

BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of Umetco Minerals Corporation)	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
(Source Materials License No. SUA-1358))	
Docket No. 40-8681)	

UMETCO Minerals Corporation ("UMETCO"), by and through its undersigned attorneys, hereby files this response in opposition to Envirocare of Utah, Inc.'s ("Envirocare") Request for an Informal Hearing and a Request for a Proceeding to Modify, Suspend or Revoke Materials License Amendment. As more fully set forth below, Envirocare's request for an informal hearing should be denied as untimely because it was not filed within 30 days after Envirocare received actual notice of the granting of the license amendment by the United States Nuclear Regulatory Commission (the "NRC").

FACTS

On August 2, 1993 the NRC issued to UMETCO an amendment (the "Amendment") to Source Materials License SUA-1358 (the "License"). The Amendment authorized UMETCO "to dispose of by-product material generated at licensed in situ leach facilities," subject to several restrictions set forth in the Amendment.

Envirocare was aware of the grant of the Amendment well in advance of January 13, 1994, the date of its hearing request. Records on file with the State of Utah's Division of Radiation Control (the "Division") establish that Envirocare discussed the Amendment with Division officials at least twice in November 1993 and at least once in early December 1993. All of these discussions occurred more than 30 days prior to the filing by Envirocare of its hearing request, dated January 13, 1994.

On November 10, 1993, Khosrow Semnani, President of Envirocare, and Reed Searle, a lobbyist representing Envirocare, met with Bill Sinclair, Director of the Division and Brent Bradford, Deputy Director of the Utah Department of Environmental Quality (the "Department").¹ At this meeting, Mr. Semnani raised the issue of disposal of radioactive waste at uranium mills such as UMETCO.² Mr. Sinclair reviewed with Mr. Semnani and Mr. Searle the NRC's action with respect to the grant of the Amendment³ and advised them that NRC

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1. Memorandum dated November 16, 1993 from Mr. Sinclair to the Envirocare File, attached as Exhibit A hereto. (Hereinafter, the "November 16th Memorandum.")
 2. November 16th Memorandum at paragraph 5.
 3. November 16th Memorandum at paragraph 6. In addition to discussing the Amendment, some of the documents attached as Exhibits hereto also contain references to an amendment to UMETCO's license involving the "Allied Signal" material. The amendment with respect to the Allied Signal material has not been challenged by Envirocare and is not the subject of this proceeding.

administrative procedures were available to Envirocare if it thought the issuance of the Amendment was incorrect.⁴

On November 23, 1993, Mr. Semnani and Charles Judd, Executive Vice President of Envirocare, met with Mr. Sinclair and Dianne Nielson, Executive Director of the Department.⁵ Again, the issue of the NRC licensing action involving UMETCO was discussed. As Mr. Sinclair had done at the November 10, 1993 meeting, Ms. Nielson advised Envirocare to proceed with an NRC administrative challenge in order to address its grievance with the NRC over the grant of the Amendment.⁶

Envirocare again raised concerns with respect to the License at a December 3, 1993 meeting between Mr. Sinclair, Denise Chancellor of the Utah Attorney General's Office, Mr. Judd, and Mike Keller, an attorney representing Envirocare.⁷ Apparently rejecting the earlier suggestions of Mr. Sinclair and Ms. Nielson that Envirocare proceed with an NRC administrative challenge, Envirocare encouraged the Division to pursue several possible courses of action to deal with UMETCO.⁸

4. November 16th Memorandum at paragraph 7.

5. Memorandum dated November 24, 1993 from Mr. Sinclair to Envirocare File, attached as Exhibit B hereto.

6. Id.

7. Memorandum dated December 6, 1993 from Mr. Sinclair to the Envirocare File, attached as Exhibit C hereto.

8. Id.

DISCUSSION

Envirocare's request for an informal hearing was filed pursuant to 10 C.F.R. § 2.1205. Under 10 C.F.R. § 2.1205(c)(2), if notice of a license amendment action has not been published in the Federal Register (as is the case with respect to the Amendment), persons other than the applicant must file a request for hearing on that action no later than 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.

Section 2.1205(d)(4) places the burden on the person requesting the hearing to "describe in detail," among other things, the "circumstances establishing that the request for a hearing is timely in accordance with [10 C.F.R. § 2.1205(c)]." Envirocare has clearly failed to carry the burden of describing in detail the circumstances establishing that its request for a hearing is timely. Indeed, the facts set forth above clearly establish that Envirocare's request is untimely under 10 C.F.R. § 2.1205(c)(2)(i) inasmuch as it had actual notice of the Amendment more than 30 days before the date of filing its request.

In its request for a hearing, Envirocare vaguely asserts that "[i]n 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 materials license."⁹ While perhaps not technically inaccurate, Envirocare's vague description of the timetable on which it learned of the Amendment is misleading in light of the three meetings with officials of the State of Utah documented above, all of which occurred more than 30 days before Envirocare filed its request. Furthermore, it is entirely possible, and perhaps probable, that Envirocare was on notice of the Amendment before it raised the issue at the first documented meeting with State officials in November.

