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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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

SERVED MAR 10 1994

In the Matter of

UMETCO MINERALS CORPORATION

(Source Materials License
No. SUA-1358)

Docket No. 40-08681-MLA

ASLBP No. 92-666-01-MLA

March 9, 1994

MEMORANDUM AND ORDER
(Motion for Leave to File Reply)

On March 4, 1994, the Presiding Officer denied Envirocare's untimely January 13, 1994, request for a hearing on a license amendment to a source material license held by UMETCO Minerals Corporation that had been granted by the NRC Staff on August 2, 1993. The Presiding Officer found that Envirocare had actual notice of the UMETCO license amendment no later than November 10, 1993, and, therefore, under the Commission's Rules of Practice, 10 C.F.R. § 2.1205(c)(2), had only thirty days from that date to seek a hearing. On the same day of the Presiding Officer's action, Envirocare filed a motion for leave to reply to the Staff's response to Envirocare's hearing request. Envirocare's latest motion is denied. Inasmuch as Envirocare had ample

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opportunity in its initial pleadings to establish its lack of actual notice, its proffer to do so now comes too late.¹

Based on the pleadings, it appears that Envirocare not only had knowledge of the amendment in question sometime prior to November 10, 1993, but alleged in meetings with State of Utah officials that the NRC licensing was "inappropriate."² Envirocare now claims it had no specific information on whether the license amendment was properly issued until after it had received a December 27, 1993, response from the NRC Field Office to its request for information. This, petitioner states, raised its suspicions and led it to investigate and obtain specific information concerning the amendment in the Denver office files.

Assuming the validity of Envirocare's present statement that it did not receive full knowledge of the circumstances surrounding the issuance of the amendment until sometime in early January 1994, the petitioner still fails to rebut information concerning its actual notice of the amendment prior to November 10, 1993. Where a party has knowledge of such facts that would lead a prudent person to make inquiry, that party is charged with actual notice. In the circumstances here, once knowing of the amendment, petitioner had a duty of inquiry and must be held to account for its failure to inquire further immediately.³ The

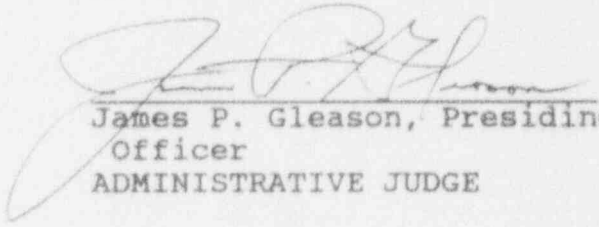
¹ See Response of UMETCO to Request for Hearing, at 4-6 (January 24, 1994) and Envirocare Response to UMETCO Response, 2-3 (January 28, 1994)

² See Memoranda, Sinclair to Envirocare file, (November 16, 24 and December 6, 1993).

³ *Amjems, Inc. v. F.R. Orr Construction Company, Inc.*, 617 F. Supp. 273, 278 (1985).

regularity of the agency's administrative processes must be protected against preventable delays and the time requirements of the Commission's regulations are a fair method designed to accomplish that objective. Envirocare's motion is therefore denied.

It is so Ordered



James P. Gleason, Presiding
Officer
ADMINISTRATIVE JUDGE

Bethesda, Maryland

March 9, 1994

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UMETCO MINERALS CORPORATION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (MOTION FR LEAVE..) 3/9 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.

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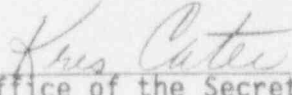
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Docket No.(s)40-8681-MLA
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Datcd at Rockville, Md. this
10 day of March 1994


Office of the Secretary of the Commission