

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE PRESIDING OFFICER

'01 FEB -8 P4:10

In the Matter of:)
)
INTERNATIONAL URANIUM) Docket No. 40-8681
(USA) CORPORATION)
(source material license amendment,)
Molycorp site, Mountain Pass California) February 7, 2001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**SIERRA CLUB REQUEST FOR A HEARING
AND PETITION FOR LEAVE TO INTERVENE**

On January 9, 2001 the Nuclear Regulatory Commission ("NRC") published a notice in the Federal Register of the receipt of a license amendment application from International Uranium (USA) Corporation ("IUC") to amend Source Material License SUA-1358 to allow IUC to receive, temporarily store, process, and store "alternate feed material" from the Molycorp site located in Mountain Pass, California ("Molycorp site"). 66 Fed. Reg. 1702. The Federal Register Notice also provided notice of opportunity for a hearing. Id. In accordance with the foregoing Federal Register Notice, and pursuant to 10 CFR Part 2, Subpart L, the Glen Canyon Group of the Sierra Club and certain members including Ken Sleight and W. Herbert McHarg (hereinafter referred to as the "Group") hereby timely submit this Request for a Hearing and Petition for Leave to Intervene in the IUC Molycorp site license amendment request.

PROCEDURAL HISTORY AND FACTS

In 1979, the NRC prepared an environmental impact statement ("EIS") for the location and construction of the White Mesa Mill, as required under the National Environmental Policy Act ("NEPA"). The scope of the EIS was limited, and did not analyze the environmental impacts of processing material other than natural uranium ore, including the trucking of such materials from various sites to the White Mesa Mill. Since that time, the NRC has received and approved a number of applications from IUC, allowing it to receive and process "alternate source material." On none of these occasions has a proper NEPA document been prepared to the impacts of receiving, storing, and processing such material, either independently or cumulatively, despite requests for a hearing and petitions to intervene.

Under cover of letter dated December 19, 2000, IUC submitted a request to NRC to amend Source Material License No. SUA-1358 to allow IUC to receive, temporarily store, process, and then store up to 17,750 tons of material other than natural uranium ore, or "alternate feed material," from the Molycorp site. 66 Fed. Reg. 1702. This material is the result of the chemical separation of lathanides and other rare earth metals from bastnasite ores, since 1951, and is presently being stored in ponds as lead sulfide sludge. Id. Molycorp's Closure Plan for decommissioning the ponds, drafted in 1997, requires it to remove, and dispose of lead sludge off-site. Id.

Molycorp must find a place for this waste, regardless of its purported uranium content. IUC and

Molycorp estimate that the sludge has an average uranium content of “approximately 0.15 percent, or greater,” and purports that the material does not contain listed hazardous waste as defined in the Resource Recovery and Conservation Act, as amended 42 U.S.C. Section 6901-6991 (“RCRA”). *Id.* However, petitioners understand that the Mountain Pass site is on both the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) and the RCRA lists, meaning that hazardous waste is present on the site. Further, petitioners also understand that the Molycorp operation at Mountain Pass was considered to be California’s number one polluter, and in the top 10 in the nation.

IUC proposes to receive and process the material for its uranium content and dispose of the byproduct material in White Mesa Mill’s tailings cells. 66 Fed. Reg. 1702. According to the Notice, the ledge sludge would be shipped in approximately 60 to 70 end-dump trailer trucks per week for a period of 60 to 90 days. *Id.* These trailer trucks would travel from the Mountain Pass facility in California to the White Mesa Mill just south of Blanding, Utah, on major highways (I-15, I-70, and 191) that travel through several towns. In the final approximately 125 miles, the trucks would follow the narrow and dangerous highway 191 straight through the center of Moab, Monticello, and Blanding. Once at White Mesa, IUC proposes to temporarily store the material on the existing storage pad until a sufficient quantity is available to begin processing. *Id.* IUC would utilize water sprays, as required, to minimize dusting, during dumping activities. *Id.* The material would be processed utilizing an acid leach, in existing mill equipment, to dissolve the uranium. *Id.* After being advanced through the mill circuitry, the solution would be disposed of in the mill’s tailing cells. *Id.*

ARGUMENT

As discussed below, the Group has standing in this matter because it will suffer injury-in-fact and it has raised concerns that are germane to the subject matter of IUC’s license amendment request.

