
BEFORE THE EXECUTIVE DIRECTOR
OF THE UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

White Mesa Mill Radioactive Material
License Number UT 1900479, July 23, 2014,
Letter Order from the Division of Radiation
Control to Energy Fuels Resources (USA)
Inc.

Findings of Fact, Conclusions of Law, and
Recommended Decision

May 15, 2015

Richard K. Rathbun
Administrative Law Judge

Under authority of Utah Code Ann. §§ 19-1-301 and 19-1-301.5, the Executive Director appointed the undersigned as Administrative Law Judge (ALJ) to conduct the adjudicative proceeding and to submit to the Executive Director a proposed dispositive action pursuant to Utah Code Ann. § 19-1-301.5 and Utah Admin. Code R 305-7-201 *et seq.* Now before me are the motions to dismiss filed by Energy Fuels Resources (USA) Inc. (Energy Fuels) and the Director, Division of Radiation Control (Director). After briefing by the parties, oral argument was held on May 5, 2015 at the DEQ building in Salt Lake City.

Upon consideration of the pleadings and exhibits, administrative record and the arguments of counsel, I submit the following Findings of Fact, Conclusions of Law and Recommended Decision to the Executive Director. Because the Petitioner, Uranium Watch, failed to timely file its Request for Agency Action and Petition to Intervene as required by the governing statute and rules, I recommend that this matter be dismissed with prejudice.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this proceeding, Uranium Watch seeks to challenge the Director's letter to Energy Fuels dated July 23, 2014 and issued in connection with the White Mesa Mill operated by Energy Fuels under license UT 1900479. Uranium Watch e-mailed its Request for Agency

Action and Petition to Intervene (RFAA) to the Administrative Proceedings Records Officer (APRO), Energy Fuels and the Director and their respective counsel on August 22, 2014. A signed, original paper RFAA was not received by the APRO and Director within thirty days of July 23, 2014. A paper or “hard copy” of the RFAA (albeit incomplete, as without attachments) was later sent to these same recipients by Uranium Watch’s placing it in the U.S. mail on February 11, 2015.

Energy Fuels and the Director filed their motions to dismiss the RFAA on February 17, 2015. One of the arguments raised by Energy Fuels in its motion, and urged as grounds for dismissal, was that the RFAA must be dismissed because an original, signed paper version of the RFAA was not delivered to the agency within the required thirty-day deadline. Because this issue mandates dismissal of these proceedings, I need not address the other arguments raised by the parties, including other grounds for dismissal asserted by Energy Fuels and the Director in their motions. To the extent a ruling on these other issues is required, however, I would dismiss them as moot.

Under agency rules enacted by authority of Utah Code Ann. §§ 19-1-201 and 19-3-103.5, an RFAA must be filed with the APRO and served upon the Director within thirty days of the challenged event. E-mail filing of an RFAA is insufficient; a “paper, signed original” must be filed and served as provided in R305-7-104. To be timely, the RFAA must be actually received by the Director and APRO within the deadline. See R305-7-104(5). For either a permit-review or non-permit-review adjudicative proceeding, the time limit is the same: filing within thirty days. See R305-7-203(5) and -303. Failure to timely file waives any right to contest the order or to seek judicial review. See R305-7-203(6) and -303(8).

The time to file may be extended only by stipulation of the parties, and no such

stipulation was filed in this case. See R305-7-205 and -303(5). Uranium Watch has acknowledged, both in its briefing(s) on Energy Fuels' motion to dismiss and at oral argument, that it failed to timely file an original, signed paper original of the RFAA within the thirty-day deadline. While an ALJ can modify certain requirements of the rules for good cause, I am specifically prohibited from modifying the requirements for timely filing an RFAA. See R305-7-108.


RECOMMENDED ORDER

In this case, Uranium Watch failed to timely file its RFAA. As ALJ, I do not have discretion to modify the deadline. I therefore recommend that Energy Fuels' motion to dismiss be granted, dismissing the RFAA with prejudice, in the form attached hereto as Exhibit A.

NOTICE OF OPPORTUNITY TO COMMENT

Parties may file comments to this Recommended Decision with the Executive Director of the Department of Environmental Quality within ten business days of issuance of this Recommended Decision in accordance with the requirements of Utah Admin. Code R 305-7-213(4) and -316(1). Comments shall not exceed 15 pages. A party may file a response to another party's comments, not to exceed five pages, within five business days of the date of the service of the comments.

Dated this 15th day of May, 2015.


Richard K. Rathbun
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2015 a true and correct copy of the foregoing Findings of Fact, Conclusions of Law and Recommended Decision was sent by electronic mail to the following:

Administrative Proceedings Records Officer
DEQAPRO@utah.gov

Sarah Fields, Program Director
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Rusty Lundberg
Director, Division of Radiation Control
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DATED this 15th day of May, 2015.



Richard K. Rathbun
Administrative Law Judge

EXHIBIT A to RECOMMENDED DECISION MAY 15, 2015

BEFORE THE EXECUTIVE DIRECTOR
OF THE UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

White Mesa Mill Radioactive Material
License Number UT 1900479, July 23, 2014,
Letter Order from the Division of Radiation
Control to Energy Fuels Resources (USA)
Inc.

[Proposed] Order Adopting
Recommended Decision

_____, 2015

Richard K. Rathbun
Administrative Law Judge

Pursuant to Utah Code Ann. § 19-1-301.5 and Utah Admin. Code R 305-7-201 *et seq.*, the ALJ has submitted Findings of Fact, Conclusions of Law and Recommended Decision dated May 15, 2015 (Recommended Decision) in the above-captioned adjudicatory proceeding. [LIST FILING PARTIES] filed comments to the Recommended Decision, as allowed by Utah Admin. Code R 305-7-213 and -316(1).

When the ALJ submits a proposed dispositive action to the Executive Director, the Executive Director may: (1) adopt it, with or without modifications; or (2) reject it, or (3) return the proposed dispositive action to the ALJ for further action as directed. Under authority of Utah Code Ann. §§ 19-1-301(7)(b-d) and 19-1-301.5(13), I have reviewed the Recommended Decision, and the parties' comments and responses thereto. I am persuaded that Uranium Watch failed to timely file its RFAA as required by Utah statutes and administrative rules, and that neither the ALJ nor I have discretion to modify the deadline for timely filing of the RFAA. Therefore, I adopt the Recommended Decision in full and HEREBY ORDER:

1. Petitioner, Uranium Watch, failed to timely file its RFAA as required by Utah statutes and administrative rules, and as described in the ALJ's Recommended Decision;
2. Energy Fuels' motion to dismiss the RFAA is granted, on grounds that Uranium

Watch's failure to timely file its RFAA mandates dismissal of these proceedings and prohibits this tribunal from exercising jurisdiction to review the RFAA; and

3. Uranium Watch's RFAA is therefore dismissed with prejudice, terminating these adjudicative proceedings.

DATED this ___ day of ____, 2015.

Amanda Smith
Executive Director

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

Pursuant to Utah Code Ann. §§ 19-1-301, 19-301.5 and 63G-4-403, a party may seek judicial review in the Utah Court of Appeals or Utah Supreme Court, as provided by statute, within thirty days of the date of this order.

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of _____, 2015 a true and correct copy of the foregoing Order Adopting Recommended Decision was sent by electronic mail to the following:

Administrative Proceedings Records Officer
DEQAPRO@utah.gov

Sarah Fields, Program Director
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Rusty Lundberg
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rlundberg@utah.gov

Richard K. Rathbun
Administrative Law Judge
rathbun@stuckirencher.com

DATED this ___ day of _____, 2015.
