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BEFORE THE UNITED STATES NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF INTERNATIONAL URANIUM (USA) CORPORATION'S AMENDMENT TO NRC SOURCE MATERIAL LICENSE SUA-1358	)))))))	DOCKET NO. OPPOSITION OF INTERNATIONAL URANIUM (USA) CORPORATION TO STATE OF UTAH'S REQUEST FOR HEARING

I. BACKGROUND

A. Introduction

International Uranium (USA) Corporation ("IUSA") operates, in accordance with Source Material License No. SUA-1358 issued by the United States Nuclear Regulatory Commission ("NRC"), a uranium recovery facility called the White Mesa Mill (the "Mill") in Blanding, Utah. The Mill processes uranium-bearing material to extract the uranium therefrom. Residuals, or "tailings," from this process, defined as "11e.(2) byproduct material," are disposed of in an NRC-licensed "cell" or impoundment at the Mill site. IUSA's Mill is regulated by NRC, pursuant to the Atomic Energy Act of 1954, as amended, and the Uranium Mill Tailings Radiation Control Act of 1978 ("UMTRCA"), as amended, as effectuated by NRC regulations set forth at 10 CFR Part 40 including Appendix A and applicable NRC guidance documents.

1. Procedural Status:

On March 3, 1998, IUSA requested that NRC amend IUSA's Source Material License to include a performance-based licensing provision that would allow the Mill to accept for processing "alternate feed materials" (i.e., feed materials other than natural ore) from unspecified sources if certain procedures and safeguards are followed. That request remains under review by NRC and is **not the subject of this proceeding.**[1]

On May 8, 1998, IUSA requested that NRC amend IUSA's Source Material License to allow the Mill to process uranium-bearing materials from the Ashland 2 Formerly Utilized Sites Remedial Action Program ("FUSRAP") site near Tonawanda, New York ("Ashland 2 material"). NRC granted IUSA's license amendment to process the Ashland 2 material on June 23, 1998. The State of Utah (the "State" or "Utah") filed a Request for Hearing and Petition for Leave to Intervene on or about July 23, 1998.[2]

II. ARGUMENT

As set forth below, the State does not have standing in this matter and the concerns raised by the State are based on inaccurate assertions that are not germane to the subject matter of IUSA's license amendment. IUSA will demonstrate that the concerns raised by the State do not affect any party, including the State, in any way different from the activities already authorized at

[1] In fact, no hearing was requested by any party with regard to IUSA's request for a performance-based license amendment. Time for requesting such a hearing has expired. See 10 CFR § 2.1205.

[2] On or about the same date, Envirocare of Utah, Inc., also filed a Request for Hearing on IUSA's License Amendment to process the Ashland 2 material.

IUSA's Mill. The only significant impact of IUSA's license amendment is to provide competition to disposal-only facilities (of which there is only one) in the State (Envirocare). This impact is not an appropriate basis for challenging NRC's grant of a license amendment.

IUSA responds to the State of Utah's Petition as follows:

A. Utah's Participation in this Proceeding.

1. Ability to Participate in the Process to Date

As a matter of fact, Utah has had an opportunity to participate in and make its views known at each step in the Mill licensing processes, including the granting of the license amendment at issue. This is evidenced by the State's recitation of correspondence and meetings involving representatives from IUSA, NRC, and the State, regarding the Mill and proposed amendments to its source materials license.[3] NRC has considered Utah's concerns in the course of reaching a determination on IUSA's license amendment applications. Utah, however, does not have the final say on these issues, as it is not an agreement state for uranium recovery licensing and thus is without jurisdiction to regulate the recovery of uranium from alternate feed materials.[4]

Utah claims that IUSA is being allowed to "receive, process, and dispose of" alternate feed materials "without the normal public input for NRC license amendments" and that Utah is

[3] See State of Utah's Request for Hearing and Petition for Leave to Intervene, at 2-6.

[4] Pursuant to §274 of the AEA, 42 U.S.C. §2022, NRC can relinquish authority to states that agree to accept responsibility for implementing specified regulatory programs ("agreement states"). Utah has declined to become an agreement state with regard to regulation of 11e.(2) materials, leaving NRC with exclusive jurisdiction over these materials. Utah is an agreement state with regard to low-level radioactive wastes ("LLRW") and thus is responsible for implementing the 10 C.F.R. Part 61 LLRW regulations.

being deprived of its "established right to participate in such proceedings." [5] 10 CFR Part 2, Subpart L, provides the normal opportunity to request a hearing and petition to intervene in a proceeding to amend a materials license. Utah has availed itself of that opportunity and cannot be heard to complain that it has been excluded from participating in the normal license amendment process.

2. Standards to Be Applied

The question now before the Presiding Officer is whether the State is entitled to a hearing on NRC's amendment of IUSA's license. NRC's Rules of Practice provide that, in ruling on a request for a hearing, 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 requester meets the judicial standards for standing* and shall consider, among other factors --
>
> (1) The nature of the requester's right under the [Atomic Energy Act] to be made a party to the proceeding;
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> (2) The nature and extent of the requestor's property, financial, or other interest in the proceeding; and
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> (3) The possible effect of any order that may be entered in the proceeding upon the requestor's interest.[6]

Where, as here, the Petitioner fails to make a sufficient showing on these matters, a hearing request should be denied.

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[5] State's of Utah's Petition at p. 11.

[6] 10 CFR § 2.1205(h) (emphasis added).

3. Utah has failed to demonstrate standing.

To demonstrate standing entitling it to a hearing, Utah must show (1) that the State has suffered, or likely will suffer, *injury in fact* from the license amendment at issue; (2) that the alleged injury is arguably within the *zone of interests* sought to be protected by the statute being enforced; and (3) that the injury is *redressable* by a favorable decision in the proceeding.[7] As NRC has noted, "[s]tanding is not a mere legal technicality, it is in fact an essential element in determining whether there is any legitimate role for a court or an agency adjudicatory body in dealing with a particular grievance."[8]

To satisfy the "irreducible constitutional minimum" of standing, a potential litigant must demonstrate that there is a "*concrete and particularized injury* that is: 1) actual or imminent; 2) caused by, or fairly traceable to, an act that the litigant challenges in the instant litigation; and 3) redressable by the court."[9] To show the required injury in fact based on an assertion of future harm, NRC has held that that future harm "*must be threatened, certainly impending, and real and immediate*."[10]

Utah has failed to satisfy the requirements for standing because it has failed to make the fundamental showing of an **injury in fact** that can be attributed to the challenged action, i.e., the issuance of IUSA's license amendment to process the alternate feed material from the Ashland 2

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[7] Northern States Power Company, 44 NRC 138, 1996 NRC Lexis 46, **5-6 (1996).

[8] Westinghouse Electric Corp., CLI-94-07, 39 NRC 322, 1994 Lexis 31, ** 5-6 (1996).

[9] Florida Audubon Society v. Bentsen, 94 F.3d 658, 663 (D.C. Cir. 1996) (en banc) (citations omitted) (emphasis added).

[10] Babcock & Wilcox, LBP-93-4, 1993 NRC Lexis 6, **7-8 (1993) (emphasis added).

Site. Having devoted several pages of its Petition to "Requirements for Intervention"[11] and "The State Has a Right To Be Made a Party to the Proceeding,"[12] Utah's Petition asserts:

> Finally, the State will suffer injury-in-fact if NRC allows IUSA to process the alternate feed material from the Ashland 2 FUSRAP site. In particular, allowing IUSA to receive, process, and dispose of the uranium-bearing material without the normal public input for NRC license amendments **will remove Utah's established right to participate in such proceedings**. Additionally, the amendment allows for processing and disposal of material that has a very low uranium concentration, making it **unlikely that the material is being processed *primarily* for its source material content.** Instead, the amendment will allow the Mill to become a disposal facility and will let IUSA circumvent the *stricter* disposal requirements of 10 CFR Part 61. (text direction omitted). Moreover, **NRC has licensed an 11e.(2) disposal cell** under 10 CFR Part 40 **at a Utah facility** that does not have uranium processing capabilities **and has held that licensee to a "higher standard."** Thus, two facilities that can dispose of the same material are held to different safety standards. Clearly, t**he amendment would substantially diminish Utah's ability to ensure protection of its environment, natural resources, and citizens.** Accordingly, the State has standing to intervene in this proceeding because **the proposed amendment threatens to cause "distinct and palpable" injury** to the State and its citizens. (citations omitted).[13]

The foregoing is Utah's entire recitation of the "injury-in-fact" upon which the State bases its claim to standing. These assertions fail to state any "concrete and particularized injury that is actual or imminent."[14] Simply alleging that "the State will suffer injury-in-fact" because of

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[11] State of Utah's Petition at 8-9.

[12] Id. at 9-11.

[13] Id. at 11-12 (italics in original; other emphasis added).

[14] Florida Audubon Society, supra.

NRC's issuance of the subject license amendment[15] does not **demonstrate a concrete and particularized injury.**

Utah's attempt to state an injury in fact can be summarized as:

> a. Utah is being deprived of its "right" to participate in the license amendment;
>
> b. Utah believes it is "unlikely" that the Ashland 2 materials are being processed primarily for their source material;
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> c. the license amendment is enabling the Mill to "circumvent the stricter disposal requirements of 10 CFR Part 61;" and
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> d. NRC has licensed an 11e.(2) cell at another Utah facility "and has held that licensee to a higher standard."[16]

a. Utah's "right" to participate in IUSA's license amendment.

Utah's assertion, embodied in a hearing request made pursuant to the procedure prescribed in NRC's regulations, that the license amendment was issued without "normal public input" and that Utah has been denied the right to participate, demonstrates the fallacy of Utah's position.

The Code of Federal Regulations, at 10 CFR Part 2, Subpart L, establishes the mechanics for any interested party to participate in a license amendment proceeding. These regulations define the means of "normal public input," and provide that interested parties may request hearings as **the State of Utah and Envirocare of Utah, Inc. both have done.**

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[15] State of Utah's Petition at 11.

[16] Id., at 11-12.

Thus, although Utah does not have a **right** to participate, it has requested a hearing in accordance with the applicable regulations. This opportunity to request a hearing **is** the means for "normal public input." Moreover, as discussed above,[17] Utah's Petition details its actual participation in this process prior to the Amendment being issued. In fact, Utah has been informed of, and participated similarly in, the issuance of prior amendments to IUSA's license. Interestingly, Utah voiced no concerns regarding public health or the environment in connection with the immediately prior license amendment enabling the Mill to process alternate feed materials containing much higher concentrations of uranium.[18]

Utah has availed itself of the opportunity to participate in the licensing proceedings for the Mill and has now, pursuant to the mechanism established by regulation, requested a hearing. **To be entitled to a hearing, however, each petitioner must prove it has standing. Lack of standing cannot constitute the injury in fact upon which standing is based.**

b. Materials are being processed primarily for source material.