In ruling on a request for a hearing, the presiding officer must determine, *inter alia*, that the petition is timely. 10 C.F.R. § 2.1205(g). If found to be untimely, the request will be entertained only upon determination by the Commission or the presiding officer that the delay in filing the request was "excusable" and that the grant will not result in undue prejudice or undue injury to any other participant in the proceeding. 10 C.F.R. § 2.1205(k).

In this case, Envirocare has not established, or even attempted to establish, that its delay was excusable. Indeed, it would be difficult for Envirocare to seriously contend that its delay was excusable inasmuch as Mr. Sinclair and

9. Envirocare's Request at page 7.

Ms. Nielson recommended on at least two separate occasions in November 1993 that Envirocare pursue its grievances with respect to the Amendment through NRC administrative proceedings. Simply stated, Envirocare knew of its option to pursue NRC administrative actions, but failed to request a hearing on a timely basis.

CONCLUSION

For the reasons set forth above, Envirocare's request for an informal hearing should be denied as untimely. In the event Envirocare's request is determined to be timely or if Envirocare's request for a proceeding to modify, suspend or revoke materials license is granted, UMETCO will file a response to Envirocare's substantive allegations in accordance with 10 C.F.R. § 2.1233 or other regulations as may be applicable.

DATED this 24 day of January, 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

I hereby certify that I caused a true and correct copy of the within and foregoing 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, to be mailed, first class, postage prepaid, this 24 day of January, to the following:

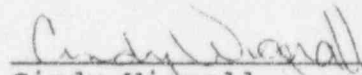
H. Michael Keller, Esq.
Matthew F. McNulty, III, Esq.
Thomas W. Clawson, Esq.
VAN COTT, BAGLEY, CORNWALL & MCCARTHY
50 South Main, Suite 1600
Salt Lake City, UT 84144

Candace Jones

BTHP/aj4

CERTIFICATION

The undersigned, Cindy Wignall, certifies that she is custodian of the records maintained by the Utah Division of Radiation Control (the "Division") and that the attached Memorandum dated November 24, 1993 from Bill Sinclair to the Envirocare file constitutes a true and correct copy from the Division records.


Cindy Wignall

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 20th day of January, 1994, by Cindy Wignall, of the Utah Division of Radiation Control.




NOTARY PUBLIC
My Commission Expires 6/15/94

From: Bill Sinclair (BSINCLAI) BS
To: Envirocare File
Date: Wednesday, November 24, 1993 1:41 pm
Subject: Meeting with Envirocare 11/24/93

Dianne Nielson and Bill Sinclair met with Charles Judd and Khosrow Semnani of Envirocare at 11 AM on November 23, 1993. Mr. Semnani made the following statements:

1. Envirocare is not interested in taking the Monticello tailings.
2. He has a serious concern about "where" the UMETCO White Mesa Mill is going in terms of becoming a commercial radioactive waste management facility.
3. He indicated he had made substantial investment to this point to license a 11 (e) 2 facility at the Envirocare site. He stated \$1.3 million in costs to date.
4. He wanted some assurance that UMETCO was not to become a commercial radioactive waste management facility.

Dianne Nielson assured Mr. Semnani it was the position of the state that UMETCO not become a commercial facility. She indicated that UMETCO was poised to solve a Utah disposal problem if the site was selected as the disposal alternative for the Monticello tailings.

Dianne Nielson requested that Envirocare and DEQ need to work closely together to find a mutually beneficial solution to the UMETCO issue. Dianne pointed out that NRC license amendments had been accomplished without the state's knowledge or input. Dianne also indicated that legislation may be the correct course of action. Language could be crafted similar to the hazardous waste statute where gubernatorial and legislative approval is required for commercial facilities. Dianne also indicated that such facilities should operate in a manner that protects human health and the environment.

Khosrow Semnani indicated that Mike Keller, attorney at law would like to meet with DRC (Denise Chancellor and Bill Sinclair) to explain his rationale that DRC already has the ability to limit the receipt of materials. The meeting will be set up for sometime within the next couple of weeks.

Dianne indicated that Envirocare should proceed and challenge NRC in those cases where they thought that NRC was making the wrong decision regarding license amendments for receipt of waste by UMETCO. Dianne also cautioned Envirocare that the "dumping ground" issue is a sensitive one.

Khosrow Semnani indicated that a meeting had been arranged with the Governor on December 6, 1993 to discuss the issue and he would like to go in with some assurances that the UMETCO issue would be resolved. He also wants to mention the Compact issue with the additional isotopes and reactor waste.

Meeting adjourned at 11:35 AM.