I. STANDING REQUIREMENTS

Section 189a(1) of the Atomic Energy Act (“AEA”), 42 U.S.C. Paragraph 2239(a) provides that “[i]n any proceeding under this Act, for . . . amending of any license . . . , the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.” In addition, the requestor must describe in detail (1) the requestor’s interest in the proceedings; (2) how those interests may be affected by the results of the proceeding; (3) the requestor’s areas of concern about the subject licensing action; and (4) the timeliness of the hearing request. 10 CFR sect. 2.1205(e). The Group is a “person” whose interest will be affected by the proposed amendment to IUC’s license, and is therefor entitled to file this request for a hearing.

In determining whether the Petitioner meets the judicial standard of standing, the Presiding Officer shall consider, among other factors:

- (1) The nature of the requestor’s right under the [Atomic Energy] Act to be made a party to the proceeding;

- (2) The nature and extent of the requestor's property, financial, or other interest in the proceeding; and
- (3) The possible effect of any order that may be entered in the proceeding upon the requestor's interest.

10 C.F.R. sect. 2.1205(h). In addition, the Presiding Officer shall determine the germaneness and timeliness of the petition. Id.

In determining whether a petitioner has met the above-referenced standards and is entitled to a hearing, the Commission looks to judicial concepts of standing and requires: (1) a petitioner's injury to arguably fall within the zone of interests sought to be protected by the AEA; (2) the petitioner to allege injury-in-fact; (3) the injury to be fairly traceable to the challenged action; and (4) the injury to be redressable by the Commission. Atlas Corporation (Moab, Utah facility), LBP-97-9, 45 NRC 414, 416 (1997) (referenced citations omitted). Moreover, while the petitioner has the burden of establishing standing, the Presiding Officer is to "construe the petition in favor of the petitioner." Atlas Corporation 45 NRC at 416.

II. THE GROUP MEETS THE STANDING REQUIREMENTS, AND THEREFORE ITS REQUEST FOR HEARING SHALL BE GRANTED AND IT SHALL BE ADMITTED AS A PARTY TO THE PROCEEDING

As discussed below, the Group meets the standing requirements noted above, and therefore, according to the AEA, the Commission shall grant a hearing and admit the Group as a party to the proceeding. 42 U.S.C. sect. 2339(a).

A. The Group has an interest in the proceeding. Members of the Glen Canyon Group of the Sierra Club live primarily within and around the communities that are affected by the subject license amendment, and work or recreate within the vicinity of the White Mesa Mill. Group members have hiked, biked, horsebacked, and driven near the White Mesa Mill in the past, and plan to embark on these activities on many occasions in the near future. At least one member has, or has held financial interest in the land resources near the Mill (See attached affidavit of Ken Sleight), while at least one other member's employment requires that he travel past the Mill on a near weekly basis (See attached affidavit of Herb McHarg). The Group has an interest in the land, water, air, wildlife and other natural resources that would be affected by the subject license amendment. Further, the Group has a strong interest in state and federal laws, including but not limited to NEPA, the AEA, the Clean Water Act, the Clean Air Act, RCRA, CERCLA, the Hazardous Materials Transportation Act, the Hazardous Substances Mitigation Act, the Nuclear Waste Policy Act, the Radiation Control Act, and others, and directly benefits from compliance with these laws and regulations. Failure to comply with such laws and regulations adversely affects the organizational interests of the Group, as well as its members' use and enjoyment of the communities and lands affected by the subject action. Indeed, failure to comply with the law "invokes a

public interest of the highest order: the interest in having government officials act in accordance with law." Seattle Audubon Society v. Evans, 771 F.Supp. 1081, 1096, (W.D. Wash. 1991). Further, violations of environmental laws and regulations alone constitutes irreparable harm to the public interest. See Seattle Audubon Society v. Evans, 771 F.Supp. 1081, 1096, (W.D. Wash. 1991).

B. The Group's interests will be affected by the results of the proceeding, and therefore should be permitted a hearing. The NRC has yet to act upon IUC's license amendment request. Consequently, the degree to which the Group members will suffer injury-in-fact is dependent, in part, upon the NRC's final evaluation, determination, documentation and approval of IUC's license amendment request. The Group discusses below the interests of the Group that may be affected at this pre-decisional stage of the NRC's Staff review.