Utah alleges that the license amendment allows processing of material that has a very low uranium content, making it "unlikely that the material is being processed *primarily* for its source material content."[19] NRC, however, has determined, pursuant to its guidance, that IUSA has satisfied **both** of the alternative tests (i.e., the co-disposal and the certification test) NRC employs to determine whether alternate feed material is being processed primarily for its source material.

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[17]See IUSA's Response, at 3, above.

[18]See Docket No. 40-8681-MLA-3, ASLBP No. 94-693-02-MLA-3 (Cotter Concentrates Amendment). IUSA understands that Envirocare was not licensed to accept the Cotter Concentrates.

[19]State of Utah's Petition, at 11.

The State's vague speculation that IUSA is "unlikely" to be processing the material for its source material content therefore is unfounded and, in any event, cannot be deemed to be an "injury in fact."

The State complains that if IUSA is not processing the material primarily for its source material content, then IUSA is simply disposing of this material. Utah suggests that such activity threatens harm to public health and the environment. Even if this were the case, however, the State has failed to specify what adverse consequence or "concrete and particularized" injury such activity will cause.

Utah cannot articulate any such injury because this is a "sham" environmental concern. Utah voices unspecified concerns about some undefined environmental harm that may result from processing alternate feeds generally, but concedes that this concern may dissipate if the material being processed has a very high uranium content. The State offers no explanation for being less concerned about processing more highly radioactive materials.

Even if the State's direct disposal concerns were realized from an environmental impact standpoint, the very worst case is that the Ashland 2 11e.(2) material would be disposed of in IUSA's licensed 11e.(2) cell, precisely the type of disposal that was proposed by Envirocare. Utah has not suggested that disposal in Envirocare's 11e.(2) disposal cell is likely to result in contamination of the air, groundwater, surface water, or any other resource. Moreover, Utah is without jurisdiction to regulate disposal of 11e.(2) material, whether or not it is processed prior to disposal, and thus cannot complain of injury to its regulatory authority. Accordingly, even if NRC were deemed incorrect in its determination that IUSA is processing the Ashland 2 material

primarily for its source material content, Utah does not suffer an "injury in fact" and consequently is without standing.[20]

c. IUSA is evading "stricter" regulatory requirements.

Utah speculates that the license amendment may allow IUSA to evade "stricter" 10 C.F.R. Part 61 regulatory requirements. This speculation is erroneous as, if Envirocare had successfully bid to directly dispose of this material, the material would be disposed of in Envirocare's 11e.(2) disposal cell and the material in question would not go to Envirocare's 10 C.F.R. Part 61 LLRW disposal cell. In any case, as discussed in footnote 21 below, 10 C.F.R. Part 61 is not a "stricter" regulatory program as asserted.[21] This claim does not establish a concrete and particularized injury and Utah cannot rely on this inaccurate assertion to state an injury in fact. Consequently, this assertion cannot form the basis for Utah's standing.

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[20] Utah also has stated that the Navajo Utah Commission has raised concerns about processing "such waste and other materials...at the Mill." First, processing "other" materials is irrelevant to this proceeding. Additionally, the concerns were raised to the Navajo Utah Commission ("NUC") by Ken Sleight, who is not a native American, and does not live within 50 miles of the Mill. The NUC is a body which operates out of Window Rock, Arizona, not Utah. The Native American Uranium workers expressed their disagreement with Sleight and NUC, and are supporting activities at the Mill. Similarly, letters from Blanding, San Juan County, and a petition of residents of San Juan County all express support for mill activities and jobs for local residents. (These documents all are attached hereto as Exhibit 1). Utah's claim to protecting "economic welfare of citizens" relative to a concern over "future releases from...tailings" is a hypothetical concern regarding general mill activities, and is not germane to this proceeding. The State also indicates that offloading will be southwest of the Mill, making it appear to NUC that transport might be on reservation land. This is not correct.

[21] A close comparison of 10 CFR Parts 40 and 61 shows Part 40 to be more protective of health and the environment because Part 40 contemplates a longer timeline (200-1000 years) for public health protection and pursuant to UMTRCA's mandate requires that title and custody of decommissioning facilities be passed to the State or the federal government in perpetuity, ensuring perpetual long-term care and monitoring by an NRC licensee. Part 61 contains a similar requirement; however, to the best of IUSA's knowledge, Utah has waived this fundamental requirement for Envirocare's LLRW cell, an action that it cannot take for either IUSA's or Envirocare's 11.e(2) disposal cells. Part 40, again pursuant to UMTRCA, contains provisions requiring protection from any potential hazards associated with *nonradiological* components of 11e.(2) byproduct material that is equivalent to the protection afforded by the requirements of the Resource Conservation and Recovery Act (RCRA) for such hazardous substances. Part 61 contains no such requirements. In other substantive respects, the programs are similar and have similar goals.

d. Utah has held another 11e.(2) disposal facility to a "higher standard."

Similarly, Utah's assertion that NRC has held a disposal-only facility in Utah to a "higher standard,"[22] is erroneous and fails to establish injury in fact. This assertion is erroneous since both IUSA's and Envirocare's 11e.(2) disposal cells are subject to exactly the same 10 C.F.R. Part 40, Appendix A criteria.[23] In addition, IUSA's 11e.(2) disposal cells must comply with an air emission permit[24] that Envirocare is not subject to, and IUSA's disposal cells have a double liner and leachate collection system that Envirocare does not have. Although Envirocare does have a State groundwater discharge permit, Utah did not initially require Envirocare's 11e.(2) cell to have a groundwater discharge permit. IUSA understands that Envirocare only obtained the State-issued groundwater discharge permit after it was determined that Envirocare's operations were causing a release of radionuclides to groundwater. IUSA does not have a groundwater discharge permit because the IUSA 11e.(2) cell does not discharge to groundwater. Consequently, Utah is unable to articulate any significant difference in the standards applicable to the 11e.(2) cells at the Envirocare and IUSA facilities. Indeed, to the extent that the two facilities are held to different safety stands, the IUSA Mill's compliance with Part 61 Clean Air Act emissions protections and its double liner with leachate collection system is more protective of public health and the environment. Moreover, the State does not even attempt to articulate a "concrete and particularized" injury that may be associated with this misleading assertion. Utah again fails to establish an injury in fact and must be denied standing.

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[22] State of Utah's Petition, at 11.

[23] Envirocare's 11e.(2) license contains two Part 61 (§§61.80 and 61.82) recordkeeping requirements that have no bearing on public health and safety or the environment.

[24] This permit is required of facilities managing byproduct material following processing. See 40 C.F.R. Part 61, Subpart W, "National Emission Standards for Radon Emissions from Operating Mill Tailings."

Based on the four assertions discussed above, Utah concludes that "clearly, the amendment would substantially diminish Utah's ability to ensure protection of its environment, natural resources, and citizens, "which in turn satisfies standing because the amendment "threatens to cause distinct and palpable injury to the State and citizens." [25] These conclusory statements which, as demonstrated above, are based on vague, inaccurate, and irrelevant assertions, fail to establish a concrete and particularized injury and cannot support standing.

The statement that "[W]hile Utah may not oppose IUSA processing of alternate feed materials with a *high enough source content* to be economically viable, anything less circumvents the law and harms Utah's interests,"[26] reveals the true nature of the State's concerns. How can alternate feeds with low uranium content be threatening to Utah's environment, natural resources, and citizens, but alternate feeds with higher uranium content are not? Clearly, the State is not concerned with any threats to its environment, natural resources and citizens. Rather, the State is concerned primarily with protecting the economic interests of Envirocare's disposal-only facility.

As the Commission's recent decision in Quivera holds, protecting the economic interests of Envirocare is not within the zone of interest addressed by the AEA or NEPA and does not satisfy the requirements for standing. If the State were truly concerned with threats to the environment, natural resources, and citizens of Utah with respect to the Ashland 2 materials, these concerns would exist irrespective of the uranium content of the feed material. Utah might better address such concerns by becoming an agreement state with respect to uranium mills and uranium mill tailings, thereby obtaining jurisdiction over these matters.

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[25] Id., at 12.

[26] State of Utah's Petition, at 16.

4. Are the Specified Areas of Concern Germane to the Subject Matter of the Proceeding?

To show that the areas of concern are germane to the subject matter of the proceeding, the party requesting the hearing must show that the activity allowed by the licensing action at issue – in this case approval of the Ashland 2 Amendment – will affect that party adversely in a way different from the activities already authorized at the IUSA Mill.

IUSA submits that processing the Ashland 2 materials at the Mill is not significantly different in any way than processing other alternate feeds which NRC has approved, including materials with higher uranium concentrations. Thus, risks to public health, safety and the environment from processing the Ashland 2 materials are, if anything, less than with other alternate feeds that IUSA has processed at the Mill.

The State is not questioning the ability of the Mill to process alternate feeds, to process conventional ores or to operate the Mill generally. The Mill's NRC license was granted in 1980 and renewed in 1985 and in 1997, and the Mill has been processing conventional ores since 1980 and alternate feeds since 1993. Each of these license renewals was noticed publicly without objection from the State.

In order to demonstrate that its concerns are germane to the regulatory action at issue, a petitioner must demonstrate that it is likely to suffer injury resulting from the Ashland 2 amendment and not from the operation of the Mill generally. Presiding Officer Peter B. Bloch, ruling in response to a similar request for a hearing in connection with the processing by IUSA of another alternate feed, held:

> "Because the license to operate the White Mesa Uranium Mill is not at issue in this proceeding, a petitioner's standing must not be based on harm resulting from the license to operate. The only issues that may be raised must relate to the specific actions proposed to be taken under the license amendment. To show standing, an individual or an organization must show how they may be harmed ("injury in fact") by the amendment."[27]

The State's vague allegations of injury in fact, if they have any merit at all, apply equally well to processing of conventional ores and to the processing of alternate feeds with higher concentrations of uranium. Therefore, any alleged injury does not result from this amendment, but from the operation of the Mill generally in accordance with its license.

If the processing of the Ashland 2 materials at the Mill does not pose any additional risk to public health, safety and the environment beyond that posed by routine mill operation pursuant to the license that has been in place since 1980 (and, of course, that risk is not at issue here), then the only concern of the State must be the protection of other disposal-only facilities in Utah (of which there is only one). In fact, Dianne Nielson, Director of the State of Utah Department of Environmental Quality has been quoted recently as stating with respect to the Ashland 2 materials:

> "If it turns out the tailings are not worth reprocessing, then by turning the White Mesa site into a storage facility without the proper state permit it would give it an improper economic advantage."[28]

IUSA respectfully submits that the concerns raised by Utah in its request for a hearing are not germane to the regulatory action here at issue: NRC's grant of IUSA's license amendment. As suggested above, the State's real area of concern appears to be the protection of the economic

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[27] In the Matter of Energy Fuels Nuclear, Inc., Docket No. 40-8681-MLA.

