

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:
Peter B. Bloch, Presiding Officer
Richard F. Cole, Special Assistant



In the Matter of:)

INTERNATIONAL URANIUM)
(USA) CORPORATION)
1050 Seventeenth Street)
Suite 950)
Denver, CO 80265)

) Docket No. 40-8681-MLA-1
) ASLBP No. 98-743-03-MLA

) Re: Source Material License Amendment
)
)

**IUSA's RESPONSE TO STATE OF UTAH'S AMENDED REQUEST FOR
A HEARING AND PETITION FOR LEAVE TO INTERVENE**

I. 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" or the "Commission"), 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. 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

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regulations set forth at 10 C.F.R. Part 40 including Appendix A and applicable NRC guidance documents.

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 July 23, 1998.¹² IUSA filed its response to the State's Request for Hearing on August 3, 1998. Subsequently, on August 6, 1998, the State filed a Motion for Stay, Request for Prior Hearing, and Request for Temporary Stay, and on August 7, 1998, IUSA filed its Opposition to the State's Motion for Stay. In an order dated August 13, 1998, the Presiding Officer denied the State's Motion for Stay. On August 18, 1998, the State filed an Amendment to its Request for Hearing and Petition for Leave to Intervene ("Amended Request").

II. ARGUMENT

A. IUSA Does Not Contest Utah's Assertion of Standing on the Issue of The State's Regulatory Jurisdiction Under RCRA

IUSA does not contest the State's assertion of standing to litigate the limited issue of whether or not and to what extent the State may have jurisdiction over whether or not the Ashland 2 materials contain listed hazardous wastes that are regulated under the Resource

¹² 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. This Request was denied on August 19, 1998.

Conservation and Recovery Act ("RCRA"). However, as discussed in detail below, IUSA objects to and disputes the State's assertion of standing with respect to all other issues that have been raised by the State in these proceedings, including the alleged threat of any possible listed hazardous waste contained in the Ashland 2 material infiltrating into groundwater or surface water.

IUSA emphasizes that it has no interest whatsoever in accepting any materials that contain *listed* hazardous wastes. Acceptance of such materials would not only violate the Commission's "Final Position and Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores" (the "Alternate Feed Policy") as explained in the Technical Evaluation Report accompanying the amendment, but could also subject the Mill to dual regulation by both NRC and the State (pursuant to the authority delegated to the State under RCRA). Precisely for this reason, NRC approved the license amendment proposed by IUSA only after its review of detailed records on the Ashland 2 materials indicated that they did not contain any *listed* hazardous wastes. Moreover, both ICF Kaiser, the project engineer for the Ashland 2 site, and IUSA have implemented additional safeguards, such as sampling of the Ashland 2 materials both before and after their shipment to the Mill, to ensure that they do not contain any *listed* hazardous wastes.

Accordingly, IUSA and the State both share a common interest in insuring that the Ashland 2 materials do not contain any *listed* hazardous wastes. Thus, the State's dispute with IUSA does not center on the license amendment per se, but rather it centers on the degree of assurance required by the State that the Ashland 2 materials in fact do not contain *listed*

hazardous wastes, and this is a matter as to which the two parties may be able to reach a reasonable agreement in the near future. As the State and IUSA share a common interest on this issue, IUSA has indicated to the State its willingness to negotiate with the State to develop reasonable procedures to ensure that the Ashland 2 materials to be processed at the Mill do not contain any listed hazardous wastes.

B. The State Lacks Standing With Respect To All Other Issues.

In its Amended Request, the State also alleges that it will suffer injury-in-fact from IUSA's license amendment due to the *potential* release of pollutants into ground and surface water near the Mill site. The State first argues that the Ashland 2 material has a different composition than traditional ores processed at the Mill and *may* also have been commingled with oil refinery contamination, possibly including *listed* hazardous wastes. Amended Request at 10-11. The State then argues that it will suffer injury from the disposal of the Ashland 2 materials at the Mill because the tailings cells at the Mill have the "*potential*" to discharge to groundwater, relying solely on an affidavit filed by one of its hydrogeologists, whose affidavit suggests that he has little or no direct knowledge of the Mill's tailings pond and no expertise as a professional engineer in the construction, management, or regulation of 11e.(2) byproduct material impoundments. Amended Request at 11-12.