1. Because the Molycorp Site Materials May Contain Hazardous Wastes, The Group Will Suffer Injury-in-Fact from the Transportation, Storage, Processing, and Disposal of the Materials, and the Violation of Hazardous Waste Laws and NRC Guidance

The Molycorp materials that IUC is proposing to process under the current license amendment request may contain listed hazardous waste or characteristic hazardous waste from water treatment residues. If so, the Group would be injured both from the full spectrum of transportation, storage, processing and disposal activities, and from violation of the above mentioned laws pertaining to these activities and NRC's final guidance on alternate feed materials.

IUC makes the unsupported statement that the Molycorp materials do not contain hazardous waste. 66 Fed. Reg. 1702. As noted in the facts above, since 1951 Molycorp has operated a surface mining and milling operation for the recovery and chemical separation of lanthanides and other rare earth metals from bastnasite ores. Id. From 1965 through 1984, Molycorp constructed and operated three lead sulfide ponds for the evaporation of lead sulfides from the clarifier/thickener operation. Id. There is, then, strong reason to believe that the Molycorp materials subject in this amendment request contain lead. The EPA lists lead as one of 129 priority pollutants, and as a class B2 carcinogen. See Irwin, R.J., M. VanMouwerik, L. Stevens, M.D. Seese, and W. Basham. 1997. Environmental Contaminants Encyclopedia, National Park Service, Water Resources Division, Fort Collins, Colorado. Lead is also listed as the 25 hazardous substances thought to pose the most significant potential threat to human health at priority superfund sites. Lead is a very toxic heavy metal that functions as a cumulative poison. Lead poisoning is characterized by neurological problems, anemia, kidney dysfunction, enzyme inhibition, and it interferes with resistance to infectious disease. Lead poisoning is particularly dangerous in young children, and may result in anorexia and permanent brain damage. Lead also may have adverse effects on human reproduction, including spontaneous abortion, miscarriages, and still births. Other hazardous waste may have been disposed of at Molycorp over the past 50 years that may include chemical separators, solvents, and other organics and metals.

Thus, since there is strong reason to believe that the Molycorp material contains hazardous wastes, the Group will suffer injury-in-fact from the transportation, storage, processing and disposal of the

material. The Group's interest covers the holistic relationship regarding the cumulative effects on the communities in the transportation corridor routes, (i.e., I-15 and I-70 to U.S. Highway 191 Crescent Junction, Utah, and through Highway 181 South to the Mill), of the 60 to 70 trucks per week for the estimated period of 60 to 90 days. These include noise, increased highway danger from collision and exposure, and reduced community aesthetics. Further, the Group alleges that the Nuclear Regulatory Commission should address the ability of the affected communities under "Emergency and Community Right-to-Know Act 1986." (42 U.S.C.A. sections 11001 to 11050), and the fiduciary responsibility in case of an incident in transit to the White Mesa Uranium Mill. For example, liability under the Uniform Fire Code standard, 29 CFR 1910.120, for remediation in the public domain, (i.e., interstates, highways, right-of-ways, etc.). This becomes important for communities that do not have the necessary abilities to remediate a radiological and/or hazardous incident. Thus, an EIS must be prepared to assess the impacts that the shipment of this radioactive and potentially hazardous waste from California to Utah will have on the environment. These impacts could include the impact on the highways and public roads from the increased traffic associated with such shipment, and the increased risk of radiological and hazardous waste accidents that result from increased numbers of trucks carrying such wastes to IUC's facility.

Further, the Molycorp material is injurious to the Group once it arrives at the White Mesa Mill for storage, processing and disposal. Many of the Group's members recreate in the surrounding public lands, while some work in the vicinity. The risks involved in the processing, storage, and disposal of the 17,750 tons of such material will result in independently and cumulatively significant short and long-term environmental, human health (including epidemiological concerns), and economic harm to the Group and its members. While in storage, the materials pose significant risk of injury to Group members living, working, and traveling in the vicinity of the Mill. *See* attached affidavits.

The Molycorp material represents a substantial threat to the Group's interests, including its interest in the protection of the natural environment and clean water, based upon the construction of the White Mesa tailings impoundment and current regulation and monitoring at IUC's mill. In the Matter of Energy Fuels Nuclear, Inc. (White Mesa Uranium Mill), LBP-97-10, 45 NRC 429, 431 (1997), sets out how a "petitioner [can] show a plausible way in which activities licensed by [a] challenged amendment would injure them." The Presiding Officer stated, "If a petitioner alleges a way in which it fears that [a] particular material would fail to be properly confined and would escape into the groundwater, then a requirement for standing would appear to be met." Here, the Group alleges that the Molycorp material has a different composition than traditional ores mined and milled at the White Mesa Mill. Moreover, the Group alleges that the Molycorp material may have been commingled with hazardous wastes and other constituents bereft of any resemblance to traditional ores. As such, storage, processing, and disposal of the material could lead to new waste streams that could contaminate the waters of interest to the Group.

