

**THOMPSON & SIMMONS, PLLC.**

1225 19th Street, N.W., Suite 300  
Washington, D. C. 20036  
202.496.0780/202.496.9111  
Fax: 202.496.0783

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440 Meadow Street  
Waterbury, Connecticut 06702

**ANTHONY J. THOMPSON**  
ajthompson@athompsonlaw.com  
Admitted in D.C. and Virginia

**CHARLES T. SIMMONS**  
csimmons@athompsonlaw.com  
Admitted in CT and D.C.

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**CHRISTOPHER S. PUGSLEY**  
cpugsley@athompsonlaw.com  
Admitted in MD

January 24, 2008

United States Nuclear Regulatory Commission  
Attn: Document Control Desk  
United States Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852-2738

To Whom It May Concern:

On behalf of Kennecott Uranium Company (KUC), Thompson & Simmons PLLC hereby submits this request for a hearing challenging the Nuclear Regulatory Commission (NRC) Staff's determination that KUC is required to obtain a license amendment prior to *storing* standard uranium-loaded ion-exchange (IX) resins at its Sweetwater Uranium Mill located in Rawlins, Wyoming and pending issuance of a license amendment to process such resins as an alternate feed material under NRC's alternate feed guidance entitled *Processing of Material Other than Natural Uranium Ores* (SRM-SECY-99-012). As will be shown below, KUC satisfies each of NRC's requirements for a hearing listed in 10 CFR § 2.309 and, as such, respectfully requests that either the Commission or the Chief Administrative Judge of the Atomic Safety and Licensing Board (Licensing Board) grant KUC a hearing on the contentions described below.

**I. INTRODUCTION AND PROCEDURAL HISTORY**

On June 10, 2007, KUC submitted a letter to NRC Staff requesting that it be permitted to store uranium-loaded IX resins on an ore pad at KUC's Sweetwater Uranium Mill prior to obtaining a license amendment permitting the processing of such IX resins as an alternate feed material.<sup>1</sup> KUC's request provided NRC Staff with argument supporting its position on the following issues: (1) uranium-loaded IX resins have previously be characterized by NRC Staff as a "refined and processed ore;" (2) NRC's previous analyses of conventional uranium milling (NUREG-0706) identifies IX processes as a typical part of the conventional uranium milling process; (3) KUC's

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<sup>1</sup> See Letter from Oscar Paulson, Facility Supervisor, Kennecott Uranium Company, to Keith McConnell, Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials & Environmental Management Programs (June 10, 2007) (Attachment A).

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existing license conditions permit the storage of uranium-loaded IX resins<sup>2</sup>; (4) uranium-loaded IX resins can be defined as “ore” for *storage* prior to engaging in an evaluation of whether the material can be *processed* as an alternate feed material.

On November 30, 2008, NRC Staff responded denying KUC’s request and concluding that KUC would be required to obtain a license amendment to store the aforementioned IX resins prior to obtaining a license amendment to process such IX resins as an alternate feed material. More specifically, NRC Staff stated that the Commission’s definition of “ore,” as used in the Atomic Energy Act of 1954, as amended, definition of 11e.(2) byproduct material and the alternate feed guidance “has no legal force,” because it was part of a “guidance” document.<sup>3</sup> Further, NRC Staff stated that KUC’s previous authorization allowing the storage of uranium-loaded IX resins at the Sweetwater Uranium Mill is not relevant because the material was classified as 11e.(2) byproduct material and not source material ore for processing.<sup>4</sup> In addition, while not expressly stated by NRC Staff, the November 30, 2007 letter intimates that an inquiry into whether a material constitutes an “ore” for storage purposes cannot be performed without considering the request in light of the entire alternate feed guidance for processing.

In response to NRC Staff’s letter, KUC hereby submits this request for a hearing and respectfully requests that the Commission or the Chief Administrative Judge of the Licensing Board grant a hearing regarding NRC Staff’s denial of KUC’s requested agency action to store uranium-laden IX resins as an “ore” at its NRC-licensed Sweetwater Uranium Mill pending issuance of a license amendment authorizing the processing of such IX resins as an alternate feed material.