[28] Salt Lake Tribune, June 27, 1998, attached hereto as Exhibit 2.

interests of a disposal-only facility in the State. As discussed above, this is not an adequate basis for the State to have standing in this proceeding.

B. NRC's Licensing Determinations Are Entitled to Deference.

Even if the Presiding Officer should determine that Utah has established standing to obtain a hearing on NRC's amendment of IUSA's license No. SUA-1358, NRC's licensing decision should be upheld. As the regulatory agency authorized by the AEA, as amended by UMTRCA, to make licensing determinations of the type here at issue, NRC's determination to grant IUSA's requested license amendment is entitled to substantial deference.[29] Deference is particularly appropriate where the agency action at issue is technical and complex.[30]

Generally, actions taken by NRC have been afforded greater deference than actions taken by other regulatory agencies. This is because the AEA gives NRC significant regulatory latitude "virtually unique in the degree to which broad responsibility is reposed in the Commission, free of close prescription in its charter as to how it shall proceed in achieving the statutory objectives."[31] NRC's determination of technical matters within its area of expertise is routinely given deference.[32] [33]

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[29] See, e.g., Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. 837 (1984).

[30] See e.g., Aluminum Co. of America v. Central Lincoln People's Util. Dist., 467 U.S. 380, 390 (1984).

[31] Nuclear Info. Resource Serv. v. NRC, 969 F.2d 1169, 1177 (D.C. Cir. 1992) (citing Siegel v. Atomic Energy Comm'n., 400 F.2d 778, 783 (D.C. Cir. 1968)).

[32] See e.g., Environmental Defense Fund v. NRC, 902 F.2d 785, 788-89 (10th Cir. 1990).

[33] Issuance, renewal and amendment of licenses for uranium recovery and tailings disposal operations are delegated to the Uranium Recovery Branch of the Office of Nuclear Material Safety and Safeguards. See NRC Delegation of Authority, C.J. Paperiello, Director, Office of Nuclear Material Safety and Safeguards, September 18, 1995, attached hereto as Exhibit 3.

In accordance with its statutory mandate and its interpretation of its own regulations and guidance developed pursuant thereto, NRC has reviewed all materials submitted by IUSA, in support of its alternate feed materials license amendment application. Based on its determination that IUSA has satisfied all conditions for the requested amendment, NRC has issued the requested license amendment allowing IUSA to process the Ashland 2 FUSRAP materials at IUSA's White Mesa Mill. The State, which is without jurisdiction to regulate uranium recovery licenses, is not entitled to interfere with NRC's regulatory function in order to advance the interests of another commercial enterprise operating in the state or to attempt to expand its regulatory jurisdiction without becoming an agreement state on these matters.[34/]

C. Clarifying the Technical Issues Raised in the State of Utah's Petition.

(i) Performance-Based Licensing: The amendment of IUSA's license No. SUA-1358 is not a performance-based license amendment. Rather, the license amendment at issue specifically allows the reprocessing of specified alternate feed materials from a specified source and disposal of tailings resulting from the reprocessing in an 11e.(2) byproduct tailings disposal cell. At the suggestion of NRC, IUSA did apply for a performance-based license amendment to process alternate feed materials in April 1998. That application is not the subject of Utah's pending petition, however, and the time period for requesting a hearing on that application has expired.

(ii) "Sham Disposal": Utah's petition claims, without any substantiation, that it is "unlikely that the material is being processed *primarily* for its source material content. Instead,

[34/] Utah has declined to be an agreement state with regard to uranium recovery licensing and consequently has no jurisdiction as regards to IUSA's license amendment here at issue.

Utah claims that the amendment will allow the Mill to become a disposal facility and will enable IUSA to circumvent the *stricter* disposal requirements of 10 CFR Part 61."[35]

NRC's "Final Position and Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores"[36] (hereinafter, "Alternate Feed Guidance") guidance governing processing of alternate feed materials at uranium mills subjects such processing to a three part test:

1. the material must be **"ore"** (Utah's Petition concedes that the Ashland 2 materials may properly be deemed "ore"[37]);
2. the material **cannot contain hazardous wastes** listed under the Resource Conservation and Recovery Act ("RCRA," 42 U.S.C. § 6901 et seq.) (this issue addressed below); and
3. the alternate feed **must be processed "primarily for its source-material content...."**[38]

As mentioned above, the State has conceded that the Ashland 2 materials are ore, so no further discussion on that point is required. We address last the issue of the procedures being employed to ensure that the Ashland 2 materials do not contain listed hazardous wastes to reflect the order in which these points are raised in the State's Petition. In determining whether the proposed processing was primarily for the source-material content or for the disposal of waste, **either** of the following tests can be used:"[39] the co-disposal test or the licensee certification test.

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[35] State of Utah Petition, at p. 11 (emphasis in original).

[36] NRC Policy Issue, August 15, 1995, attached as Exhibit 4 hereto.

[37] State of Utah Petition, at 17.

[38] 57 Fed. Reg. 20530-31.

[39] Id.

NRC has determined that **both** of these tests were satisfied in connection with IUSA's request for a license amendment.

co-disposal: under the co-disposal test, if NRC would approve direct disposal (i.e., in the absence of any reprocessing) of *non*-11e.(2) material (i.e., source material) in an 11e. (2) tailings cell for a fee, then NRC reasons that if the licensee reprocesses the material, it must be doing so "primarily" for its source material content. NRC found that the Ashland 2 material satisfies the co-disposal test because the Department of Energy ("DOE") (the regulatory agency with responsibility for the Tonawanda Site under the AEA until that responsibility recently was delegated to the U.S. Army Corps. of Engineers ("USACE")) determined that the material was 11e. (2) byproduct material.[40/] Thus, the reasoning of the co-disposal test applies to the Ashland 2 material with even more vigor than it would with respect to *non*-11e.(2) byproduct material. It is unquestioned that 11e.(2) byproduct material can be directly disposed in uranium mill tailings cells for a fee; therefore, if the licensee processes such materials, it must be doing so primarily for its source material content.[41/]

Utah's suggestion that the Ashland 2 material cannot be approved for disposal in an 11e. (2) disposal cell because NRC Uranium Recovery Branch stated that the material is not subject to NRC regulation until it arrives at White Mesa is irrelevant. Even if the Ashland 2 material were

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[40/] See DOE document EM-0233 (April 1995) discussing DOE FUSRAP sites. This document explains that "the waste at many FUSRAP sites...is a waste "byproduct" material known as 11e.(2), as defined under the Uranium Mill Tailings Radiation Control Act of 1978." (p.5). This document goes on to define "By-Product Material" as including "wastes from the processing of ores primarily to recover their source material content." (p. A-11). The document profiles the Ashland 2 material as "By-Product Material." (p. A3). Referenced pages are attached as Exhibit 5 hereto.

[41/] 11e.(2) byproduct material from in situ leach (ISL) uranium recovery operations must be disposed in uranium mill tailings facilities pursuant to Appendix A, Criterion 2. Disposal of such material directly into mill tailings impoundments for a disposal fee is currently and has been a routine practice under NRC's uranium recovery regulatory program.

conventional ore, NRC would not regulate it until it arrived at IUSA's mill. Thus, both conventional ore and non-NRC regulated 11e.(2) materials **become subject to NRC regulation** upon arrival at IUSA's mill.[42]

licensee certification: Under the Alternate Feed Guidance, [43] licensee certification that materials are being processed "primarily for source material content" can be justified by (i) financial considerations, (ii) the material's high uranium content, or (iii) on *other grounds*. NRC has accepted IUSA's certification that IUSA's reprocessing of the Ashland 2 materials is justified by financial considerations (increased efficiency of operating closer to mill capacity, avoiding the costs of shutdowns and startups, maintaining a trained work force, the similarity of the material to the conventional ore currently being stockpiled for the upcoming mill run, value of uranium extracted)[44] and on *other grounds* (the added advantage of recycling materials to recover a valuable resource and to reduce the radioactive content of the materials ultimately disposed). IUSA has made this certification based on knowledge of its business and has provided reasonable justification for this certification. NRC has accepted that justification. The State is not in a position to determine how IUSA should run its business or what makes sense to IUSA from a financial point of view.

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[42] See U.S. Nuclear Regulatory Commission, Final Generic Environmental Impact Statement on Uranium Milling, Appendix A, A-89 (Sept. 1980) (activities associated with and prior to processing ore at a mill site are within NRC's regulatory authority).

[43] See Alternate Feed Guidance, attached hereto as Exhibit 4 at 3-4.

[44] Despite NRC's having determined that IUSA is processing the Ashland 2 materials "primarily for the recovery of uranium," the State saw fit to attempt to calculate the average uranium content in the Ashland 2 materials. In so doing, the State mistakenly applied "0" values where, in fact, no values had been obtained. Consequently, Utah's calculation undercounts the average uranium content of the Ashland 2 materials.

Having determined that the Ashland 2 materials are "ore" and are being processed primarily for their source material content, it must be determined that these **materials do not contain listed hazardous wastes** if they are to be approved for processing by amendment of a source materials license. NRC technical staff has reviewed the extensive materials testing data provided to date by USACE and IUSA and provisions for testing to be performed in the future prior to processing at the Mill and found these a satisfactory basis for determining that the Ashland 2 material does not contain hazardous wastes listed pursuant to RCRA.

Utah alleges, without substantiation, that testing of Ashland 2 materials for hazardous constituents was inadequate and that "more" testing should be done prior to excavation of the materials.[45/] Speculating that "the area" may have been used for oil refinery residue disposal,[46/] Utah's Petition concludes, without explanation, "NRC evaluation in relation to hazardous waste determination is, therefore, not adequate."[47/]

Utah dismisses further sampling of feed materials during excavation by USACE contractor, ICF-Kaiser, and by IUSA upon arrival at the Mill as "consistent with a commercial disposal operation, not a reprocessing operation,"[48/] but offers nothing to suggest the relevance of this seeming non sequitur. After criticizing IUSA for not sampling enough, Utah inexplicably criticizes IUSA for proposing additional confirmatory testing. The sampling method for the Ashland

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[45/] State of Utah Petition, at 20.

[46/] Id., at 21.

[47/] Id.

[48/] Id.

2 materials was agreed upon by NRC and IUSA by incorporating the sampling procedures that NRC has imposed on Envirocare for 11e.(2) materials.

Utah's petition claims that "the State needs to review the entire Baseline Risk Assessment for the Tonawanda Site."[49] IUSA is unaware of anyone having prevented the State from doing so.

