

66 FR 64064
12/11/01
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From: "Sarah M. Fields" <smfields@moci.net>
To: Hearing Docket <hearingdocket@nrc.gov>
Date: 12/17/01 3:27PM
Subject: 66 Fed. Reg. 64064 (December 11, 2001): International Uranium (USA) Corporation; Notice of Opportunity for Hearing

Chairman
United States Nuclear Regulatory Commission
c/o Secretary
Attn.: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
hearingdocket@nrc.gov

RECEIVED
DEC 27 11 41 11
Public and Regulatory
Affairs

Dear Chairman,

Attached please find .pdf copy of a Nuclear Regulatory Commission (NRC) Federal Register notice (FRN), 66 Fed. Reg. 64064-64066 (December 11, 2001), accessed via GPO Access at <http://www.access.gpo.gov>.

This FRN is entitled NRC; Docket No. 40-8681; International Uranium (USA) Corporation; Notice of Opportunity for Hearing; and was signed on November 30, 2001, "for the Nuclear Regulatory Commission [itself]" by "Melvyn Leach, Branch Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards."

The FRN notices a "Final finding of no significant impact [FONSI]; notice of opportunity for hearing [and notice of opportunity for public comment]."

The subject December 11, 2001, fails to provide proper public notice with respect the subject matter of the notice.

AVAILABILITY OF NRC OFFICIAL RECORDS

The "Summary" at 66 Fed. Reg. 64064, 64064, col. 3, mis-states:

The [NRC] proposes to accept the license amendment the license amendment for the NRC Materials License SUA-1358 to authorize the licensee, International Uranium (USA) Corporation (IUSA), to allow for the and reclamation of the White Mesa uranium mill, located near Blanding, Utah. An Environmental Assessment was performed by the NRC staff in accordance with the requirements of 10 C.F.R. part 51. The conclusion of the Environmental Assessment is a [FONSI] for the proposed licensing action.

By way of example, the December 11 fails to provide a date certain for the subject matter FONSI and, further, fails to provide a date certain for an NRC record which might memorialize the nature of "comments and conversations" from or with various governmental entities referenced by such notice.

(See 66 Fed. Reg. 64064, 64065, col. 1.)

Template = ADM-013

F-RTDS = ADM-03
Cell = W. Von Till (RWV)

The December 11 fails to provide proper public notice regarding access to NRC official records (see 10 C.F.R. 2.790) or the legal niceties (10 C.F.R. Part 2) contemplated by such notice, given the short suspense (30 days from 12/11/01).

The December 11 FRN mis-states:

The Environmental Assessment [EA] and other documents related to this proposed action amendment application are available for public inspection and copying at

NRC Public Document Room [PDR], [NRC] Headquarters, Room 0-1F21, 11555 Rockville Pike,
Rockville, MD 20852. [See 66 Fed. Reg. 64064, 64065, col. 2-3.]

The Federal Register notice does not, but should have, referred an interested person to the NRC Agencywide Documents Access and Management System (ADAMS), accessed at <http://www.nrc.gov/reading-rm.html>, as a source of the EA and other related documents.

The Federal Register notice does not, but should have, referred an interested person to the NRC Bibliographic Retrieval System (BRS) as a source of any pre-November 1999 documents related to the EA (for example the "previous environmental assessments," see 66 Fed. Reg. 64064, 64065, col. 1), nor the fact that information and access assistance to the BRS can be obtained by contacting the PDR.

The Federal Register notice does not, but should have, informed an interested person that relevant NRC official records can be quickly ordered from the PDR. And, further, the PDR contractor will respond (hopefully, in like manner) via, for example fax, diskette, e-mail file, U.S. mail, or other appropriate means. The Federal Register notice does not, but should have, provided the toll-free (1-800-397-4209) to the PDR and the PDR's e-mail address (pdrc@nrc.gov).

The Federal Register notice does not, but should have, indicated that an interested person requiring "further information [might succeed in an attempt to] contact" appropriate NRC staff or appropriate voice mail via the toll-free number (1-800-368-5642), by asking (in this instance) for extension 6251.