CC: DFINERFR, AT_KEY01:DCHANCEL, BBRADFOR

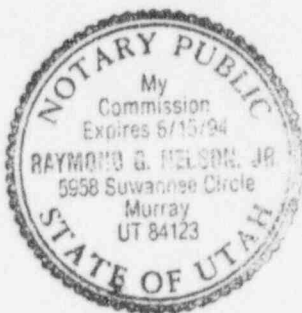
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Raymond G. Nelson, Jr.
NOTARY PUBLIC

From: Bill Sinclair (BSINCLAI) *BS*
To: ~~BBRADFOR~~ *Envirocare File*
Date: Tuesday, November 16, 1993 8:02 am
Subject: Envirocare Meeting 11/10/93

Bill Sinclair and Brent Bradford of DEQ met with Khosrow Semnani and Reed Searle representing Envirocare of Utah on November 10, 1993. The purpose of the meeting was to discuss proposed legislation by the Department. The following was discussed:

1. The need for the legislation was discussed. A consensus was reached for the need for the legislation to address issues in the 1992 legislative audit report.
2. A concern was raised regarding whether the legislature was the appropriate forum to decide "technical issues" such as type and concentrations of radionuclides and/or the perpetual care fund. A consensus was reached that by giving the Board authority to regulate these items that the intent of the audit was being met.
3. Envirocare asked if a representative of the radioactive waste industry similar to what is in the Solid and Hazardous Waste Act could be added or clarified in the current statute. This was taken under advisement.
4. Envirocare indicated their desire not to become the "host" low level waste site for the Northwest Interstate Low Level Radioactive Waste Compact now or in the future. It was pointed out that the proposed revisions to the Act would prohibit receipt of type B and C radioactive wastes unless legislative and gubernatorial approval is obtained.
5. Following the legislative discussions, Mr. Semnani offered a concern that UDEQ was not actively discouraging receipt of out state radioactive waste at "other" facilities (e.g. uranium mills such as UMETCO White Mesa) as was done in the past. He was concerned that uranium mill facilities do not have to meet the same requirements for design and operation as his Envirocare facility.
6. Bill Sinclair explained the current situation with UMETCO White Mesa including a review of the last two NRC licensing actions involving in-situ mining waste and the Allied Signal material to be reprocessed. Mr. Sinclair pointed out that until recently NRC was under no obligation to inform the state of their actions and he had taken steps to correct that situation.
7. Mr. Semnani indicated that he would have to do something. Mr. Sinclair pointed out that NRC administrative procedures were available to Envirocare if they thought the licensing was incorrect.

CC: DFINERFR, DRNIELSO

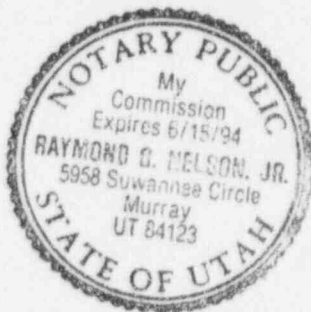
CERTIFICATION

The undersigned, Cindy Wignall, certifies that she is custodian of the records maintained by the Utah Division of Radiation Control (the "Division") and that the attached Memorandum dated December 6, 1993 from Bill Sinclair to the Envirocare file constitutes a true and correct copy from the Division records.

Cindy Wignall
Cindy Wignall

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 20th day of January, 1994, by Cindy Wignall, of the Utah Division of Radiation Control.



Raymond G. Nelson
NOTARY PUBLIC

MEMORANDUM

TO: Envirocare File

FROM: Bill Sinclair, Director *BS*
Division of Radiation Control

SUBJECT: Meeting, December 3, 1993 with Charles Judd and Mike Keller

DATE: December 6, 1993

Denise Chancellor from the Utah Attorney General's Office and Bill Sinclair met with Charles Judd and Mike Keller as a follow-up to the meeting of November 24, 1993, where Khosrow Semnani of Envirocare expressed concern to Dianne Nielson that he perceived UMETCO was becoming or operating as a commercial low level waste disposal facility. The major concern was that UMETCO has a license from NRC to receive material from other facilities, much of it being out of state waste.

Envirocare also raised concerns in regards to the recent NRC licensing actions relating to the receipt of in situ mining waste for disposal and the Allied Signal material for reprocessing. Envirocare feels that NRC's licensing was not appropriate due to their findings of no significant impact for the two licensing actions. Envirocare also perceived that NRC had issued "open ended" licensing actions which would allow receipt of thousands of tons of material. Envirocare pointed out they had spent considerable funds pursuing their uranium mill tailings disposal cell and felt that they had "to do more" (e.g. payment of disposal fees). Envirocare also pointed out that UMETCO was not subject to any requirements for testing of incoming material.

Envirocare had three suggestions for the Division to pursue:

1. Bring this issue before the Utah Radiation Control Board
2. Require UMETCO to get a groundwater discharge permit
3. Act upon the policy question of gubernatorial/legislative approval