

NOV 12 1987

40-8926

MEMORANDUM FOR: Ronald Scroggins, Deputy Director
for Financial Management and Controller, ARM

THRU: Graham D. Johnson, Director
Division of Accounting and Finance, ARM

FROM: C. James Holloway, Jr., Chief
License Fee Management Branch
Division of Accounting and Finance, ARM

SUBJECT: STATE OF WYOMING REQUEST FOR WAIVER OF 10 CFR 170
FEES FOR ALTAIR RESOURCES, INC.

We have reviewed the request dated July 8, 1987, by the State of Wyoming, Department of Environmental Quality (DEQ), for a waiver from the fees assessed to Altair Resources, Inc. (Altair) for the issuance of License SUA-1492 and Amendment No. 1 to the license. Altair is a contractor doing work for the State of Wyoming. Altair was billed \$372 (\$522 - \$150 paid) under Invoice F0754 for the issuance of the new license and \$150 under Invoice F0780 for issuance of Amendment 1 to the license. Altair has notified the State concerning the receipt of the two invoices and has indicated that if they have to pay the fees then they will seek reimbursement from the DEQ.

The initial license was issued by the NRC in response to Altair's application for a source material license dated August 29, 1986. Altair paid the \$150 application fee for the application. License SUA-1492 was issued by the NRC on October 14, 1986. An NRC license was required because Altair was the successful bidder on State of Wyoming Contract No. 9-00487 for ground water restoration and facility decommissioning of the Bison Basin commercial in-situ leach facility located in Wyoming. The award of the contract was the result of a bond forfeiture by Ogle Petroleum, the former NRC licensee of the Bison Basin site. Ogle Petroleum went out of business and abandoned the site in October 1985. It is our understanding that at the time when the initial license was issued by NRC to Ogle that the State of Wyoming required two surety bonds from Ogle totaling about \$1 million to meet certain State environmental quality requirements. In order to avoid the unnecessary duplication and expense of "double bonding", the Commission in accordance with 10 CFR 40, Appendix A, II, Criterion 9, accepted the financial sureties. When Ogle abandoned the site, the State took possession and Ogle forfeited the bonds to the State of Wyoming. The State is now holding the money to be used for restoration of the site.

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Criterion 9 of Appendix A, 10 CFR 40 indicates that "in establishing specific surety arrangements, the licensee's cost estimates must take into account total costs that would be incurred if an independent contractor were hired to perform the decommissioning and reclamation work." Altair is now the independent contractor hired by the State of Wyoming to perform the decommissioning and reclamation work.

Fees under the provisions of Part 170 are assessed based on (1) who files the application and (2) the type of license being requested. The fact that a private commercial applicant subject to NRC regulations might be performing work under contract with the State of Wyoming, for example, has never been considered a justification for exempting such an applicant from fees. The State in their July 8, 1987 letter, states that they are "responsible for payment of all such billings because all project bidders were told there would be no DEQ or NRC licensing fees assessed against the contractor; fees were just not in the public interest, and such assessments would only push up the bid process and ultimate project cost to the State". The failure of the contractual agreement to include costs that might be incurred for licenses needed in order to perform the contractual services is a matter for resolution between the contracting parties, in this case, the State of Wyoming and Altair. The Licensing staff at the Region IV URFO Office has informed LFMB that (1) in their discussions with the State of Wyoming and Altair representatives both were aware that Commission licenses are subject to the fees of Part 170, and (2) the State is not interested in becoming the licensee. If the State of Wyoming had elected to be the applicant, they would have been exempt from fees under 10 CFR 170.11(a)(9). Enclosure 1 provides a chronology of this case.

This case is not unique. As we recently discussed in the NBS-GE case, there are many licensees whose licenses involve contractual services exclusively for Federal or State governments. These applicants are consistently assessed and have paid fees under 10 CFR 170 of the Commission's regulations. The precedent of relieving Altair we feel has unacceptable implications.

Based on the above, the attached letter informs the State of Wyoming that any services provided by the NRC to Altair, their contractor, are subject to Part 170 license and inspection fees.

/s/

C. James Holloway, Jr., Chief
License Fee Management Branch
Division of Accounting and Finance
Office of Administration and
Resources Management

Enclosure: As stated

Altair Resources
Background

1. 5/29/81 - Ogle Petroleum issued License SUA-1396 for an in-situ operation (2B) at their Bison Basin mine in Wyoming.
2. 1981 - 1984 - Several amendments issued to Ogle's license. All required fees paid.
3. 7/12/85 - Ogle filed an application to permit reduced monitoring and staffing at Bison Basin. Paid \$150 application fee.
4. 8/1/85 - In response to the application, NRC informs Ogle that various questions about the license itself precludes issuing a formal amendment at this time.
5. 10/29/85 - Ogle notifies Western Fuel (their joint venture partner) that effective 11/6/85, Ogle will cease operations of Bison Basin site.
6. 10/31/85 - Two letters from Ogle, one to NRC, and one to Wyoming State informing of decision to cease operation as of November 6, 1985.

7. 11/6/85 - Letter from Attorney General of State of Wyoming to Ogle, Western Fuel, Travellers Indemnity and Allied Fidelity Insurance Companies of bond forfeiture proceedings and hearing. State intends to seek forfeiture of bonds and to seek a qualified contractor for clean-up operations at Bison Basin.
8. 11/8/85 - NRC letter from Martin, Region IV Administrator, to State of Wyoming confirming assurance of NRC involvement and appropriate resources to aid clean-up.
9. 11/19/85 - NRC letter from Dale Smith, URFO Director, to Western Fuel confirming their role, not as a licensee, but as a joint venture partner of Ogle for entering into a contractual arrangement with a new corporation to provide site maintenance and security.
10. 12/3/85 - In response to 11/19/85 NRC letter, attorney's from Western Fuel forward a copy of an Agreement between Western Fuel and Altair Resources. Explains relationship between Western and Altair, and that the Agreement between them is effective "only upon receipt by Western of written assurances from Wyoming and NRC that Western will not be deemed a licensee".
11. 12/20/85 - Dale Smith, URFO, provides assurance to Western Fuel that they are not a licensee in response to their 12/3/85 letter.

12. 8/19/86 - Altair files application with NRC to possess source material while decommissioning Bison Basin site. Pays \$150 application fee.
13. 10/14/86 - Altair's new License SUA-1492 issued. Billed additional \$372 under Invoice F0754 for new license costs (9 hrs @ \$58 = \$522 - \$150).
14. 1/19/87 - Altair requests amendment to their license concerning two changes in the process circuit.
15. 1/27/87 - In response, Amendment No. 1 issued to Altair's license. Billed under F0780 for \$150 minimum fee. (2 hrs @ \$58 = \$116).
16. 6/22/87 - Altair informs State of Wyoming of receipt of 2 bills F0754 (\$372) and (\$150) F0780 and questions the reasons for bills.
17. 7/8/87 - Wyoming State sends letter to Scroggins explaining background of Bison Basin mine site and requests a review of the appropriateness of the 2 invoices, all future fees, and a waiver of the fees.

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DISTRIBUTION:

License Fee File

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→ Debbie

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