The Group will suffer injury from the Molycorp materials disposed of at White Mesa because the White Mesa tailings cells have the potential to discharge to groundwater. According to an affidavit filed in a petition against an earlier license amendment request, there are several bases of concern about the

potential for the White Mesa tailings impoundment discharging to groundwater. First, in a hydrogeologic evaluation of the White Mesa Mill, prepared in 1994, infiltration modeling results for the White Mesa impoundment predict an annual seepage discharge of between 0.45 to 5.95 inches per year for closed cell conditions. *See* attached Exhibit, Loren Morton affidavit, dated August 18, 1998. Second, the 1994 hydrogeologic evaluation incorrectly assumed that White Mesa has closed cells. However, the open cell conditions at White Mesa create a higher potential seepage discharge rate than predicted for closed cell conditions. *Id.* Third, because the 1994 hydrogeologic evaluation used unrepresentative infiltration modeling assumptions, it artificially lowered the rate of seepage discharge for the White Mesa tailings disposal cells. *Id.* Fourth, based on U.S. Environmental Protection Agency infiltrations simulations, there may be as much as 89 gallons per acre per day of undetected seepage discharge from tailings impoundments similar to those at White Mesa. *Id.* Finally, there is potential for seepage discharge at White Mesa due to obsolete technology. *Id.* Thus, there is strong reason for the Group to fear that the Molycorp materials may contaminate groundwater under the White Mesa Mill.

In addition to the plausible injury discussed above, at this pre-decisional stage of the NRC Staff's license amendment review, it is unknown what conditions, if any, the NRC will place on approval of TUC's request. In the case of In the Matter of Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 274 (1998), the Presiding Officer admitted several parties to a Subpart L source material license proceeding because "[s]ome of the license conditions imposed by the Staff indicate information the Staff must still be provided before the requested license activities may be authorized." Likewise, there is reasonable doubt about the source and content of the Molycorp materials to establish injury in fact to the Group's interests.

The Group alleges that such injuries will befall its members should this amendment be granted, and that some members have already been injured in other ways. *See* attached affidavits of Ken Sleight and Herb McHarg. The risk of injury is high, considering the crowded and dangerous routes through several towns that trucks containing the material would travel, and the fact that the material could extend sufficiently far from the facility (while storing, processing, or in the cells through wind, soil and groundwater transfer). The Group has a strong interest in protecting its members against injury from such wastes, and at a minimum, an EIS must be prepared to determine the lead (and other waste) content of the Molycorp material, and to fully consider its impacts during transportation, storage, processing, and disposal.

If the Molycorp material contains such hazardous waste, approval of the subject license amendment would violate RCRA, and therefore the interest of the Group. The Licensing Board has stated: "If [an] intervenor can show that there is a law preventing particular material from being stored pursuant to the amendment, then there may also be a presumption of injury sufficient to establish standing." In the Matter of Energy Fuels Nuclear, Inc. (White Mesa Uranium Mill), LBP 97-10, 45 NRC 429, 431 (1997) (setting out standing requirements for petitioners challenging a license amendment at the White Mesa Mill). Thus, the Group's allegations that the Molycorp materials may contain hazardous waste is

sufficient to demonstrate injury-in-fact to the Group's interests. RCRA regulates many of the activities that would occur if NRC approves the IUC's Molycorp license amendment request. Transportation, storage and disposal is subject to 40 CFR Parts 263 (transportation) and 264 (storage and disposal). Thus if the contractor excavates hazardous waste at the site, and transports it to White Mesa without the proper RCRA handling, labeling, and manifesting, the waste shipments will be in violation of RCRA. 40 CFR Part 263. Furthermore, RCRA imposes storage requirements when the waste arrives at White Mesa. 40 CFR Part 264. Moreover, RCRA has laws in place dealing with the recycling of product containing hazardous waste, and RCRA may also impose storage requirements prior to reclamation. 40 CFR Parts 261 and 264. Finally, RCRA hazardous waste may only be disposed of in a licensed disposal facility, which includes the waste meeting the land disposal restrictions for the concentrations of hazardous waste. 40 CFR Parts 264 (disposal) and 268 (land disposal restrictions).