(iii) Stricter disposal requirements imposed on disposal facilities regulated pursuant to 10 CFR Part 61 (and Utah's state law equivalent, R313-25):

Utah's petition repeatedly refers to the "stricter" disposal requirements imposed by 10 CFR Part 61.[50] Utah doesn't specify what these "stricter" disposal requirements are, *but in any event this assertion is* **irrelevant**. In fact, the Part 61 standards do not apply to the Ashland 2 materials; as discussed above, this material is 11e.(2) byproduct material and, whether first re-processed or not, must be disposed of in an 11e.(2) tailings cell. **Both IUSA's and Envirocare's 11e.(2) cells are subject to the Part 40 standards, not the Part 61 standards.**[51]

Utah also claims that NRC has held another 11e.(2) disposal cell licensee (Envirocare) to a "higher standard,"[52] but doesn't specify what this "higher standard" is. In fact, Envirocare's

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[49] State of Utah's Petition, at 22.

[50] See, e.g., State of Utah's Petition, at 11.

[51] Utah appears to be confused about this issue. The Part 40 requirements governing 11e.(2) tailings disposal are, on balance, more protective of human health and the environment than are the Part 61 requirements governing land disposal of radioactive waste. Part 40 contemplates a maintenance timeline of 200-1000 years, whereas Part 61 contemplates 300-500 years. By statutory and regulatory mandate, care for IUSA's site in perpetuity will pass to the federal government, ensuring long-term monitoring and, if necessary, remediation. By regulation, Part 61 requires state or federal care for LLRW sites in perpetuity; however, IUSA understands that Utah has waived this provision with respect to the Envirocare LLRW site. Utah could not waive this fundamental health and safety requirement for either Envirocare's or IUSA's 11e.(2) tailings cell.

[52] Id.

proposal for disposing of the Ashland 2 material contemplated disposal in Envirocare's 11e.(2) tailings cell. Envirocare's 11e. (2) cell is regulated in precisely the same manner as IUSA's except that:

a. IUSA is in compliance with an air emission permit, issued pursuant to 40 CFR Part 61, Subpart W, regulating emissions from its tailings cell of radon, the primary 11e.(2) radiological contaminant of concern, thus assuring protection of public health and safety with "an ample margin of safety." Envirocare's 11e.(2) cell is not required to comply with this standard.[53/]

b. IUSA does not have a groundwater discharge permit because IUSA's facility is not subject to State jurisdiction in this regard. Nevertheless, even if the Mill was subject to State jurisdiction in this regard, IUSA's tailings cell does not discharge to groundwater and hence a groundwater discharge permit is not necessary and would not provide any additional protections. IUSA understands that upon discovering that its operations appeared to be causing radionuclides to be released to groundwater, Envirocare chose to expand their existing groundwater discharge permit for their naturally occurring radioactive material ("NORM") and LLRW disposal facilities to also include their 11e.(2) facility. In a letter from the Utah Department of Water Quality to Envirocare, DWQ stated that the Department's original preference had been for the 11e.(2) cell to be permitted by rule based upon NRC license requirements, rather than be given an individual groundwater permit. However, since DWQ had been given to understand Envirocare preferred an individual permit, one was issued.[54/] However, IUSA's 11e.(2) cell is more protective of

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[53/]See Letter from William Yellowtail, Regional Administrator, U.S. EPA, Region VIII, to Thomas Cochran, October 16, 1997, attached hereto as Exhibit 6_

[54/] See letter from Don A. Ostler, State of Utah Department of Environmental Quality, to Charles Judd, Envirocare of Utah, Inc. dated February 17, 1994 attached hereto as Exhibit 7.

human health and the environment because it has a double liner (synthetic and clay), a leachate collection system, and leak detection monitoring (to date there have been no discharges); to the best of IUSA's knowledge, Envirocare's cell has only a single, clay liner and has no leachate collection system, necessitating the discharge permit and potentially posing a significant contamination risk to groundwater.

In its Petition, the State suggests that the processing of the Ashland 2 materials is sham disposal, and that the materials should instead be disposed of directly in a State permitted LLRW disposal facility, which the State argues is more protective of the environment. As stated above, IUSA disagrees that a State permitted LLRW facility is more protective. Nevertheless, as the Ashland 2 materials are 11e.(2) byproduct material, if those materials are not processed as alternate feeds by IUSA, they would have to be placed into an 11e.(2) disposal cell. Permitting for such a direct disposal facility is in the jurisdiction of NRC and not the State. Therefore, if the processing of the Ashland 2 materials by IUSA at the White Mesa Mill was sham disposal, the alternative direct disposal would not be within the jurisdiction of the State. Therefore, the State's request for a hearing cannot be considered to be an effort to have IUSA comply with State requirements, since the Ashland 2 materials must be placed in an NRC regulated 11e.(2) disposal facility, not a state permitted LLRW facility, whether or not those materials are processed prior to disposal.

III. CONCLUSION

For all of the reasons set forth above, IUSA respectfully submits that Petitioner, State of Utah, lacks standing to obtain a hearing in this matter and its Request should be **DENIED.** In the event that Utah is determined to have standing entitling it to a hearing in this matter, the action of NRC Staff to amend IUSA's Source Materials License No. SUA-1358 should be upheld.

Respectfully submitted,

Anthony J. Thompson, Esq.
Frederick S. Phillips, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N. Street, N.W.
Washington, D.C. 20037
(202) 663-8000
Counsel to International (USA) Uranium Corporation

627003-01 / DOCSDC1

627003-01 / DOCSDC1

BEFORE THE UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF INTERNATIONAL URANIUM (USA) CORPORATION'S AMENDMENT TO NRC SOURCE MATERIAL LICENSE SUA-1358	))))))	DOCKET NO.

DOCKETED
AUG - 3 1998
RULEMAKINGS AND
ADJUDICATIONS STAFF
SECY-NRC

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Opposition of International Uranium (USA) Corporaton to State of Utah's Request for Hearing" in the above-captioned proceeding have been served on the following by facsimile, on this 3rd day of August, 1998:

Anthony J. Thompson by [illegible]

Anthony J. Thompson
SHAW, PITTMAN, POTTS
& TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037-1128
Tel: (202) 663-8000
Fax: (202) 663-8007

Dated: August 3, 1998

Mr. Joseph Holonich
Uranium Recovery Branch
Division of Waste Management
Office of Nuclear Material
Safety and Safeguards
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Md 20852

Office of Rulemakings and Adjudications
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Mr. John C. Hoyle
Office of the Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Fred G. Nelson, Assistant Attorney General
Attorney for State of Utah
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, Utah 84114-0873

Anthony J. Thompson by FGN

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Tel: (202) 663-8000
Fax: (202) 663-8007

Dated: August 3, 1998

628243-01 / DOCSDC1

EXHIBIT 1

July 17,1998

URANIUM WORKERS FIGHT FOR FREEDOM TO BE HEARD!

The Constitution states that very citizen in the United States has the right to speak! Upon receiving the article written by Ken Sleight entitled The Making of A Nuclear Waste Dump at the White Mesa Mill. We the Native American Uranium Mill workers would like for you to hear what we have to say.

First off being workers as we are of International Uranium Corp. Located at the White Mesa Mill we would all like to know why we haven't had the oppurnity to speak our emotions to all that is being said. Many of us have been here for more than ten years and plan to work until we know when it is time for us to retire. In the article it states that in past the Navajo and Ute tribes have been concerned with health hazards and Aboriginal land issues. The reason it is not relevant now is that we know as employees that Radiation is not a high risk factor as long as we take the right precautions. We also know what type of material we are being exposed to. As far as the public goes they would not be at high risk, unless they were to eat the waste. Instead of supplying the public with information about the hazards of the material, why not supply them with the material of how non- hazardous it can be?

Why is it also that the County Commissioner's do not take a step forward on to helping the Mill to assure that they receive the proper license for the Material. San Juan County has a background of Radioactivity. There were Uranium Plants all over San Juan County. To this day every person all over the world dwell on this planet we call Earth which is covered with Hazardous materials, and we would like to know now what the big deal is? Helping the Mill to receive the proper license would surely make it a lot easier; the reason being is that we already know how to handle the material! All of our lives we eat what grows from the ground, Drink water which also comes from the ground, even our livestock feast from the ground in return we feast off our livestock. It is a life cycle no matter how you see it.

The date for NRC's approval was June 23,1998. It was submitted on May 8,1998, exactly 20 days before the article was written. Also the last load of Wastren Ore or New York waste came through our gates on March 27,1998 which is 108 days and approximately three months and fourteen days.

The International Uranium Corporation has supplied jobs to 40 –45% minorities in the past four years. Out of those four years 95-98% were Native American. So as you can see there has been a good amount of Native American's who have worked here and many of them still do today.

Thanks,

Tarena Heilig Bunn

LAB.

Top Five Representatives:

1. Wilson Bennett
2. Roy Atcitty
3. James Sampson
4. John Stash
5. Dan Nakai

Notice: We have three different shifts so many of us may not have signed.

To: Melvin R. Brown
Speaker of the House of Representatives
Salt Lake City, UT 84114
xc: Governor Michael Leavitt
Joseph J. Holonich, NRC
Dianne Nielson
US Army Corps of Engineers
Senator Robert Bennett
Senator Orrin Hatch
Congressman James V. Hansen
Congressman Chris Cannon
Congressman Merrill Cook
From: Employees of IUC and Citizens of Blanding
Date: July 22, 1998
Re.: "Sham" Recycling

This communication is a response to your letter of today's date to Mr. Joseph J. Holonich, Chief of the Uranium Recovery Branch of the Nuclear Regulatory Commission in Washington, D.C. Please be advised that what you are describing as a "sham" recycling process at the White Mesa Uranium Mill is grounded in faulty information. You are encouraged to become more informed on this issue by actually visiting with the mill and its management, rather than depending on biased reports that derive from personal agendas that pervert and stretch the truth. If you are genuinely concerned about what is going on, please seek objectivity and a balanced perspective, rather than being swayed by only one point of view.

Those of us who live and work in this environment have more at stake and more to lose than anyone else, should we be a part of a compromised ecosystem. Self interest requires that we be concerned for the health and welfare of ourselves and our families. We are confident that what is occurring at the White Mesa Uranium Mill is a responsible and environmentally sensitive process that is actually improving our environment rather than negatively impacting it.

There is a strong opinion held locally that the decision to bury the uranium tailings in Monticello was a less environmentally sound solution than the recycling of that byproduct would have been. Time will eventually reveal that solution to have been temporary. We feel that re-processing the uranium waste creates a permanent solution to the problem and renews a resource. What we are involved with is real and not a "sham." Please bring an objective team of competent professionals to evaluate us and our process before passing judgment.

We the undersigned citizens of San Juan County affix our signatures to this petition to emphasize our support of the resolution unanimously concurred in by the Blanding City Council in their public meeting held on July 22, 1998, in support of the uranium recycling process at the White Mesa Mill.