NRC STAFF PRACTICE WITH RESPECT PROCEDURAL NOTICING

NICETIES

The NRC December notice (see 66 Fed. Reg. 64064, 64065) fails to provide proper notice of what procedural or other such amenities an interested person must navigate in order to receive permission to proceed as a party in the hearing mentioned by that public notice.

Particularly, the subject notice fails to indicate, given that it cites "10 C.F.R. Part 2, Subpart L [10 C.F.R. 2.1201, et seq.], 'Informal Hearing Procedures for Adjudications in Material and Operator Licensing Proceedings,'" what "judicial standards for standing" or "other factors" (see 10 C.F.R. 2.1205 (h), as laid out below) are contemplated to be relied upon by the NRC responsive any 10 C.F.R. 2.1205(d) request for hearing that might ensue. 10 C.F.R. 2.1205(h) states:

In ruling on a request for a hearing under paragraph (d) of this section, the presiding officer shall determine that the specified areas of concern are germane to the subject matter of the proceeding and that the petition is timely.

The presiding officer also shall determine that the requestor meets the JUDICIAL STANDARDS FOR STANDING and shall consider, AMONG OTHER FACTORS --

- (1) The nature of the requestor's right under the 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 this may be entered in the proceeding upon the requestor's interest. [Emphasis added.]

What specifically are the "judicial standards for standing" contemplated by 10 C.F.R. 2.1205(h) referred to by the December 11 notice?

What specifically are the "factors" beyond the factors listed in 10 C.F.R. 2.1205(h)(1), (2), and (3) referred to by the December 11 notice?

As shown, by the examples (defects) laid out above, a reasonable person would call into question the adequacy of the factual and legal predicate brought forward by the NRC staffs December 11 public notice, which was published (FR Doc. 01-30610 Filed 12-10-01; 8:45 am) at public expense (Billing Code 7590-01-P) "for the Commission [itself]."

Would respectfully request that the undersigned be allowed (as soon as possible, in order not to delay any proceeding which might ensue responsive to such 12/11 notice) to formally further request relief with respect such fatally defective public notice as is described above.

Such request for relief would lay out, with particularity and specificity, further errors of fact or omission revealed by the December 11 FRN.

John Francis Darke
Appearing pro se
P.O. Box 603
Moab, Utah 84532
435-259-0210

Enclosure: As stated

CC: "Dr. William Travers, EDO" <vai@nrc.gov>, "Dennis C Dambly, Esq." <dcd@nrc.gov>, "Michelle Rehmann, International Uranium (USA) Corp." <iuc@intluranium.com>, William von Till <rwv@nrc.gov>

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and 2, located in Calvert County, Maryland.

Environmental Assessment

Identification of the Proposed Action

The proposed action is a one-time exemption from the requirements of Title 10 of the Code of Federal Regulations (10 CFR) part 50, Appendix E, Items IV.F.2.b and c regarding conduct of a full-participation exercise of the onsite and offsite emergency plans every 2 years. Under the proposed exemption, the licensee would reschedule the exercise originally scheduled for September 25, 2001, and complete the exercise requirements by September 31, 2002.

The proposed action is in accordance with the licensee's application for an exemption dated September 28, 2001.

The Need for the Proposed Action

10 CFR part 50, Appendix E, Items IV.F.2.b and c requires each licensee at each site to conduct an exercise of its onsite and offsite emergency plan every 2 years. Federal agencies (the U.S. Nuclear Regulatory Commission (NRC) for the onsite exercise portion and the Federal Emergency Management Agency for the offsite exercise portion) observe these exercises and evaluate the performance of the licensee, State and local authorities having a role under the emergency plan.

The licensee had initially planned to conduct an exercise of its onsite and offsite emergency plan on September 25, 2001, within the required 2-year interval. However, because of consideration for increased security risk due to ingress and egress of personnel during the current period of heightened security, and consideration that activities associated with the exercise could create undue public alarm, the licensee has decided to postpone the exercise.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action involves an administrative activity (a schedular change in conducting an exercise) unrelated to plant operations.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

On October 9, 2001, the staff consulted with the Maryland State official, Mr. Richard McLean of the Maryland State Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 28, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov> (the Electronic Reading Room).