If hazardous waste is mixed with radioactive waste, the waste is regulated under RCRA. 40 CFR Part 261 (identification and listing of hazardous waste). The White Mesa Mill does not have a permit from the State of Utah to store RCRA hazardous waste and is not a RCRA-permitted hazardous waste disposal facility. Thus, if approved for receipt and processing at White Mesa, the Molycorp waste may violate RCRA's handling, manifesting and storage laws, as enforced by the State of Utah. Furthermore, the very act of processing the Molycorp materials and disposing of the process waste may be in violation of RCRA.

The 17,750 tons of alternate feed material to be processed and not milled at White Mesa Mill will develop a byproduct of mixed waste. Thus, an EIS must be prepared with an analysis under RCRA to determine the hazardous constituents and the disposal of such byproducts. 42 U.S.C.A. section 6925, 6991. Failure to prepare such document would result in injury to the Group's interest in enforcement of the law. It should be noted that under the circumstances, the Group's allegations that the Molycorp materials contain such waste is enough to confer standing, since the Group is not required to prove the merits of its case. As stated by the United States Supreme Court: "standing in no way depends on the merits of the plaintiff's contention that particular conduct is illegal." Warth v. Seldin, 422 U.S. 490,500 (1975). In fact, "trial and reviewing courts must accept as true all material allegations of the [petition]." Id. At 501. The Group has made a sufficient demonstration by citing with specificity to the IUC Molycorp amendment request the potential for hazardous waste to be present in the requested material for processing at the White Mesa Mill.

In addition, if the Molycorp material contains hazardous waste, it would violate NRC guidance on alternate feed materials. The guidance states:

If the proposed feed material contains hazardous waste, listed under Subpart D 261.30-33 of 40 CFR (or comparable RCRA authorized State regulations), it would be subject to EPA (or State) regulation under RCRA. To avoid the complexities of NRC/EPA dual regulation, such feed material will not be approved for processing at a licensed mill.

Final Position and Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores,

(Alternate Feed Guidance) 60 Fed. Reg. 49,296-97 (1995). As such, there should also be a presumption of injury-in-fact to the Group for violation of the foregoing prohibition.

2. Because the Molycorp Material Has a Different Composition than Materials Currently Received, Processed, and Disposed of at the White Mesa Mill, The Group Will Suffer Injury-in-Fact from IUC's License Amendment

Prior to approving IUC's license amendment request, the NRC must satisfy itself that the Molycorp material meets all steps of NRC's Alternate Feed Guidance: (1) that the feed material, is an "ore"; (2) that the feed material does not contain hazardous waste; and (3) that the ore is being processed primarily for its source-material content. 60 Fed. Reg. 49,396-97.

The Group alleges that the Molycorp material may contain listed or characteristic hazardous waste. The Group also alleges that the Molycorp material does not meet the definition of "ore" and is not being processed primarily for its source material content. Under NRC's Alternate Feed Guidance, for waste to qualify as "ore," it must meet the following definition:

Ore is a natural or native matter that may be mined and treated for the extraction of any of its constituents or any other matter from which source material is extracted in a licensed uranium or thorium mill.

60 Fed Reg. 49,296. In this case, Molycorp's mining and milling operation chemically separated lanthanides and other rare earth metals from ores. 66 Fed. Reg. 1702. What was left, and what IUC proposes to store, process and dispose of is "lead sulfide sludge" with a relatively low concentration of uranium. Id. Unless NRC intends to allow ANY material to be processed at a uranium mill, there comes a time when NRC must question the integrity of its definition of ore. The time is ripe for NRC to take a hard look at the application of "ore" as applied to the Molycorp materials.

It is obvious that IUC is primarily interested in the disposal fee and not in processing the material primarily for its source material content. It is not known what IUC would receive. The Group has an interest in knowing how much IUC is to receive per cubic yard or ton prior to approval of any license amendment. Until the Group obtains such information the value of any uranium extracted from the Molycorp materials, after taking into account processing costs, would be minuscule by comparison. Dianne R. Nielson, Executive Director of the Utah State Department of Environmental Quality, stated that a policy decision which shifts "reprocessing" to "waste disposal in disguise" will trigger several issues including the need for a state siting approval, a need for a license for waste disposal of these materials, the payment of appropriate waste disposal fees to the state, and the need for a state groundwater discharge permit. The Group also alleges that if the primary purpose of obtaining the Molycorp material is for disposal rather than reprocessing, then the White Mesa facility is unsuitable because such disposal would circumvent the disposal requirements of 10 CFR Part 61.