1. Applicable Standards

To demonstrate standing entitling it to a hearing, the State 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.

Northern States Power Company, 44 NRC 138, 1996 NRC Lexis 46, **5-6 (1996). As the Commission 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." Westinghouse Electric Corp., CLI-94-07, 39 NRC 322, 331-332.

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

2. Speculative and Unsubstantiated Claims About Possible Release of Contaminants Into the "Waters of the State" From the IUSA Tailings Cells Do Not Confer Standing Upon the State

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.*" Babcock & Wilcox, LBP-93-4, 1993 NRC Lexis 6, **7-8 (1993) (emphasis added). See also Cleveland Electric Illuminating Co., LBP-92-4, 35 NRC 114, 123 (1992); Sequoyah Fuels Corp. and General Atomics, CLI-94-12, 40 NRC 64, 74 (1994). An "abstract, hypothetical" injury is insufficient to confer standing. Ohio Edison Co., Cleveland Electric Illuminating Co. and Toledo Edison Co., LBP-91-38, 34 NRC 229, 252 (1991). By engaging in unsubstantiated speculation

about the *potential* release of wastes generated during processing of the Ashland 2 material from the IUSA tailings cells, the State has failed to meet this standard. In fact, there have been no releases from the Mill's tailings ponds nor is there any reasonable basis to suggest that such releases will occur in the future.

The State bases its claims *solely* on the affidavit of Loren Morton, a hydrogeologist employed by the Utah Department of Environmental Quality, who concludes that "there is *potential* for the White Mesa tailings cells to discharge to the waters of the state (i.e., groundwater)." (Emphasis added) Morton Affidavit at 3-4. He reaches this conclusion after reviewing just three reports, only one of which actually evaluated the conditions at the Mill. Morton Affidavit at 3. The remaining two reports are generic background or reference documents prepared for the U.S. Environmental Protection Agency that have little or no relevance to the Mill. Relying primarily on these documents, he engages in speculation about *possible* releases of contaminants from the Mill:

[C]omputer simulations show that a containment design similar to the one at the White Mesa facility *can* result in an undetected seepage discharge to the environment of as much as 89 gallons per acre per day. (Emphasis added)

Morton Affidavit at 6.²¹

IUSA disagrees with the speculative conclusions of Mr. Morton. The "potential" harm that Mr. Morton hypothesizes "can" occur is insufficient to establish harm that is "threatened,

²¹ The irrelevance of such speculations is further underscored by the site-specific focus of UMTRCA regulations at 10 C.F.R. Part 40, Appendix A, that emphasize the need for "flexibility . . . to allow achieving an optimum tailings disposal program on a site-specific basis" and also allow licensees to propose their own alternatives to any requirements to take into account variations in "local or regional conditions, including geology, topography, hydrology, and mete[o]rology." 10 C.F.R. Part 40, Appendix A.

certainly impending, and real and immediate." In addition, Mr. Morton misinterprets the one study that relates specifically to the Mill, and ignores the fact that the Mill tailings impoundments have never had any releases to groundwater in 18 years of operation, and given the geologic and hydrogeologic features of the Mill site, such releases are extremely unlikely to occur at any time in the future.

Moreover as demonstrated by the affidavit filed by Michelle Rehmann of IUSA which is attached to this Response, the Mill has maintained an exemplary environmental and safety record since it started operations in 1980 and has not detected or recorded any release of contaminants from its 11e.(2) tailings cells, a fact the State conveniently chooses to ignore. One of the reasons that the Mill was sited at its location was because of the ideal hydrogeologic features of the site. Further, the Mill was constructed pursuant to NRC approval and under NRC oversight and remains closely regulated. Thus, nothing in the history of operations of the Mill or any other facts remotely suggests that there is a "*real and immediate*" possibility of releases of contaminants from the Mill's tailings cells that is sufficient to confer standing to the State as to these issues.^{3/} We need not address the zone of interest or redressability elements of the standing analysis since the State's claims fail to satisfy the injury-in-fact requirement.