## II. TIMELINESS

KUC’s request for a hearing is timely under 10 CFR § 2.309(b). As a general matter, NRC Staff’s final determination on KUC’s request to store uranium-loaded IX resins at the Sweetwater Uranium Mill pending issuance of a license amendment authorizing the processing of such resins as an alternate feed material constitutes agency action in the form of a denial of a request to conduct a licensed activity without the need for a license amendment. NRC Staff’s determination in the form of a letter transmittal was dated November 30, 2008. NRC Staff’s determination was not published in the Federal Register at any time. Thus, the appropriate deadline for filing a request for a hearing should be calculated under 10 CFR § 2.309(b)(4). Section 2.309(b)(4) states in pertinent part:

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<sup>2</sup> See SUA-1350, License Condition 9.4.

<sup>3</sup> See Letter from William von Till, Chief, Uranium Recovery Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs to Oscar Paulson, Facility Supervisor, Kennecott Uranium Company, (November 30, 2007) (Attachment B).

<sup>4</sup> *Id.*

“In proceedings for which a Federal Register notice of agency action is not published, not later than the latest of:

(i) Sixty (60) days after publication of notice on the NRC Web site at <http://www.nrc.gov/public-involve/major-actions.html>, or

(ii) Sixty (60) days after the requestor receives actual notice of a pending application, but not more than sixty (60) days after agency action on the application.”

10 CFR § 2.309(b)(4).

Given that the agency action was not noticed on the NRC web-site, the appropriate filing deadline would be calculated under Section 2.309(b)(4)(ii). Since KUC received actual notice of NRC’s agency action by receipt of its November 30, 2007 letter transmittal, the appropriate filing deadline for this hearing request is January 29, 2008. By filing this hearing request on January 25, 2008, KUC’s request is timely.

### III. STANDING

Pursuant to 10 CFR § 2.309(d), KUC has standing for an administrative hearing regarding NRC Staff’s November 30, 2008. Under Section 2.309(d)(i-iv), standing is demonstrated by satisfy each of the following requirements:

- “(i) The name; address and telephone number of the requestor or petitioner;
- (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
- (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.”

10 CFR § 2.309(d).

As will be shown below, KUC satisfies each of these requirements for standing.

#### 1. Licensee Addresses:

Kennecott Uranium Company  
Sweetwater Uranium Project  
P.O. Box 1500  
Rawlins, Wyoming 82301-1500

Kennecott Uranium Company  
Caller Box 3009  
505 South Gillette Avenue  
Gillette, Wyoming 82717

2. KUC has the right to a hearing under the Atomic Energy Act of 1954, as amended (AEA) as a licensee of NRC:

a. KUC is a uranium recovery company possessing an NRC-licensed conventional uranium mill (Sweetwater Uranium Mill) located in the State of Wyoming. KUC's Sweetwater Uranium Mill is currently on "standby" status which requires satisfaction of certain conditions before being able to re-commence licensed uranium milling operations;

b. The Sweetwater Uranium Mill, the subject of this hearing request, has been licensed by NRC for 27 years;

c. On June 10, 2007, KUC submitted a letter to NRC Staff requesting an agency action regarding the storage of standard uranium-laden IX resins pending the issuance of a license amendment to process such IX resins as an alternate feed material. On November 30, 2007, NRC Staff issued a letter stating that KUC's requested agency action<sup>5</sup> was not permissible and that a license amendment would be required merely for on-site *storage* of such resins. Given that KUC's requested agency action was denied, KUC has been adversely impacted by an action of NRC;

d. Under 42 U.S.C. § 2239(a)(1)(A), "[i]n any proceeding under this Act [the AEA]...for the issuance or modification of rules and regulations dealing with the activities of licensees...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." KUC's contentions, as described below, focus on an act by NRC Staff to "modify" a rule (i.e., the alternate feed guidance as affirmed in a Commission adjudicatory proceeding) by claiming that it does not have the force and effect of law and, hence, is not a rule. Thus, based on Section 2239(a)(1)(A), this decision which is adverse to KUC warrants an NRC hearing.