Dated at Rockville, Maryland, this 4th day of December 2001.

For the Nuclear Regulatory Commission.
Donna Skay,

Project Manager, Section 1, Project Directorate 1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01-30609 Filed 12-10-01; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-8681]

International Uranium (USA) Corporation; Notice of Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact; notice of opportunity for hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to accept the license amendment for the NRC Materials License SUA-1358 to authorize the licensee, International Uranium (USA) Corporation (IUSA), to allow for the and reclamation of the White Mesa uranium mill, located near Blanding, Utah. An Environmental Assessment was performed by the NRC staff in accordance with the requirements of 10 CFR part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. William von Till, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T-8A33, Washington, DC 20555-0001. Telephone (301) 415-6251, e-mail rwv@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

Materials License SUA-1358 was originally issued by NRC on August 7, 1979, Pursuant to Title 10, Code of Federal Regulations (10 CFR), part 40, "Domestic Licensing of Source Material." The IUC site is licensed by the U.S. Nuclear Regulatory Commission (NRC) under Materials License SUA-1358 to possess byproduct material in the form of uranium waste tailings and other uranium byproduct waste generated by the licensee's milling operations, as well as other source material from multiple locations. Some of these locations include material from Formerly Utilized Sites Remedial Action Program (FUSRAP) sites

managed by the U.S. Army Corps of Engineers (USACE). These materials have similar chemical, physical, and radiological composition to conventional mill tailings. The mill is currently operating.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the receipt and processing of materials from the Molycorp facility at the White Mesa mill, in accordance with 10 CFR Part 51, Licensing and Regulatory Policy Procedure for Environmental Protection. In conducting its appraisal, the NRC staff considered the following: (1) Information contained in the previous environmental evaluations of the White Mesa project; (2) information contained in the IUSA's amendment application dated December 19, 2000, and supplemented by letters dated January 29, February 2, March 20, August 15, October 17, and November 16, 2001; (3) information derived from NRC staff site visits and inspections of the White Mesa mill site, and (4) from comments and conversations from the State of Utah Department of Environmental Quality (DEQ), and the U.S. Environmental Protection Agency (EPA). The results of the staff's appraisal are documented in an Environmental Assessment.

Conclusions

The NRC staff has examined the actual and potential environmental impacts associated with the receipt and processing of the proposed Molycorp material, and has determined that the action is (1) consistent with requirements of 10 CFR Part 40, (2) will not be inimical to the public health and safety, and (3) will not have long-term detrimental impacts on the environment. The following statements support the FONSI and summarize the conclusions resulting from the staff's environmental assessment:

1. An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to detect whether applicable regulatory limits are exceeded. Radiological effluents from site operations have been and are expected to continue to remain below the regulatory limits. A groundwater monitoring program is in place to detect potential seepage of contaminants from the tailings cells. The Entrada/Navajo Sandstone Aquifer is separated by low permeability formations from the tailings cells further decreasing a potential impact to groundwater resources. The Molycorp material will be placed on bermed

concrete to reduce groundwater contamination while stored on the ore pad and an existing dust suppression program will be implemented at the Mill to reduce the potential for airborne contamination.

2. Present and potential environmental impacts from the receipt and processing of the Molycorp material were assessed. No increase in impacts has been identified as a result of this action, therefore, the staff has determined that the risk factors for health and environmental hazards are insignificant.

Alternatives to the Proposed Action

The action that the NRC is considering is approval of an amendment request to a source material license issued pursuant to 10 CFR part 40. The alternatives available to the NRC are:

1. Approve the license amendment request as submitted; or
2. Amend the license with such additional conditions as are considered necessary or appropriate to protect public health and safety and the environment; or
3. Deny the request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of IUSA's future operations or the denial of the license amendment. The NRC staff has concluded that there are no significant environmental impacts associated with the proposed action. Therefore, alternatives with equal or greater impacts need not be evaluated. Additionally, in the Technical Evaluation Report prepared for this action, the staff has reviewed the licensee's proposed action with respect to the criteria for reclamation, specified in 10 CFR 40, Appendix A, and has no basis for denial of the proposed action. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed reclamation plan for NRC Source Material License SUA-1358. On the basis of this assessment, the NRC staff has concluded that the environmental impact that may result for the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action amendment application are available for public inspection and

copying at the NRC Public Document Room, US Nuclear Regulatory Commission Headquarters, Room 0-1F21, 11555 Rockville Pike, Rockville, MD 20852.