^{3/} IUSA also submits that even if the Ashland 2 materials contained any listed hazardous waste, and IUSA emphatically maintains that they do not contain any such waste, such constituents would still be adequately regulated under the existing UMTRCA regulations which conform to EPA's RCRA regulations. After all, the Alternate Feed Policy explicitly permits processing of feed materials containing *characteristic* hazardous waste other than residues from wastewater treatment since they do not qualify as hazardous waste when recycled. NRC has noted:

Constituents with hazardous characteristics that were in feed materials processed at a uranium mill would eventually end up in the tailings impoundment as 11e.(2) byproduct material. As such, they would be regulated under appendix A of 10 C.F.R. part 40 which provides for monitoring and control of hazardous constituents. *Thus, the ultimate fate of hazardous constituents that might be in uranium feed material would not escape regulatory oversight.*

Footnote continued on next page

3. The State's Concerns About Potential Contamination of Groundwater Near The Mill Are Not Germane To This License Amendment Proceeding

In addition, the State's concerns about potential contamination of the "waters of the state" are not germane to this proceeding. In ruling on a request for a hearing, the Presiding Officer must not only determine whether the requester meets the judicial standards for standing but also whether "the specified areas of concern are *germane* to the subject matter of the proceeding."^{4/}

NRC explained the germaneness requirement in the preamble to its final rule promulgating 10 C.F.R. Part 2, Subpart L regulations:

This statement of concerns need not be extensive, but it must be sufficient to establish that the issues the requester wants to raise regarding the licensing action fall generally within *the range of matters that properly are subject to challenge in such a proceeding.*^{5/}

In Sequoyah Fuels Corporation Ltd., the ALJ further elaborated on this standard: "In Subpart L proceedings, a statement of concern must provide enough specificity to afford the Presiding Officer the ability to link the concern with the subject matter of the proceeding in order to make a decision to admit the statement for litigation." Sequoyah Fuels Corporation Ltd., LBP-94-39, 40 N.R.C. 314, 1994 NRC LEXIS 67, *3 (1994).

Footnote continued from previous page

57 Fed. Reg. 20525, 20533 (1992). It should also be noted that 11e.(2) byproduct material generated during processing of conventional ores frequently contain hazardous constituents or characteristics, thus necessitating the incorporation of RCRA standards in 10 C.F.R. Part 40.

In fact, NRC's concerns about the presence of listed hazardous waste in alternate feed materials have been premised not on any concerns about potential adverse impacts on public health, safety and the environment since its regulations already address hazardous constituents and characteristics as discussed above, but on concerns about triggering dual regulatory jurisdiction of tailings impoundments by NRC and EPA and complicating the ultimate transfer of custody to these facilities to the U.S. Department of Energy. 57 Fed. Reg. 20525, 20526 (1992).

^{4/} 10 CFR § 2.1205(h)(emphasis added).

^{5/} 54 Fed. Reg. 8269, 8272 (1989) (emphasis added).

In this case, in order to demonstrate that its concerns are germane to the regulatory action at issue, the State must demonstrate that it is likely to suffer injury resulting from the Ashland 2 amendment that represents an *incremental* hazard separate and in addition to that from the operation of the Mill generally. In reviewing a similar request for a hearing in connection with the processing by IUSA of another alternate feed, Presiding Officer Peter B. Bloch 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.*

Energy Fuels Nuclear, Inc., Docket No. 40-8681-MLA (emphasis added). See also Energy Fuels Nuclear, Inc., LBP-94-33, 40 NRC 151, 1994 NRC LEXIS 63, *9 (petitioner's claims regarding the threat posed by the proposed license amendment to archaeological resources and groundwater denied on grounds that the alleged injuries arise from the operation of the facility and not the license amendment; "we are constrained to view [the petitioner's] concern within the scope of the license amendment, not the EFN source materials license. . . . *If it arose from activities at the White Mesa Mill, it arose as a result of activities under the original license -- and those issues are not germane to this proceeding.*") (emphasis added).