CITY OF BLANDING

"Base Camp to Adventure"

50 West 100 South Blanding, Utah 84511 (801) 678-2791 / Fax (801) 678-3312 / E-Mail - blandingcity@sima.com

July 23, 1998

Joseph J. Holonich, Chief
Uranium Recovery Branch
Division of Waste Management
Nuclear Regulatory Commission
Mail Stop T719
Washington D.C. 20555-0001

Via Fax # (301) 415-5397

Re: White Mesa Mill Processing of Alternative Fee Ores

Dear Mr. Holinich:

We only learned yesterday of a movement to block the processing of alternative feed ores at the White Mesa Mill (a major employer of Blanding citizens) just south of Blanding. We were not only shocked but dismayed at the lack of understanding regarding the issues at hand.

It has been less than a year ago that similar sentiments were made in the name of "public safety" in an effort to stop the processing of these alternative feed ores. The Wasatch front papers jumped on the band wagon and the environmental activities sounded alarms. Without jumping to conclusions our little City corresponded with Utah's Department of Environmental Quality who educated us again on the issues assuring the City that politicians and activists were over reacting and that the danger to public safety was non-existent.

Having learned that alternative ores are a safe source of feed for the mill we encouraged the International Uranium Corporation to aggressively pursue these sources since it aids in providing a more viable and consistent source of economic development and stability to the community. They did pursue these sources and it has had a stabilizing influence (consistent operations and layoffs few and far between).

This latest effort to enforce additional fees and restrictions seems to be nothing more than political based bureaucracy thrashed out in an effort to protect selective pocket books.

Please know that we have full confidence in the Nuclear Regulatory Commissions ability to provide the necessary regulatory standards to ensure public safety and environmental compliance. We fully support the alternative feed operations as well as those others approved by your commission.

Having just received a grant of $875,000 from the federal government to aid in economic development in the City of Blanding, it certainly would seem counter productive to restrict our largest employer only to satisfy governmental ego's and political posturing.

Please let us know if we can do anything further to ensure the continued and safe viability of the White Mesa Mill. It is so important to so many of us here in Southeast Utah.

Respectfully,
City of Blanding

Calvin Balch
Mayor

xc: Dr. Dianne R. Nielson
Rep. Merrill Cook
Dr. Shirley A. Jackson
Harold R. Roberts
Rep. Christopher B. Cannon
Governor Michael O. Leavitt
Bruce Howard
Melvin R. Brown
Senator Orrin G. Hatch
Rep. James Hansen
Kip Huston
City Council

EXHIBIT 2

The Salt Lake Tribune

Saturday, June 27, 1998

Nuke Tailings May Be Moved To Utah Site

BY PAUL ROLLY
THE SALT LAKE TRIBUNE

The federal Nuclear Regulatory Commission (NRC) has OK'd the transfer of thousands of tons of radioactive uranium mill tailings from New York to the White Mesa uranium reprocessing facility near Blanding in southeastern Utah.

But the Utah Department of Environmental Quality (DEQ) has protested the move until tests can determine whether the tailings contain enough uranium to be reprocessed into a usable energy source for power plants.

Without that assurance, state officials worry that International Uranium, operator of the White Mesa site, could end up disposing of the low-level radioactive material without the proper state permits and oversight.

``We have 30 days after the NRC approval to appeal the decision to move the material," said Bill Sinclair, director of the state Division of Radiation Control.

``To our knowledge, the Army Corps of Engineers has not signed the contract with International Uranium," said Sinclair.

There will be no action until that contract is signed.

Several sites in the Western United States have expressed interest in receiving the tailings left over from the World War II Manhattan Project in Tonawanda, N.Y. But White Mesa needs NRC approval because it is licensed just to receive uranium ore that can be reprocessed for nuclear power capability.

The tailings from Tonawanda are considered ``alternative feed material," so an amended license is required. That amended license, according to state officials, was approved by the NRC this week.

``We want to make sure that the White Mesa facility is not just saying it will reprocess the tailings when in fact it may just dispose of them in the tailings pond," said Dianne Nielson, DEQ director.

The state, according to its letter to the NRC, wants a study to ensure the tailings contain the proper uranium value for reprocessing.

``If it turns out the tailings are not worth reprocessing, then by turning the White Mesa site into a storage facility without the proper

state permits would give it an improper economic advantage," the letter said.

Radioactive disposal permits cost several hundred thousand dollars a year, plus the costs of state and federal oversight of the storage process.

The only facility permitted to store radioactive waste in Utah is Envirocare Inc., with its facility in Tooele County.

Sinclair said the Army Corps of Engineers expressed a desire to generate more competition in the radioactive-waste disposal industry. So it has entertained applications from other bidders. But states have been active in the courts in asserting their authority to grant permits before radioactive waste is transferred into their areas.

Sinclair said if a contract is signed with the Army Corps of Engineers before questions from Utah officials are satisfactorily answered, the state may go to court to seek an injunction against the move.

The Army Corps of Engineers already has committed to a $38 million cleanup of the uranium tailings dumped near the Niagara River after the Manhattan Project.

An article in the Buffalo News on Monday said the cleanup project could begin ``within the next two weeks."

The move could be halted on the New York end, however, even without the Utah protest.

The environmental group FACTS (For a Clean Tonawanda Site) has filed a federal lawsuit in New York that asks a judge to halt the cleanup until more research can be done.

The NRC approval for the White Mesa site means Utah now is fighting a two-front war against the onslaught of radioactive waste without the projection of a state permit and the regulatory and oversight authority such a permit brings with it.

Gov. Mike Leavitt already is engaged in a vigorous battle to keep a conglomerate of nuclear power plant operators in the eastern United States from shipping high-level radioactive waste to the Goshute reservation in Utah's west desert.

That NRC application still is pending.

EXHIBIT 3

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 18, 1995

MEMORANDUM TO: Division Directors, Deputy Directors, Branch Chiefs and Section Leaders

FROM: Carl J. Paperiello, Director
Office of Nuclear Material Safety and Safeguards

SUBJECT: DELEGATIONS OF AUTHORITY

The most recent Delegations of Authority for the Office of Nuclear Material Safety and Safeguards (NMSS) were dated February 11, 1991. These were based on the Delegation to the Office Director from the Chairman (June 16, 1976), subsequent delegations up to February 1991, and the NMSS organization at that time.

Since February 1991, there have been numerous changes within NMSS. The most recent changes are creation of the Spent Fuel Project Office (May 14, 1995) and a June 20, 1995, delegation from the Director, Office of Enforcement. To accurately reflect current responsibilities and authorities, the attached revision of the NMSS Delegations of Authority has been prepared. Please take note of the responsibilities and authorities that are currently redelegated from the Office Director to you and your staff.

Attachment:
As stated

OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
DELEGATIONS OF AUTHORITY
SEPTEMBER 1995

ACTION	SIGNATURE AND APPROVAL AUTHORITY[4]
Director, NMSS	
1. Orders (10 CFR 2.202)	Director, NMSS[1]
2. Demands for Information (10 CFR 2.204)	Director, NMSS[1]
3. Construction Permits (10 CFR 50 - Production Facilities)	Director, NMSS[1]
4. Operating Licenses (10 CFR 50 - Production Facilities)	Director, NMSS[1]
5. Director's Decision (10 CFR 2.206)	Director, NMSS[1]
6. Issue subpoenas under Section 161c. of the Atomic Energy Act with concurrence of the Office of the General Counsel.	Director, NMSS[1]
7. Prepare, sign and issue enforcement actions for MC&A violations and violations caused by certificate holders of transportation packages, for matters evaluated and managed by NMSS (By memo from Director, OE, dtd 6/6/89):	
a Actions involving Severity Level I and II violations and proposed civil penalties	Director, NMSS[1,5] (With concurrence of the Director, Office of Enforcement and Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support)

ACTION	SIGNATURE AND APPROVAL AUTHORITY[5/]
Director, NMSS (cont'd)	
b. Notices of Violation with Severity Level III violations	Division Director[2,5,6/] Director, SFPO (With concurrence of the Director, NMSS, the Director, Office of Enforcement and Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support)
c. Notices of Violation with Severity Level IV violations	Branch Chief[5/] Deputy Director, SFPO
8. Prepare, sign and issue enforcement actions concerning decommissioning activities for matters evaluated and managed by NMSS (by memo from Director, OE, dtd 6/20/95):	
a. Actions involving Severity Level I and II violations and proposed civil penalties	Director, NMSS[1,5/] (With concurrence of the Director, Office of Enforcement and Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support)
b. Notices of Violation with Severity Level III Violations	Director, DWM[2,5/] (With concurrence of the Director, NMSS, the Director, Office of Enforcement and Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support)
c. Notices of Violation with Severity Level IV violations	Branch Chief[5/] LLDP/DWM
9. Review and approve Instant Awards for NMSS employees (these are Special Achievement Awards for Special Acts or Services of up to $200)	Director, NMSS[1/]

ACTION	SIGNATURE AND APPROVAL AUTHORITY[4]
Deputy Director, NMSS	
10. Reviewing Official for SES Performance Plans for Deputy Division Directors and below	Deputy Director, NMSS
Director, Program Management, Policy Development and Analysis Staff (PMDA)	
11. Center for Nuclear Waste Regulatory Analyses (CNWRA) Activities:	Director, PMDA
a. Overall programmatic performance of operations	
b. Assuring appropriate integration of work assigned	
c. Assessment of Center performance; Chairman of Center Review Group	
d. Recommend approval, disapproval, or suspension of costs requested for reimbursement by the Center based on review of the Center's progress and performance	
12. Allowance Financial Manager under Chief Financial Officer Act of 1990	Director, PMDA
13. Signature authority on personnel actions (SF-52) for NMSS	Director, PMDA
14. Contracting	Director, PMDA
a. Sign and issue Requests for Procurement Action (RFPAs), Requests for Assistance Action (RFAAs) for Grants and Cooperative Agreements, and Requisitions for Supplies, Equipment, or Labor Services (NRC Form 30 for technical assistance contracts under $25K)	
b. Sign and issue requests for proposals to DOE for work to be performed by the national laboratories	
c. Authorize, sign, and issue NRC Forms 173, Standard Order for DOE Work (SOEW), NRC Forms 173A, Standard Order for Interagency Work (SOIW), and accompanying statements of work, task descriptions, or modifications to work statements	
d. Sign and approve DOE Source Selection Justifications (NRC Form 367) and Justification for Task Order Technical Assistance Contracts	