The Molycorp materials, if processed at White Mesa, would not be considered 11(e)2 tailings because they fail to meet all three criteria of NRC's Alternate Feed Guidance. Thus the tailings may be considered hazardous waste, mixed waste or low level radioactive waste. In addition to violating the laws

noted above, this would also violate the State's siting criteria for hazardous waste and low level radioactive waste facilities. See Utah Code Ann. Paragraphs 19-6-108 and 19-3-105 and implementing administrative rules. Therefore, the Group's interest in the adherence to, and enforcement of applicable laws would again be harmed.

3. The Group Suffers Injury-in-Fact from the Failure to Prepare an Adequate NEPA Document

NEPA is designed to ensure that full environmental information is available to public officials and citizens before decisions are made, and that such decisions "protect, restore, and enhance the environment." 40 CFR 1500.1(b)(c). Indeed, "[p]ublic participation in the development, revision, implementation, and enforcement of any regulation guidelines, information or program under this chapter shall be provide for encouraged and assisted..." 42 U.S.C.A. section 6974 subsection (b) (1). Arguably, the NRC being the Administrator, is bypassing this statutory requirement by clouding the fact that the White Mesa Mill is being used as a treatment, storage and disposal site, without meeting the necessary federal and/or state statutory or regulatory requirements for such a facility. Regardless, NRC's NEPA regulations require that an applicant for an amendment to a license issued pursuant to 10 C.F.R. part 40 must submit an Environmental Report with that application. IUC did not submit an Environmental Report with its application for an amendment to its license to allow for additional disposal of 11e(2) material. In fact, no environmental evaluation has been performed for public scrutiny and to assist the NRC in making an informed decision.

NRC's NEPA regulations also require that an EIS be prepared for licensing actions that are major actions that significantly affect the quality of human environment. Although an EIS was prepared in 1979, such document is outdated fails to analyze the changed circumstances and cumulative impacts. Council of Environmental Quality regulations state that a document of this age is no longer adequate, and require that "cumulative actions" be considered together in a single EIS. 40 CFR 1508.25(a)(2)(emphasis added). "Cumulative actions" are defined as actions "which when viewed with other proposed actions, have cumulatively significant impacts." Id.

It is reasonably foreseeable that the subject action, as well as other past and potential future actions, would have cumulatively significant impacts. According to the regulations, a cumulative impact:

is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over time.

40 CFR '1508.7. The scope of the 1979 EIS was limited, and did not analyze the environmental impacts of processing material other than natural uranium ore, including the trucking of such materials from various sites to the White Mesa Mill. Since that time, the NRC has received and approved a number

of applications from IUC, allowing it to receive and process "alternate source material." On none of these occasions has a proper NEPA document been prepared to the impacts of receiving, storing, and processing such material, either independently or cumulatively, despite requests for a hearing and petitions to intervene. Not only have issues regarding these and other concerns been excluded from any analysis, but they have never even seen the light of day. Thus, with the processing of the subject application, the time has come to prepare an EIS that analyzes the cumulative impacts of such past, present and reasonably foreseeable actions together in one comprehensive document.

C. The Group's Areas of Concern about the subject matter of IUC's license amendment. Pursuant to 10 CFR section 2.1205 and the January 9, 2001 Federal Register Notice, the Group describes its "areas of concern about the licensing activity that is the subject matter of the proceeding." 66 Fed. Reg. 1703. In discussing and applying the standing requirements above, the Group has described the following concerns about whether the Molycorp material: (1) may contain listed or characteristic hazardous waste; (2) may violate all three criteria of NRC's Alternate Feed Guidance; (3) may have the potential for leakage at the White Mesa tailings impoundment, and (4) could violate federal and state laws and regulations (including all laws noted in the arguments above, and the state's siting criteria).