IUSA agrees with the State that the Ashland 2 materials cannot contain listed hazardous wastes and the company is willing to negotiate with the State regarding reasonable procedures to ensure that no listed hazardous wastes will be processed at the Mill. With the issue of listed hazardous wastes dealt with, the processing of the Ashland 2 materials is no different than the processing of conventional ores, or alternate feed ores with regard to which the Mill is licensed

to process. The State's vague concerns regarding *potential* release of contaminants to the "waters of the state" apply equally well to processing of conventional ores and to the processing of other alternate feeds that have been approved and to which the State has not objected, including those with higher concentrations of uranium. Thus, these generalized concerns about the Mill's tailings cells do not relate to the challenged license amendment but in the operation of the Mill generally. They are not germane to the regulatory action here at issue: NRC's grant of IUSA's license amendment.^{6/}

4. The State Has No Other Grounds For Standing

In Paragraph 2 of page 9 of its Amended Request, the State reasserts its concern that if the "primary purpose" of obtaining the Ashland 2 material was for disposal rather than reprocessing, then the Mill is "unsuitable" because it would be circumventing the disposal requirements for low-level radioactive waste. The State has not offered any additional argument in support of its claim for standing on this issue. As discussed extensively in pages 8-10 and 16-19 of IUSA's Opposition to State of Utah's Request for Hearing, IUSA has satisfied *both* the co-disposal and certification tests for demonstrating that the Ashland 2 materials were being processed "primarily" for their source material content, and there is no basis whatsoever for the State's claim, and the claim is not germane to the amendment in question.

^{6/} Similarly, in its Amended Request the State relies on the Umetco decision to support its allegations of injury in fact. Amended Request at 18. This reliance is misplaced. Standing must be demonstrated to exist based on the specific facts and circumstances of the case under consideration; and based on those facts and circumstances, the petitioner must be able to demonstrate injury in fact. The State has not attempted to demonstrate that the facts and circumstances that were considered in the Umetco decision are present in this case, and absent such a showing, the State's reliance on the Umetco decision in support of its assertion of standing is inappropriate.

In addition, the State has failed to buttress its claim in its Request for Hearing (p.18-19) that the allegedly low uranium content of the Ashland 2 materials makes it unlikely that the materials are being processed "primarily" for their source material content and their processing thus violates the Alternate Feed Policy. As discussed in pages 17-19 of IUSA's Opposition to State of Utah's Request for Hearing, this argument reflects a profound misunderstanding of the Alternate Feed Policy on the State's part, because the economic value of the source material content of alternate feed has never been the sole factor in the Commission's determination of the acceptability of such materials.

The fact that the State's Amendment Request focuses almost exclusively on the issue of listed hazardous wastes and devotes only one sentence on page 9 to its previous claims for standing indicates to IUSA that the real concern of the State is on ensuring that the Ashland 2 materials do not contain listed hazardous wastes. IUSA agrees with that concern and is prepared to work with the State on a resolution for the issue.

III. CONCLUSION

IUSA does not contest the State's assertion of standing to litigate the limited issue of whether or not and to what extent the State may have jurisdiction over whether or not the Ashland 2 materials contain listed hazardous wastes that are regulated under the Resource Conservation and Recovery Act ("RCRA"). However, IUSA objects to and disputes the State's assertion of standing with respect to all other issues that have been raised by the State in these proceedings, including the alleged threat of any possible listed hazardous waste contained in the

Ashland 2 material infiltrating into groundwater or surface water, and the issue of the primary purpose of processing the Ashland 2 materials.

Respectfully submitted,



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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:
Peter B. Bloch, Presiding Officer
Richard F. Cole, Special Assistant

In the Matter of:)	
INTERNATIONAL URANIUM (USA) CORPORATION)	Docket No. 40-8681-MLA-1 ASLBP No. 98-743-03-MLA
1050 Seventeenth Street)	Re: Source Material License Amendment
Suite 950)	
Denver, CO 80265)	

AFFIDAVIT OF MICHELLE R. REHMANN

I, MICHELLE R. REHMANN, being first duly sworn upon oath, depose and state as follows:

1. I am the corporate Environmental Manager for International Uranium (USA) Corporation ("IUSA"), having been hired to that position upon the transfer of the assets of Energy Fuels Nuclear, Inc. on May 9, 1997. I held the same position with the predecessor company, Energy Fuels Nuclear, Inc., commencing in 1994.

2. I earned a B.S. in hydrology from the University of Arizona, College of Engineering and Mines in 1989.

3. Among my responsibilities with IUSA is management of environmental licensing and compliance activities, including application for amendments to the Company's NRC license for the White Mesa Uranium Mill (the "Mill").