ACTION	SIGNATURE AND APPROVAL AUTHORITY[6]
Director, Program Management, Policy Development and Analysis Staff (cont'd)	
e. Sign and issue Source Evaluation Panel Designations	
f. Approve and sign Source Evaluation Panel Reports (Competitive Range Reports and Final Evaluation Reports)	
g. Enter into, extend, modify, and terminate orders and agreements with other agencies, as appropriate, and settle termination thereof (by memo from Director, NMSS, dated 5/18/94)	
General	
15. Withholding of information from public disclosure with Decision and Notice to Applicant	Division Director[2,6] Director, SFPO
16. Denial of licenses	Division Director[2,6] Director, SFPO
17. Grant exemptions from the regulations	Division Director[2,6] Director, SFPO (may be redelegated in writing to Branch Chiefs or Deputy Director, SFPO, citing specific types of exemptions)
18. Correspondence to Applicants and Licensees:	
a. All correspondence related to the normal processing of applications and related safety, safeguards, and environmental reviews, transmitting comments to applicant	Branch Chief[3] Deputy Director, SFPO (may be redelegated in writing)
b. All other correspondence (the Branch Chief is expected to determine whether the subject matter goes beyond the normal process)	Branch Chief[3] Deputy Director, SFPO or Division Director/Director, SFPO as appropriate
19. Letters to Federal Agencies transmitting Environmental Reports	Branch Chief Deputy Director, SFPO
20. Letters to Federal, State, and local agencies requesting comments on Environmental Reports	Branch Chief Deputy Director, SFPO

ACTION	SIGNATURE AND APPROVAL AUTHORITY[5]
General (cont'd)	
21. Recommend to the Commission rules and regulations and amendments thereto on matters within your delegated authority; develop policy options for Commission consideration on matters within your delegated authority	Division Director[2,6] Director, SFPO through the Director, NMSS
22. Recommend research to enable the Commission to effectively perform its functions	Division Director[2,6] Director, SFPO Branch Chief Deputy Director, SFPO through the Director, NMSS
23. Recommend and/or concur in rulemaking to enable the Commission to effectively perform its functions	Division Director[2,6] Director, SFPO through the Director, NMSS
24. Staff Reports to ACRS and ACNW: primary point of contact	Division Director Director, SFPO
25. Notices to the Federal Register and request to publish	Branch Chief Deputy Director, SFPO
26. Administrative approval of travel	
a. Domestic Travel (Approval must be one level above the proposing level)	Branch Chief
b. Foreign travel (Form 445)	Deputy Director, NMSS
c. Approval of Contractor foreign travel	Deputy Director, NMSS
27. Personnel Actions:	
a. Termination of employee during probationary period and adverse actions (non performance-based)	Division Director or Branch Chief Director, SFPO or Deputy Director, SFPO (one level above proposing level)

ACTION	SIGNATURE AND APPROVAL AUTHORITY[2/]
General (cont'd)	
b. Performance-based actions (involve intent to separate employee or reduce in grade)	Division Director or Branch Chief Director, SFPO Deputy Director, SFPO (one level above proposing level)
c. Memoranda of admonition and formal letters of reprimand	Immediate Supervisor
Division of Industrial and Medical Nuclear Safety	
28. Examination and Issuance of Operator Licenses	Branch Chief[3/] (may be redelegated in writing)
29. Issue, renew and amend By-product, Source, and Special Nuclear Material licenses	Branch Chief[3/] (may be redelegated in writing)
30. Shipping container quality assurance program approvals	Branch Chief[3/] (may be redelegated in writing)
Division of Fuel Cycle Safety and Safeguards	
31. Construction Permit Safety Evaluation Reports (SER) for Production Facilities	Division Director
32. Operating License Safety Evaluation Reports (SER) for Production Facilities	Division Director
33. Construction Permit Amendments for Production Facilities	Branch Chief
34. Operating License Amendments for Production Facilities	Branch Chief
35. Safeguards Functions:	Division Director[2/]
a. Pursuant to Section 204 of The Energy Reorganization Act of 1974, as amended, monitor, test, and recommend upgrading of physical security and material control and accounting systems for nuclear materials licensed under The Atomic Energy Act of 1954, as amended	

ACTION	SIGNATURE AND APPROVAL AUTHORITY[4]
Division of Fuel Cycle Safety and Safeguards (cont'd)	
b. Pursuant to Section 204 of The Energy Reorganization Act of 1974, as amended, develop, in consultation and coordination with the Department of Energy, contingency plans for dealing with threats, thefts and sabotage relating to special nuclear materials, nuclear facilities and high-level radioactive wastes resulting from all activities licensed under The Atomic Energy Act of 1954, as amended.	
36. Safeguards license conditions	Branch Chief[3]
37. Approve and grant exemptions to physical security and MC&A plans	Branch Chief[3]
38. Issue, renew, amend and terminate Source and Special Nuclear Material licenses	Branch Chief[3]
Spent Fuel Project Office	
39. Sign certificates of compliance for dry spent fuel storage casks	Director, SFPO[6]
40. Shipping container design approvals	Director, SFPO[6]
41. Issue, renew, amend and terminate Source, Byproduct, and Special Nuclear Material licenses	Director, SFPO[6]
Division of Waste Management	
42. Issue high-level waste management Technical Positions	Division Director[2] (may be redelegated in writing
43. Issue, renew and amend licenses to dispose of low-level radioactive waste under 10 CFR 61	Division Director[2] (may be redelegated in writing)
44. Pursuant to Title I of the Uranium Mill Tailings Radiation Control Act of 1978, provide advice, consultation and concurrence as required in all aspects of the Department of Energy actions implementing Title I to prevent or minimize hazards associated with designated inactive mill tailings sites	Branch Chief[3]

ACTION	SIGNATURE AND APPROVAL AUTHORITY[4]
45. Low-Level Waste Management Topical Report approvals	Branch Chief[3] (may be redelegated in writing)
46. Issue, renew, and amend licenses for uranium recovery and tailings disposal operations	Branch Chief[3]

ACTION	SIGNATURE AND APPROVAL AUTHORITY[4]

1/ Or Deputy Director, NMSS, acting for the Director

2/ Or Deputy Division Director, acting for the Division Director

3/ Division Directors are to review Branch Chiefs newly issued license conditions and approvals with the objective of determining that they are both necessary and adequate to meet program objectives and that the NRC/industry licensing interface is operating satisfactorily.

4/ It is incumbent upon persons delegated authority to raise to the attention of the next higher level of management proposed actions which have broad programmatic, public health and safety, or public interest potential prior to taking the action to determine if the delegated authority in the specific case should be moved to a higher level of management.

5/ Notices of Violation with Severity Level III violations or higher, proposed civil penalties, and correspondence associated with such actions require the concurrence of the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, unless delegated to the Director, Office of Enforcement. NRC Enforcement Manual Chapter 0400, the NRC Enforcement Policy, Enforcement Guidance Memoranda, and other guidance procedures of the Office of Enforcement shall be followed in conducting enforcement activities under this delegation.

6/ Or Deputy Director, acting for the Director, Spent Fuel Project Office (SFPO)

EXHIBIT 4

(1) AMC Comments on ANPRM

POLICY ISSUE
(Notation Vote) (2)

August 15, 1995

SECY-95-211

FOR: The Commissioners

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: FINAL "REVISED GUIDANCE ON DISPOSAL OF NON-ATOMIC ENERGY ACT OF 1954, SECTION 11e.(2) BYPRODUCT MATERIAL IN TAILINGS IMPOUNDMENTS," AND FINAL "POSITION AND GUIDANCE ON THE USE OF URANIUM MILL FEED MATERIALS OTHER THAN NATURAL ORES"

PURPOSE:

To obtain Commission approval of two final guidance documents related to the Uranium Recovery Program (Attachment 1).

BACKGROUND:

Over the past several years, the U.S. Nuclear Regulatory Commission staff has developed guidance on proposed activities, other than the normal processing of native uranium ore, at uranium mills. On August 7, 1991, SECY-91-243 informed the Commission of the staff's proposed approach for responding to applicant requests to dispose of material other than Atomic Energy Act (AEA) of 1954, Section 11e.(2), byproduct material in mill tailings impoundments. On January 17, 1992, the staff provided revisions to the guidance proposed in SECY-91-243, to address concerns raised by the Commission, in a Staff Requirements Memorandum (SRM) dated September 20, 1991.

Contact: Myron Fliegel, NMSS
415-6629

TO BE MADE PUBLICLY AVAILABLE IN 5 WORKING DAYS FROM THE DATE OF THIS PAPER

FINAL GUIDANCE DOCUMENTS

FINAL REVISED GUIDANCE ON DISPOSAL OF NON-ATOMIC ENERGY ACT OF 1954, SECTION 11e.(2) BYPRODUCT MATERIAL IN TAILINGS IMPOUNDMENTS

1. In reviewing licensee requests for the disposal of wastes that have radiological characteristics comparable to those of Atomic Energy Act (AEA) of 1954, Section 11e.(2) byproduct material [hereafter designated as "11e.(2) byproduct material"] in tailings impoundments, staff will follow the guidance set forth below. Since mill tailings impoundments are already regulated under 10 CFR Part 40, licensing of the receipt and disposal of such material [hereafter designated as "non-11e.(2) byproduct material[1]"] should also be done under 10 CFR Part 40.

2. Radioactive material not regulated under the AEA shall not be authorized for disposal in an 11e.(2) byproduct material impoundment.

3. Special nuclear material and Section 11e.(1) byproduct material waste should not be considered as candidates for disposal in a tailings impoundment, without compelling reasons to the contrary. If staff believes that such material should be disposed of in a tailings impoundment in a specific instance, a request for approval by the Commission should be prepared.

4. The 11e.(2) licensee must demonstrate that the material is not subject to applicable Resource Conservation and Recovery Act (RCRA) regulations or other U.S. Environmental Protection Agency (EPA) standards for hazardous or toxic wastes prior to disposal. To further ensure that RCRA hazardous waste is not inadvertently disposed of in mill tailings impoundments, the 11e.(2) licensee also must demonstrate, for waste containing source material, as defined under the AEA, that the waste does not also contain material classified as hazardous waste according to 40 CFR Part 261. In addition, the licensee must demonstrate that the non-11e.(2) material does not contain material regulated under other Federal statutes, such as the Toxic Substances Control Act. Thus, source material physically mixed with other material, would require evaluation in accordance with 40 CFR Part 261, or 40 CFR Part 761. (These provisions would cover material such as: characteristically hazardous waste; listed hazardous waste; and polychlorinated biphenyls.) The demonstration and testing should follow accepted EPA regulations and protocols.

5. The 11e.(2) licensee must demonstrate that there are no Comprehensive Environmental Response, Compensation and Liability Act issues related to the disposal of the non-11e.(2) byproduct material.

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[1]"non-11e.(2) byproduct material" as used here is simply an encompassing term for source, special nuclear, and 11e.(1) byproduct materials.

6. The 11e.(2) licensee must demonstrate that there will be no significant environmental impact from disposing of this material.

7. The 11e.(2) licensee must demonstrate that the proposed disposal will not compromise the reclamation of the tailings impoundment by demonstrating compliance with the reclamation and closure criteria of Appendix A of 10 CFR Part 40.