In addition, the Group has an additional concern regarding Native American cultural resources, human health and economic stability. The Group and its members also have a strong interest in Native American history and cultural resources, as well as the current health, social, and economic stability of the Navajo and White Mesa Ute people. The Group recognizes that These people have long been left out of the process even though they have inhabited the region for many years before the white people came and took over their lands. Even the initial EIS in 1979 did not consider these people's cultural needs. The cultures and antiquities of the more recent "historic period" were also not considered. The needs of the nearby White Mesa community were not considered, and the nearby Navajo settlement of Westwater was neglected completely. Obviously their needs have not been met. Environmental and social justice have eluded them.

Of utmost importance, we must determine the extent cultural and archeological resources are threatened. The area, the White Mesa Archeological District, contains many burial sites and other sacred sites in the mill's property and the area about. Additional survey work needs to be done, and the effect on archeological sites need to be determined. The limited studies already accomplished, need completion by experts in the field. Because of the sacredness of these lands to Native Americans, and as a legacy to all of us, this area must be responsibly protected. As some excavations took place during earlier mill development and construction - excavations of burials, artifacts and ancient ruins - these sites are of immediate concern. Adjacent to the IUC property, the Avikan site has been officially set aside as a very spiritual place.

These are the concerns the Group wishes to raise in this proceeding. As stated in Babcock and Wilcox Co. (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania), LBP-94-12, 39

NRC 215, 217 (1994), "[a]t this stage of the proceeding requestors need only identify the area of concerns they wish to raise. They need only provide the minimal information to ensure that the areas of concern are germane to the proceeding." The Group has made more than the minimal required showing of the areas of concern that are germane to the subject matter of this proceeding. *See Id.* Furthermore, a Presiding Officer recognized that "[I]t is not necessary to determine the merits of a concern in order to determine that it is germane." Hydro Resources 47 NRC at 280.

D. This Request for Hearing is timely filed. This request for a hearing to IUC's amendment request is timely filed. This request has been filed within thirty days of the NRC's publication in the Federal Register of a notice regarding this license amendment request. 66 Fed. Reg. 1702. The NRC published notice of IUC license amendment request relating to the Molycorp materials on January 9, 2001. *Id.* Therefore, by filing this request on or before February 8, 2001, this request is timely pursuant to 10 C.F.R. Paragraph 2.1205(d)(1).

III. ACTION REQUESTED

The Group requests that the NRC and staff strictly follow its "Final Position and Guidance on the Use of Uranium Mill Feed Material Other than Natural Ores." If IUC has not complied with the Guidance, IUC's license amendment should be denied.

The NRC should not allow this IUC amendment request if IUC cannot show that the material is being processed primarily for its source material content.

The Group requests that the NRC require the preparation of an Environmental Impact Statement ("EIS") for IUC's license before considering this license amendment request. The study would also evaluate any releases that have already occurred from all previous impoundments. The preparation of an EIS would ensure that (1) any significant adverse effect on the human environment from the White Mesa Mill would be identified and analyzed, (2) alternatives to the license would be identified and analyzed, (3) the public would have the opportunity to comment on the potential adverse effects, and (4) any adverse effects could then be mitigated.

Studies should be undertaken to prepare for the eventual removal or disposition of the present wastes already brought and stored at the White Mesa Mill under previous license amendments. The creation of acres waste in this sensitive region aggravates future developments and uses of the lands. To move the pile would rightly follow that of the Atlas tailings pile near Moab.

The Group proposes that all licensees that accept 11e.(2) byproduct material comply with applicable NRC standards as is required of Envirocare. Environmental laws designed to protect human health and the environment from the hazards of radioactive waste disposal must be uniformly applied to

all such facilities. Enforcement must be uniformly applied. IUC must be held to the same strict standards.

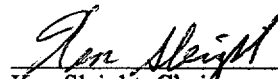
There is a real need to protect the health and safety of the public. It is apparent that IUC has not been subjected to these strict standards. There needs to be a stricter enforcement of present laws, rules and regulations. Indeed, there needs to be additional regulation of these disposal facilities even though it raises costs for all such operators in the industry.

IV CONCLUSION

For the reasons stated above, the Group has demonstrated that it has standing to intervene and be heard in the proceeding because it has shown injury-in-fact to its interests, has raised issues that are germane to the IUC license amendment, and has timely submitted this Petition in accordance with the January 9, 2001 Federal Register notice.

Dated this 7th day of February, 2001

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the GLEN CANYON GROUP, SIERRA CLUB'S REQUEST FOR A HEARING AND PETITION TO INTERVENE were served on the persons listed below by first class mail, and by e-mail where noted, on February 7, 2001.