Notice of Opportunity for Hearing

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

- (1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

- (2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

- (1) The applicant, International Uranium (USA) Corporation, Independence Plaza, Suite 950, 1050 Seventeenth Street, Denver, Colorado 80265; Attention: Michelle Rehmann; and

- (2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

- (1) The interest of the requestor in the proceeding;

- (2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

- (3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

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(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to Michael Lesar, Chief, Rules and Directives Branch, Office of Administrative Services, Division of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555 - 0001.

Dated at Rockville, Maryland, this 30th day of November 2001.

For the U.S. Nuclear Regulatory Commission.

Melvyn Leach,

Branch Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01-30610 Filed 12-10-01; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 10, 17, 24, 31, 2001, January 7, 14, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 10, 2001

There are no meetings scheduled for the Week of December 10, 2001.

Week of December 17, 2001—Tentative

There are no meetings scheduled for the Week of December 17, 2001.

Week of December 24, 2001—Tentative

There are no meetings scheduled for the Week of December 24, 2001.

Week of December 31, 2001—Tentative

There are no meetings scheduled for the Week of December 31, 2001.

Week of January 7, 2002—Tentative

Wednesday, January 9, 2002

9:30 a.m.

Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larking, 301-415-7360)

Week of January 14, 2002—Tentative

There are no meetings scheduled for the Week of January 14, 2002.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording) —(301) 415-1292. Contact person for more information: David Louis Gamberoni (301) 415-1651.

ADDITIONAL INFORMATION: By a vote of 5-0 on December 4 and 5, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3)" be held of December 5, and no less than one week's notice to the public.

By a vote of 5-0 on December 5, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107 (a) of the Commission's rules that "Affirmation of Connecticut Yankee Atomic Power Company (Haddam Neck Plant); Docket 50-213-OLA" be held on December 5, and on less than one week's notice to the public.

By a vote of 5-0 on November 30 and December 3, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Intragovernmental and Security Issues (Closed —Ex. 1 & 9)" be held on December 5, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov>.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, D.C. 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet System is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: December 6, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01-30733 Filed 12-7-01; 12:45 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45122; File No. SR-CHX-99-18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Inc., Relating to the Exchange's Limit Order Display Requirements

December 4, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 24, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 20, 2001, the CHX amended the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its limit order display requirements under CHX Article XX, Rule 7 to conform to Rule 11Ac1-4 under the Act.⁴ The text of the proposed rule change is below. Additions are in italics; deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See October 15, 2001 letter from Daniel J. Liberti, Vice President and Chief Enforcement Counsel, CHX, to Joseph Morra, Special Counsel, Division of Market Regulation, Commission ("Amendment No. 1"). The CHX mailed Amendment No. 1 to the Commission on October 15, 2001, but the Commission never received the Amendment. The CHX provided the Commission with a telexed copy of the Amendment on November 20, 2001. The Commission agreed to accept the Amendment as of November 20, 2001, while awaiting delivery of the original, signed Amendment. In Amendment No. 1, the CHX (i) confirmed that the proposed change to exempt block-sized orders from the CHX's limit order display requirement will not apply when a customer has requested that the order be displayed; (ii) corrects a typographical error relating to CHX Article XX, Interpretation and Policy .01 relating the mark sense terminal; and (iii) adds new identifiers for subparagraphs (a) and (b) in CHX Article XX, Interpretation and Policy .05. The CHX made other minor, non-substantive changes to the proposal. See December 3, 2001 telephone conversation between Daniel J. Liberti, Vice President and Chief Enforcement Counsel, CHX, and Joseph Morra, Special Counsel, Division of Market Regulation, Commission.

⁴ 17 CFR 240.11Ac1-4.