must be filed the earlier of:

i) Thirty (30) days after the requestor receives actual notice of a pending application or an agency action granting an application; or

(ii) One hundred and eighty (180) days after agency action granting an application.

The following subsection, 10 C.F.R § 2.1205(d)(4), requires the request for hearing to describe in detail:

(4) The circumstances establishing that the request for a hearing is timely in accordance with paragraph (c) above.

The objective of timely filings for hearing requests is to facilitate the resolution of concerns on pending license applications in a timely manner.²

The posture of the hearing petition in this proceeding evidences a time lapse of over five months occurring between the NRC license amendment approval and the filing of the hearing petition request. In these circumstances, any Envirocare explanation for the timing of the filing of its hearing request must be evaluated. Here, however, Envirocare has not submitted

² The Commission views the filing of hearing requests in the context of "the earliest possible resolution of safety issues." See Proposed Rule on Informal Hearing Procedures For Materials Licensing Adjudications, 55 Fed. Reg. 50858 (January 29, 1993).

an explanation; rather, the petitioner merely maintains that its filing is timely. Envirocare's position is untenable.

Envirocare's petition states that "in late 1993," it became aware that NRC's Field Office, in the late summer or early fall, approved the UMETCO license amendment. The petition included, as exhibits, a copy of an Envirocare letter dated December 16, 1993, and a December 27, 1993, NRC response from the Director of NRC's Field Office. The pertinent part of Envirocare's December 16th letter 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." The NRC Staff Director noted in his December 27th reply that, based on discussions with a Mr. Semnani (who is subsequently identified in the pleadings as Envirocare President), a copy of an October 1, 1993 UMETCO license amendment was being forwarded in response to Envirocare's request. This exchange discloses nothing relative to the license amendment of August 2, 1993 -- the only matter at issue here. More relevant to the question, of when Envirocare first had knowledge of the August 2, 1993 license amendment, are the exhibits filed with UMETCO's opposition to Envirocare's hearing request. These exhibits, each with a notarized certification by the custodian of the records maintained by the Utah Division of Radiation Control, reveal that among the subjects discussed in meetings between Utah Officials and Envirocare representatives, including Mr. Semnani, was

information concerning NRC license amendments prior to the date of the discussions. The exhibits appears to indicate that Envirocare had actual knowledge of the August 2 amendment at least some time prior to November 10, 1993 -- the date of the initial meeting with the State of Utah's representatives. This is some sixty-four (64) days prior to the filing of Envirocare's hearing request.³

Importantly, Envirocare's response does not rebut these exhibits or in any way challenge the exhibits referencing such knowledge. Rather, Envirocare supports the timeliness of its hearing request by referring to a January 12, 1994 letter to UMETCO from the Director of NRC's Field Office.⁴ This communication indicates that a thirty-day period from the date of the Staff's letter was available for the October 1, 1993 license amendment but that the one-hundred-eighty-day (180) regulatory time period for filing hearing requests was running out on the August 1993 amendment. The UMETCO reply (which attached the January 12th NRC letter as an exhibit), as well as the Staff's response, make evident the unfounded basis for Envirocare's position. See UMETCO Reply, February 1, 1994 at 4 and Staff Response, February 14, 1994 at 14 n.14. The thirty-day time period referred to in the NRC Director's (Hall) January 12, 1994

³ See Memoranda, Sinclair to Envirocare file, (November 16, 24, and December 6, 1993), UMETCO Response to Request for Informal Hearings, January 24, 1994.

⁴ Although Envirocare's Response, dated January 28, 1993, indicated the letter was attached as Exhibit A, it was not included in the petitioner's pleading.

letter was addressed to the October 1 license amendment. As Envirocare's hearing request concerns the August 1993 license amendment, the subsequent amendment is not at issue in this proceeding. In connection with the one-hundred-eighty-day (180) time period mentioned in the NRC Director's letter, there is no indication in the letter that the Director was aware of Envirocare's prior actual notice of the August 2, 1993 license amendment. If the Director had such knowledge, his statement regarding the 180-day filing period would have been merely erroneous but it would not authorize Envirocare to ignore the plain dictates of 10 C.F.R. § 2.1205(c)(2). It is evident that the requestor has failed to meet the timeliness requirements of 10 C.F.R § 2.1205(c)(2) and, as a consequence, its request for a hearing is denied.

Standing

Inasmuch as the timeliness requirements is fatal to Envirocare's petition, it is unnecessary to determine the validity of petitioner's contention that the unfair application of NRC's regulatory requirements is a basis for standing in this proceeding. The charge is that NRC Staff permitted UMETCO to conform its operations to less stringent environmental standards than Envirocare, thus providing a significant economic advantage to a competitor. From this foundation, Envirocare argues it has a "real stake" in the outcome of this proceeding and is within

the "zone of interest" protected by Section 189(a) of the Atomic Energy Act.⁵

In order to satisfy judicial standing in the Agency's adjudicative processes, a petitioner must demonstrate that its interests are protected by the statute under which intervention is sought.⁶ It has been held in a number of NRC cases that economic considerations are not included among the zone of interests encompassed by the Atomic Energy Act, although these cases are generally tied to rate-paying in the electric utility industry.⁷ Economic interests have been recognized under the National Environmental Policy Act (NEPA) in instances where the harm is environmentally related.⁸ Although no claim of environmental damage is made by Envirocare, economic competitive disadvantages as a foundation for standing, grounded on NRC's noncompliance with regulatory standards, has not to this Presiding Officer's knowledge been tested in NRC litigation.⁹ In any event, that issue cannot be evaluated here due to the petitioner's failure in meeting regulatory timing prerequisites.

⁵ See Envirocare Request for an Informal Hearing at 7

⁶ See Public Service Co. of New Hampshire (Seabrook Station, Unit 1) CLI-91-14, 34 NRC 261, 266 (1991)

⁷ See Staff's Response to Hearing Request at 9.

⁸ See Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992)

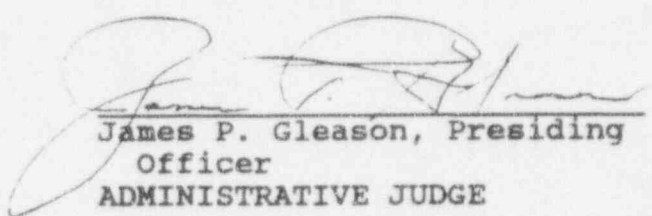
⁹ It is noted that the introduction to Appendix A in 10 C.F.R. Part 40 calls for a consideration of the economic costs involved in licensing decisions affecting the disposition of tailings and wastes.

Appeal Rights

In accordance with 10 C.F.R. § 2.714a (1993), Envirocare may seek appeal on the question of whether its request for a hearing should have been wholly denied.

An appeal to the Commission may be sought by filing a petition for review, pursuant to 10 C.F.R. § 2.714a (1993), within 10 days after service of this Order.

IT IS SO ORDERED:



James P. Gleason, Presiding
Officer
ADMINISTRATIVE JUDGE

Bethesda, Maryland

March 4, 1994

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NUCLEAR REGULATORY COMMISSION

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UMETCO MINERALS CORPORATION

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Docket No.(s) 40-8681-MLA-2

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (REQUEST FOR HEARING) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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

Administrative Judge
James P. Gleason
Presiding Officer
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

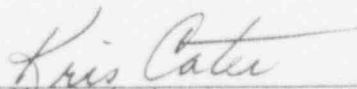
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Dated at Rockville, Md. this
7 day of March 1994


Office of the Secretary of the Commission