Attn: Docketing and Service Branch
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-Mail: elj@nrc.gov
(original and two copies)

International Uranium (USA) Corp.
Attn: Michelle Rehman
Independence Plaza, Suite 950
1050 Seventeenth Street
Denver, CO 80265

NRC Staff
Executive Director for Operations
U.S. Nuclear Regulatory Commission

Washington, D.C 20555

A handwritten signature in cursive script, reading "Ken Sleight", written over a horizontal line.

Ken Sleight
Chairman, Nuclear Waste Committee
Glen Canyon Group, Sierra Club

In the Matter of the International Uranium Corporation source material license amendment request to receive, store, and process alternate feed material from the Molycorp Mountain Pass site, Docket Number 40-8681, 66 Fed. Reg. 1702

DECLARATION OF W. HERBERT McHARG

W. Herbert McHarg states the following:

1. My interests in safety, health, water, air, community, the natural environment, and the laws and regulations governing such interests are negatively affected by the International Uranium Corporation (IUC) request to the Nuclear Regulatory Commission (NRC) to amend its source material license SUA-1358 to receive and process alternate feed materials from the Molycorp Mountain Pass site, 66 Federal Register 1702.
2. I currently reside in Monticello, San Juan County, Utah, approximately 25 miles from IUC's White Mesa Mill, in a home just off highway 191. Prior to this, and beginning in January 1998, I lived in Moab, Grand County, Utah, residing for the majority of the time in a home directly off highway 191.
3. I work with the Southern Utah Wilderness Alliance, and office in a building located on Main Street (highway 191 in the town of Moab. My position requires much travel, and I drive highway 191 on a daily basis. My travels take me past the White Mesa Mill frequently, as well as along I-15, I-70, and the length of 191 from Crescent Junction through the towns of Moab, Monticello, and south of Blanding. I am an avid biker, and frequently bike to work or for enjoyment on various stretches of highway 191, including the stretch past the White Mesa Mill. I also walk frequently along the highway through the communities of Moab and Monticello. During my time on the road, whether in my vehicle or on my bike, countless truck-trailers hauling materials to be dumped, stored and processed at the White Mesa Mill pass me in the on-coming lane or travel directly in front of me. Materials and dust from such trucks has blown onto and into the windows of my vehicle, or onto my face, body, and into my eyes, nose and mouth. Further, I am deeply concerned about the potential for an accident involving these truck-trailers, as to my knowledge there has already been at least one incident. I have also witnessed dust plumes coming from the White Mesa Mill when traveling past the site. Such materials blowing from the trucks and the mill site directly injure me, as my windshield has been cracked, and the dust immediately irritates my skin, eyes and nose. I also have reason to believe that such dust, and dust that would be created as a result of this amendment proceeding is harmful to my health and the environment in the long-term.

4. As part of my work-position, personally, and as a member of the Glen Canyon Group of the Sierra Club, I hike frequently in the vicinity of the White Mesa Mill in areas, which I believe may be affected by blowing materials. I also drink from waters that I believe may be affected by the materials subject to this amendment proceeding that would be dumped, stored and processed at the White Mesa Mill.
5. Also as part of my work-position, as a citizen, and as a member of the Glen Canyon Group of the Sierra Club, I have a strong interest in the application of federal and state environmental and safety laws and regulations, and in the laws and regulations that govern administrative agencies and other administrative bodies. I have a particular interest in the application of the National Environmental Policy Act (NEPA), and my rights under such Act. It is my understanding that the IUC White Mesa Mill is licensed only to process and recover uranium from conventional-type ore. It is also my understanding that no environmental impact statement (EIS) has been prepared to fully analyze the direct, indirect and cumulative impacts of IUC's request to amend its license to receive, store, process, and dump the Molycorp materials, which are "alternate feed materials" in the form of lead sulfide sludge. As such, my interests noted above in the environment, my health and safety, and in the application of NEPA and other laws have been injured.
6. Thus, I have a strong interest in the subject matter of the proceeding to amend IUC's license as described in Federal Register Notice dated January 9, 2001, 66 Fed. Reg. 1702. As such, I would testify at a hearing on such license amendment both as member of the Glen Canyon Group of the Sierra Club and personally.

I declare, under penalty of perjury, the foregoing to be true and correct.


W. Herbert McHarg