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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Charles Bechhoefer, Presiding Officer
Dr. Peter S. Lam, Special Assistant

In the matter of:

QUIVIRA MINING CO.
Ambrosia Lake Facility
Grants, New Mexico

Amendment to Source
Material License No.
SUA-1473

Docket No. 40-8905-MLA

ASLBP No. 97-728-04-MLA

June 20, 1997

MEMORANDUM AND ORDER
(Request for Hearing)

This proceeding involves a proposed amendment to the source material license (SUA-1473) of Quivera Mining Co. (QMC or Applicant) to permit it to receive Section 11(e)(2) byproduct material for disposal at its Ambrosia Lake uranium mill and tailings site, located near Grants, New Mexico. In response to a Notice of Opportunity for Hearing, appearing in the Federal Register of April 29, 1997 (62 Fed. Reg. 23282, 23283), a timely request for a hearing dated May 28, 1997, was submitted by Envirocare of Utah, Inc. (Envirocare or Petitioner). Timely responses in opposition to Envirocare's request were filed by the Applicant and NRC Staff, dated June 12 and June 19, 1997, respectively. In its response, the Staff stated that, pursuant to 10 C.F.R. § 2.1213, it wishes to participate as a party.

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As set forth in the above Federal Register notice, this proceeding falls within the scope of 10 C.F.R. Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings" (10 C.F.R. §§ 2.1201-2.1263). On June 6, 1997, Administrative Judge Charles Bechhoefer was designated Presiding Officer, and Administrative Judge Peter S. Lam was appointed Special Assistant (see 10 C.F.R. § 2.1209(j)) to assist in taking evidence and preparing a suitable record for review. 62 Fed. Reg. 32386 (June 13, 1997).¹

In proceedings under Subpart L, a petitioner is required to set forth (1) its interest in the proceeding-- i.e., its standing; (2) how its interest may be affected by the results of the proceeding; (3) its area of concern about the licensing activity that is the subject matter of the proceeding; and (4) the timeliness of the petition. 10 C.F.R. § 2.1205(e). To admit Envirocare, I must find that the specified areas of concern are germane to the subject matter of the proceeding, that the petition was timely, and that the petitioner has standing. 10 C.F.R. § 1205(h).

With respect to Envirocare's petition, it clearly was timely submitted. In addition, I agree with the NRC Staff that certain (although not all) of its areas of concern are

¹Although dated June 6, 1997, this designation was not docketed until June 9, 1997. Periods of time running from the date of designation (see, e.g., 10 C.F.R. § 2.1213) may be calculated from the latter date.

germane to the subject matter of the proceeding. But its statement of standing and injury in fact are not sufficiently specific for me to determine whether those factors have been satisfied.

In proceedings subject to Subpart G of 10 C.F.R. Part 2, a petitioner would have a right to amend its petition without leave of the Presiding Officer (in those proceedings, an Atomic Safety and Licensing Board). 10 C.F.R. § 2.714(a)(3). In proceedings subject to Subpart L of 10 C.F.R. Part 2, such as this one, there is no specific right of this type, although there also is no prohibition.

Reflecting the common statutory derivation of the formal and informal hearing procedures (i.e., § 189a of the Atomic Energy Act, 42 U.S.C. § 2239(a)), the Subpart L procedures, while differing in material respects from the formal procedures, do not appear to have been intended to make it more difficult to attain intervention in an informal proceeding than in a formal one. A meaningful opportunity for a hearing must of course be offered. City of West Chicago, IL v. NRC, 701 F.2d 633, 645 (7th Cir. 1983). This is particularly significant in view of the lack of local availability of information bearing upon a materials license application.

A necessary concomitant of a meaningful right to a fair hearing is that a petitioner have an adequate opportunity to provide the minimal amount of detail essential to determine

that a petitioner has standing and seeks to raise germane issues. Combustion Engineering, Inc. (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140 (1989). Questions concerning standing and injury in fact in this proceeding are complex. Further information, particularly on these subjects, is necessary for me to decide whether Envirocare should be granted the hearing it requests.

Accordingly, to afford Envirocare a meaningful opportunity to develop its hearing request, and based on my authority under 10 C.F.R. § 2.1209, I am providing Envirocare the opportunity to supplement its request for a hearing, taking into account the points raised by the Staff in its response. Envirocare's supplement must be filed (mailed) by July 3, 1997. (A copy of this Order is being telefaxed today to Envirocare.) Other parties may respond in sufficient time to reach the Presiding Officer, Special Assistant and other parties or the Petitioner by July 15, 1997 (a telefax response may be used, followed by a mailed copy).

Depending upon the substance of Envirocare's supplement, I may conduct a prehearing conference to clarify issues as to standing and, as necessary, to define further the issues for hearing and establish schedules for further filings. Such conference would likely be held during the week of July 21-25, 1997, although it could be held later. The conference will be conducted either by telephone

conference call (initiated by NRC) or at a location near Grants, New Mexico. The latter location might be warranted if a site tour would produce information relevant to the grant or denial of the hearing request. Parties and the Petitioner are invited to advise the Presiding Officer of their preference.

If I were to grant Envirocare's request for a hearing, the NRC Staff would be required to provide the Presiding Officer, the Special Assistant and all parties with a hearing file, consisting of documents of the type described in 10 C.F.R. § 2.1231(b). However, to assist me in evaluating Envirocare's request, I call upon the Applicant to provide the Presiding Officer, the Special Assistant and Envirocare with copies of the license amendment application, dated November 20, 1995, including any safety-analysis reports (SAR) and environmental reports (ER) relied upon; and subsequently submitted amendments or correspondence relevant to that application or to the SAR or ER. (If the Staff eventually must provide a hearing file, it need not include any documents provided by QMC under this request.)

It is so ORDERED.

By the Presiding Officer:


Charles Bechhoefer
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 20, 1997

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

QUIVERA MINING COMPANY

(License Amendment)

Docket No.(s) 40-8905-MLA

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.

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Docket No.(s)40-8905-MLA
LB M&O (REQUEST FOR HEARING)

Dated at Rockville, Md. this
20 day of June 1997


Office of the Secretary of the Commission