8. The 11e.(2) licensee must provide documentation showing approval by the Regional Low-Level Waste Compact in whose jurisdiction the waste originates as well as approval by the Compact in whose jurisdiction the disposal site is located.

9. The Department of Energy (DOE) and the State in which the tailings impoundment is located, should be informed of the Nuclear Regulatory Commission findings and proposed action, with a request to concur within 120 days. A concurrence and commitment from either DOE or the State to take title to the tailings impoundment after closure must be received before granting the license amendment to the 11e.(2) licensee.

10. The mechanism to authorize the disposal of non-11e.(2) byproduct material in a tailings impoundment is an amendment to the mill license under 10 CFR Part 40, authorizing the receipt of the material and its disposal. Additionally, an exemption to the requirements of 10 CFR Part 61, under the authority of § 61.6, must be granted. (If the tailings impoundment is located in an Agreement State with low-level waste licensing authority, the State must take appropriate action to exempt the non-11e.(2) byproduct material from regulation as low-level waste.) The license amendment and the § 61.6 exemption should be supported with a staff analysis addressing the issues discussed in this guidance.

FINAL POSITION AND GUIDANCE ON THE USE OF URANIUM MILL FEED MATERIAL OTHER THAN NATURAL ORES

Staff reviewing licensee requests to process alternate feed material (material other than natural ore) in uranium mills should follow the guidance presented below. Besides reviewing to determine compliance with appropriate aspects of Appendix A of 10 CFR Part 40, the staff should also address the following issues:

1. <u>Determination of whether the feed material is ore</u>.

   For the tailings and wastes from the proposed processing to qualify as 11e.(2) byproduct material, the feed material must qualify as "ore." In determining whether the feed material is ore, the following definition of ore must be used:

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.

2. Determination of whether the feed material contains hazardous waste.

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. If the licensee can show that the proposed feed material does not contain a listed hazardous waste, this issue is resolved.

Feed material exhibiting only a characteristic of hazardous waste (ignitable, corrosive, reactive, toxic) would not be regulated as hazardous waste and could therefore be approved for recycling and extraction of source material. However, this does not apply to residues from water treatment, so acceptance of water treatment residues as feed material will depend on their not containing any hazardous or characteristic hazardous waste. Staff will consult with EPA (or the State) before making a determination of whether the feed material contains hazardous waste.

3. Determination of whether the ore is being processed primarily for its source-material content.

For the tailings and waste from the proposed processing to qualify as 11e.(2) byproduct material, the ore must be processed primarily for its source-material content. There is concern that wastes that would have to be disposed of as radioactive or mixed waste would be proposed for processing at a uranium mill primarily to be able to dispose of it in the tailings pile as 11e.(2) byproduct material. In determining whether the proposed processing is primarily for the source-material content or for the disposal of waste, either of the following tests can be used:

a. Co-disposal test: Determine if the feed material would be approved for disposal in the tailings impoundment under the "Final Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments," or revisions or replacements to that guidance. If the material would be approved for disposal, it can be concluded that if a mill operator proposes to process it, the processing is primarily for the source-material content. The material would have to be physically and chemically similar to 11e.(2) byproduct material and not be subject to RCRA or other EPA hazardous-waste regulations, as discussed in the guidance.

b. Licensee certification and justification test: The licensee must certify under oath or affirmation that the feed material is to be processed primarily for the recovery of uranium and for no other primary purpose. The licensee must also justify, with reasonable documentation, the certification. The justification can be based on financial considerations, the high uranium content of the feed

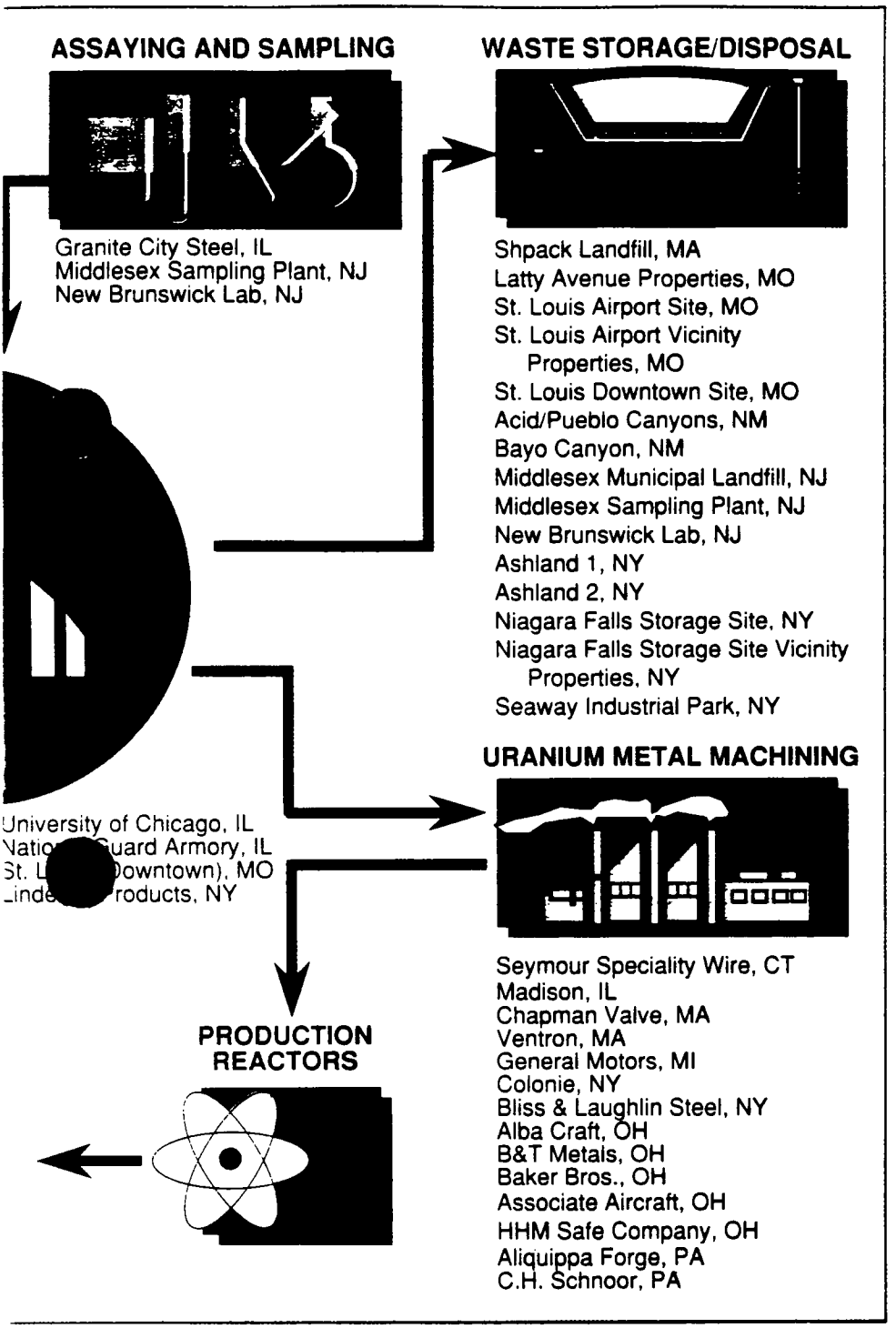
material, or other grounds. The determination that the proposed processing is primarily for the source material content must be made on a case-specific basis.

If it can be determined, using the aforementioned guidance, that the proposed feed material meets the definition of ore, that it will not introduce a hazardous waste not otherwise exempted, and that the primary purpose of its processing is for its source-material content, the request can be approved.

EXHIBIT 5

DOE/EM-0233
April 1995

U.S. Department of Energy
Office of Environmental Restoration



throughout the United States. Each of the 46 FUSRAP sites is associated with one or more of these activities.

uranium was sent to production reactors—primarily the Hanford Reservation in Washington State in the 1940s and the Savannah River Plant in South Carolina in the 1950s. These reactors produced basic materials used in making nuclear weapons. These resulting materials were then sent from the production reactors to weapons development facilities.

DOE began FUSRAP in 1974 to study and clean up these sites. If a site is a candidate for FUSRAP, old records are reviewed, previous employees are interviewed, and the site is surveyed. If contamination is found that is connected to MED or AEC activities, cleanup is approved under FUSRAP. Congress also has added specific sites to FUSRAP.

FUSRAP Legal Authority

Three Federal laws give DOE the authority to conduct FUSRAP activities:

- The Atomic Energy Act of 1954 (AEA) requires that public health and safety be protected during all atomic energy research and production activities.

- The 1984 Energy and Water Development Appropriations Act established FUSRAP projects at four specific sites: Colonie, New York; Wayne, New Jersey;

FUSRAP Waste Handling Options

Treatment: *Any method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to make it nonhazardous or less hazardous, safer to transport, or safer to dispose of or store.*

Storage: *Holding hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.*

Disposal: *Permanent placement of waste that ensures isolation of the waste and no intention of retrieval in the foreseeable future.*

appropriate Federal laws and regulations and State and local environmental and land-use requirements (to the extent permitted by Federal law); and

- Certify the sites for appropriate future use.

DOE continues to improve its FUSRAP objectives and modify the scope of the program as it learns from previous FUSRAP cleanup activities.

Waste Types at FUSRAP Sites

The waste at many FUSRAP sites is like a sandy soil. Much of this material resulted from processing ore to recover uranium and thorium. This waste is a "by-product" material known as 11e(2), as defined under the Uranium Mill Tailings Radiation Control Act of 1978. Very low levels of uranium from the machining of uranium metal are found at several FUSRAP sites. This waste is known as low-level radioactive waste (see Glossary in Appendix 4).

The low-level waste at FUSRAP sites is stored or disposed of according to applicable Federal, State, and local regulations and DOE guidelines. Wastes may be stored in containerized drums, engineered containment structures, or shipping containers to control leakage. DOE currently uses commercial disposal facilities and other Federal sites to dispose of the waste.

FUSRAP Cleanup Progress

Since 1974, FUSRAP has identified several hundred sites that were used to support the MED/AEC from the early 1940s through the early 1960s. Most of these sites were involved in some way in processing or handling radioactive material owned by the Government. More than 400 sites have been identified as potential candidates for FUSRAP. Many of these sites are covered by other Federal cleanup programs or are under the jurisdiction of other agencies and, therefore, will not be cleaned up under FUSRAP.

Other sites require more detailed investigations, and in some cases, radiological surveys. To date, 46 sites and their vicinity properties have been included in FUSRAP. More than 300 sites have been eliminated from FUSRAP, because there is no significant potential for radioactive materials at the site, DOE does not have authority to conduct the cleanup, and/or another government agency or program has authority and is responsible for cleanup.

DOE currently estimates that all FUSRAP sites will be cleaned up by the year 2016, at a total cost of approximately $2.5 billion.