3. KUC has significant interest in this proceeding for a number of reasons:

a. KUC is an NRC-licensed conventional uranium mill seeking to receive and store standard uranium-laden IX resins for eventual processing as an alternate feed material. KUC, like other uranium recovery companies, are expected to rely on NRC's alternate feed guidance to facilitate the receipt, storage, and processing of uranium-bearing materials such as the aforementioned IX resins. NRC Staff's decision regarding KUC's proposed agency action included a statement that the alternate feed guidance and its definition of "ore" have "no legal force." As a result, uranium recovery companies such as KUC will have no assurances that the provisions of the guidance will be consistently applied;

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<sup>5</sup> While it traditionally classifies "agency action" as acts such as issuance of a license/license amendment, renewal/revocation of a license or enforcement action, requests from licensees to conduct a licensed activity without the need for a license amendment closely mirror such an action.

b. Production of uranium in the current market-place represents significant economic benefit to uranium recovery companies such as KUC. Failure to permit KUC to receive and store these standard uranium-laden IX resins potentially may result in KUC not receiving access to this source of uranium now or in the future;

c. KUC is currently negotiating with a water treatment service company that would serve as the source of the proposed uranium-laden IX resins. This company's NRC-license expressly requires that its standard uranium-laden IX resins be transported to a licensed/permitted facility either for direct disposal or for alternate feed processing. NRC Staff's decision to require a license amendment to store these resins requires that NRC Staff conduct a technical and environmental review, including an environmental assessment (EA) that will significantly delay the receipt of such resins.

4. The possible effect(s) of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest is:

a. Failure to reverse NRC Staff's finding that KUC cannot store standard uranium-laden IX resins without a license amendment and that NRC's alternate feed guidance and its definition of "ore" have "no legal force" will result in potential loss of alternate feed material for the KUC Sweetwater Uranium Mill and inconsistent application of NRC's alternate feed guidance to KUC;

b. Reversal of NRC Staff's finding that KUC cannot store standard uranium-laden IX resins without a license amendment and that NRC's alternate feed guidance and its definition of "ore" have "no legal force" will result in KUC's receipt and storage of standard uranium-laden IX resins pursuant to storage procedures used previously when similar resins were stored on-site pursuant to KUC's NRC license.

#### IV. CONTENTIONS

In addition to providing NRC with affirmative demonstration that KUC has standing for an administrative hearing under 10 CFR § 2.309(d), KUC is also required to proffer at least one admissible contention

1. KUC asserts that NRC Staff's failure to classify uranium-laden IX resins produced as a result of water treatment operations as an "ore" under its alternate feed guidance is a violation of the Commission's express endorsement of the alternate feed guidance in *In the Matter of International Uranium (USA) Corporation*, (White Mesa Mill), CLI-00-01, 51 NRC 9 (2000). Given that federal agencies are permitted to promulgate rules either by rulemaking or adjudication, NRC Staff's denial of KUC's requested agency action is a violation of the Commission's alternate feed guidance.

2. KUC asserts that NRC Staff's finding that the definition of "ore" does not have the force and effect of law and that KUC cannot store uranium-laden IX resins generated from water treatment operations is a violation of the Commission's interpretation and

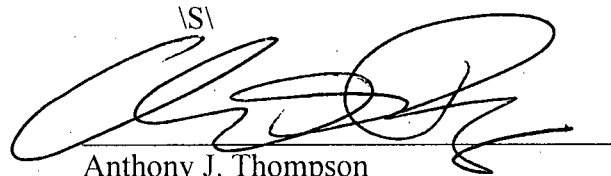
subsequent endorsement of the definition of "ore" in *In the Matter of International Uranium (USA) Corporation*, (White Mesa Mill), CLI-00-01, 51 NRC 9 (2000).

3. KUC asserts that NRC Staff's finding that the definition of "ore" does not have the force and effect of law and that KUC cannot store uranium-laden IX resins generated from water treatment operations is inconsistent with NRC Staff's previous classification of water treatment residuals from mine-water treatment operations as a "refined and processed ore." 57 Fed. Reg. 20525, 20532 (May 13, 1992).

## V. CONCLUSION

For the reasons stated above, KUC respectfully requests that the Commission or the Chief Administrative Judge of the Licensing Board grant a hearing regarding NRC Staff's denial of KUC's requested agency action to store uranium-laden IX resins as an "ore" at its NRC-licensed Sweetwater Uranium Mill pending issuance of a license amendment authorizing the processing of such IX resins as an alternate feed material.

Respectfully Submitted,



Anthony J. Thompson  
Christopher S. Pugsley  
THOMPSON & SIMMONS, PLLC  
1225 19<sup>th</sup> Street, NW  
Suite 300  
Washington, DC 20036  
(202) 496-0780  
(202) 496-0783 (facsimile)  
[ajthompson@athompsonlaw.com](mailto:ajthompson@athompsonlaw.com)  
[cpugsley@athompsonlaw.com](mailto:cpugsley@athompsonlaw.com)