Site Name	Location	Description	Site Origin	Vicinity Properties	Waste Types	Estimated Waste
New York [cont'd]						
Ashland 2	Tonawanda	115 acres of contaminated soil covered by vegetation at a non-operating facility. Contaminated soil from Ashland 1 disposed at Ashland 2.	DOE assigned	None	By-product material, Radium, Thorium, Uranium	52,100yd^3
Linde Air Products	Tonawanda	135 acres bordered by industries, businesses, undeveloped land, and a golf course. 5 buildings were used for uranium separation and conversion processes.	DOE assigned	1	By-product material, Radium, Thorium, Uranium	71,000yd^3
Seaway Industrial Park	Tonawanda	93 acres with no buildings and little vegetation containing approx. 6,000yd^3 of soil excavated from Ashland 1 site. Soil containing low-grade uranium ore tailings is limited to 14 acres of the site.	DOE assigned	None	By-product material, Radium, Thorium, Uranium	117,000yd^3
Bliss & Laughlin Steel	Buffalo	A single large building with a floor area of 12,000m^2. Contamination is limited to a 300m^2 floor area in the southeast part of the building where uranium rods were machined and straightened in 1952.	DOE assigned	None	LLW (Uranium)	20yd^3
Colonie	Colonie	DOE-owned/leased site. 11 acres of fenced plant buildings with uranium processing equipment. All buildings and some grounds are radioactively contaminated. Mixed light-industrial, commercial, and residential area. Contaminated waste from 53 vicinity properties are stored inside plant.	Assigned by Congress	56	LLW (Uranium), Mixed Waste, Chemical	53,909yd^3
Niagara Falls Storage Site	Lewiston/ Youngstown/ Niagara Falls	DOE-owned/leased site. 191-acre fenced area where radioactive low-grade residues from the Linde site and portion of high-grade residues from SLDS are stored in an encapsulated disposal design.	DOE assigned	26	By-product material, K-65, Radium, Thorium, Uranium	205,000yd^3

Atomic Energy Act (AEA): The Act of 1946 placed responsibility for production and control of nuclear materials within a civilian agency, originally the Atomic Energy Commission. The Act of 1954 allowed the Atomic Energy Commission to license private companies to use nuclear materials to build and operate nuclear power plants.

Atomic Energy Commission (AEC): The authority established by Congress to provide civilian control of atomic weapons under the Atomic Energy Act of 1946. The Act was amended in 1954 to permit peaceful uses of atomic energy. The AEC was dissolved by the Energy Reorganization Act of 1974.

By-Product Material: Includes wastes from the processing of ores primarily to recover their source material (uranium and thorium) content.

Decontamination and Decommissioning (D&D): Decontamination is the removal of contamination from facilities, soils, or equipment by washing, chemical action, mechanical cleaning, or other techniques. Decommissioning is the process of removing a facility from operation followed by entombment, decontamination, dismantlement, or conversion to another use.

Enrichment: The process of separating the isotopes of uranium from each other. In the United States, this is done using the gaseous diffusion process. Enriched uranium has more uranium-235 than natural uranium.

Fission: The splitting of a heavy nucleus into two roughly equal parts (which are nuclei of lighter elements), accompanied by the release of a relatively large amount of energy and frequently one or more neutrons. Fission can occur spontaneously, but usually is caused by the absorption of gamma rays, neutrons, or other particles.

Hazardous Waste: A solid waste (which includes solids, liquids, and contained gases), or combination of solid wastes, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may 1) cause or significantly contribute to an increase in mortality or an increase in irreversible or incapacitating illness, or 2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. Some wastes are listed as hazardous under certain U.S. Environmental Protection Agency regulations.

High-Level Waste: Material that remains following the chemical reprocessing of spent nuclear fuel and irradiated targets from reactors. It contains a combination of transuranics and fission products in concentrations high enough to require permanent isolation.

Irradiation: Exposure to radiation of wavelengths shorter than those of visible light (gamma, x-ray, or ultraviolet). Irradiation is used for medical purposes, for the destruction of bacteria in foodstuffs, or for the sterilization of medical instruments.

Isotopes: One of two or more atoms with nuclei that have the same number of protons but a different number of neutrons.

K-65: Highly concentrated radium waste from processing high-grade uranium ore.

Lithium: A soft, silvery, highly reactive metallic element that is used as a heat transfer medium in thermonuclear weapons.

Low-Level Waste: Radioactive waste not classified as high-level, transuranic, spent nuclear fuel, by-product material, or uranium mill tailings. Low-level waste typically has small amounts of radioactivity in large amounts

EXHIBIT 6

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2466

Ref: 8P2-TX

OCT 16 1997

Mr. Thomas B. Cochran
Director, Nuclear Programs
Natural Resources Defense Council
1200 New York Avenue, N.W.
Suite 400
Washington, D.C. 20005

Dear Mr. Cochran:

We are replying to your letter dated May 30, 1997. You asked Administrator Browner about the compliance status of Envirocare of Utah, Inc. (Envirocare) under the Federal Clean Air Act, National Emission Standards for Hazardous Air Pollutants (NESHAPS). The Toxics Program, EPA Region 8, has reviewed the regulatory requirements of 40 C.F.R. Part 61, Subpart W as it applies to the 11e.(2) cell at Envirocare. We have determined that Subpart W does not apply to this cell for the following reasons:

1. The intent of Subpart W was to manage uranium mill tailings impoundments within a Nuclear Regulatory Commission (NRC) licensed facility in order to control radon-222 gas emissions. Subpart W limits radon-222 emissions from uranium tailings impoundments in existence as of December 15, 1989 (and licensed to receive additional tailings) and those constructed after this date. Operationally, these impoundments are in active use or standby status. There is a fundamental difference between the type of facility regulated under Subpart W and the Envirocare facility. Subpart W is applicable to facilities engaged in uranium extraction from ores. However, the Envirocare facility, specifically the 11e. (2) cell, is limited to waste disposal (wastes from processing of uranium and thorium ore).

2. Subpart W specifically states in section 61.250 that ".. The provisions of this subpart apply to owners or operators of facilities licensed to manage uranium byproduct material during and following the processing of uranium ores, commonly referred to as uranium mill and their associated tailings." As described by the Environmental Appeals Board in the Umetco Minerals Corporation decision, "Subpart W applies "..to any entity which holds a license that authorized it <u>both</u> to process uranium ores and to manage the tailings it generates..." (Emphasis added). <u>Umetco Minerals Corporation</u>, CAA Appeal No. 94-6, slip op. At 13 (July 25, 1995). As noted under 1 (above), the Envirocare facility has not been licensed for uranium ore processing.

We apologize for the delay in responding to your request for information, and should you have further concerns or questions pertaining to this letter, please contact me or Dr. Richard Graham of my staff at (303) 312-6396.

Sincerely,

William P. Yellowtail
Regional Administrator

EXHIBIT 7

State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY

Michael O. Leavitt
Governor
Dianne R. Nielson, Ph.D.
Executive Director
Don A. Ostler, P.E.
Director

288 North 1460 West
P.O. Box 144870
Salt Lake City, Utah 84114-4870
(801) 538-6146
(801) 538-6016 Fax
(801) 536-4414 T.D.D.

FILE COPY

February 17, 1994

Mr. Charles Judd
Envirocare of Utah, Inc.
46 West Broadway, Suite 240
Salt Lake City, Utah 84101

Dear Mr. Judd:

This letter is to confirm our understanding of permitting options for your facilities as we discussed in our meeting of February 17, 1994.

It is our understanding that you would prefer to pursue an individual ground water permit for the 11e.2 disposal cells rather than pursue a permit by rule option based upon the current NRC license requirements as we have recently suggested. We have agreed to defer to your preference in this regard and will continue our current efforts to modify your existing individual permit to include coverage of 11e.2 waste. If there are questions or any disagreement with these conclusions, please let me know.

Sincerely,

Don A. Ostler, P.E.
Director

DAO:mlf

cc: Dennis Ditto
File: Envirocare

BEFORE THE UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF INTERNATIONAL URANIUM (USA) CORPORATION'S AMENDMENT TO NRC SOURCE MATERIAL LICENSE SUA-1358	))))))	DOCKET NO.

NOTICE OF APPEARANCE

The undersigned, Anthony J. Thompson, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia hereby enters his appearance as counsel on behalf of licensee, International Uranium (USA) Corporation, in any proceeding related to the above-captioned matter.

In addition, Frederick S. Phillips, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia hereby enters his appearance as counsel on behalf of licensee, International Uranium (USA) Corporation, in any proceeding related to the above-captioned matter.

Anthony J. Thompson by FSP

Anthony J. Thompson

Frederick S. Phillips

Frederick S. Phillips
SHAW, PITTMAN, POTTS
& TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037-1128
Tel: (202) 663-8000
Fax: (202) 663-8007

Dated: August 3, 1998
601783

BEFORE THE UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF INTERNATIONAL URANIUM (USA) CORPORATION'S AMENDMENT TO NRC SOURCE MATERIAL LICENSE SUA-1358	))))))	DOCKET NO.

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Notice of Appearance" in the above-captioned proceeding have been served on the following by facsimile, on this 3rd day of August, 1998:

Mr. Joseph Holonich
Uranium Recovery Branch
Division of Waste Management
Office of Nuclear Material
Safety and Safeguards
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Md 20852

Office of Rulemakings and Adjudications
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Mr. John C. Hoyle
Office of the Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Fred G. Nelson, Assistant Attorney General
Attorney for State of Utah
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, Utah 84114-0873

Anthony J. Thompson by [illegible]

Anthony J. Thompson
SHAW, PITTMAN, POTTS
& TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037-1128
Tel: (202) 663-8000
Fax: (202) 663-8007

Dated: August 3, 1998

BEFORE THE UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF INTERNATIONAL URANIUM (USA) CORPORATION'S AMENDMENT TO NRC SOURCE MATERIAL LICENSE SUA-1358	))))))	DOCKET NO.

AMENDED CERTIFICATE OF SERVICE

I hereby certify that copies of the "Notice of Appearance" and "Opposition of International Uranium (USA) Corporation to State of Utah, Inc.'s Request for Hearing" in the above-captioned proceeding have been served on the following by facsimile, on the 3rd day of August, 1998 and by First Class United States Mail on the 4th day of August, 1998:

Frederick S. Phillips
SHAW, PITTMAN, POTTS
& TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037-1128
Tel: (202) 663-8000
Fax: (202) 663-8007

Dated: August 4, 1998

Mr. Joseph Holonich
Uranium Recovery Branch
Division of Waste Management
Office of Nuclear Material
Safety and Safeguards
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Md 20852

Office of Rulemakings and Adjudications
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Mr. John C. Hoyle
Office of the Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Fred G. Nelson, Assistant Attorney General
Attorney for State of Utah
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, Utah 8414-0873