4. In addition to my corporate responsibilities with IUSA, I engage in professional activities relevant to application of hydrologic principles to facilities involved in management of radioactive waste:

- (a) Serve as an invited lecturer on hydrologic aspects of radioactive waste management for the Hydrology Proseminar Course at the University of Arizona, College of Engineering and Mines, Department of Hydrology and Water Resources.
- (b) Organize and present sessions on the hydrologic, hydrogeologic, and geochemical aspects of radioactive waste management for Waste Management Symposia, Inc.
- (c) Serve as a Director of Waste Management Symposia, Inc., and the American Nuclear Society, and an Executive Committee Member of the Fuel Cycle and Waste Management Division of the American Nuclear Society.

5. The speculations contained in the affidavit of Loren Morton dated August 18, 1998, regarding hypothetical potential for the Mill tailings cells to impact ground water, are based on incomplete information about the tailings cell construction, operation, and hydrologic

modeling. Morton also misinterprets relevant information, in particular the infiltration modeling analyses detailed in the Hydrogeologic Evaluation of the White Mesa Uranium Mill issued by Titan Engineering ("1994 Titan Report").

6. Hydrogeologic features and setting were key siting criteria evaluated in selection of the Mill location. The tailings cells at the Mill are constructed within the unsaturated Dakota Sandstone. Directly below the Dakota Sandstone is the Burro Canyon Formation, another sandstone unit, at depths of approximately 90 to 150 feet beneath the cells. The Burro Canyon Formation hosts a thin, perched zone of groundwater. Saturation in this zone ceases or is marginal along the western and southern section of the Mill property. Underlying this perched zone of groundwater is an aquitard, which isolates the perched water in the Burro Canyon formation from the regional aquifer, the Entrada/Navajo Sandstones. The total thickness of the aquitard, consisting of mudstones, claystones, and shales, is on the order of 800 to 1,200 feet.

7. IUSA has and continues to rely on the judgment of professional engineers registered in the State of Utah to ensure that its tailings impoundments are designed, constructed, monitored, and maintained in accordance with NRC regulations for such facilities. Construction of the Tailings Cell #2 commenced in 1979 and was completed in 1980. Cells #1, 3, and 4a were constructed in 1981, 1983, and 1989, respectively. To date, Cell #4 has not been used for tailings disposal and will not be used for Ashland 2 tailings. Cell #3 will be used for Ashland 2 tailings. Cell #3 has not experienced any leakage or release throughout its operations.

8. The tailings cells at the Mill are lined, and contain leak detection systems and monitoring wells screened in the nearest groundwater to the cells. Data on groundwater quality

have been collected at the Mill from a total of 23 wells drilled since 1979. The Mill's groundwater monitoring program is engineered to provide a timely detection of potential releases to the Entrada/Navajo Sandstones, by monitoring in wells completed above this hydrogeologic unit, in the perched groundwater. Although the perched zone used for early detection monitoring transmits insufficient water to be defined as an aquifer, this perched zone, rather than the Entrada/Navajo aquifer, is used for very early detection of any potential releases from the tailings disposal cells at the Mill. In other words, any release detected in this zone is separated from the Entrada/Navajo aquifer by approximately 1,200 feet of very low permeability rock. Over 18 years of data collected quarterly from the wells installed in this zone and reported to the NRC in semi-annual reports, which are available in the NRC Public Document Room, have shown that:

- (a) There have been no increasing trends in concentrations of constituents that would indicate seepage from the existing disposal cells;
- (b) The facility has operated for a period of nearly 19 years without impacts to groundwater.

Continued monitoring at the Mill will be performed to verify that past, current, and future operations will not impact groundwater.

9. The tailings impoundments at the Mill have shown no evidence of leakage. The data supporting this are available in the semi-annual effluent reports filed by IUSA with the NRC. IUSA has also provided the Utah Department of Environmental Quality with copies of several recent semi-annual effluent reports that contain, among other data for the site, the results

of quarterly groundwater monitoring. These data show that the groundwater monitored in the perched zone has not been affected by the Mill impoundments.

10. If at any time the monitoring indicated a potential release, based on monitoring of conservative (that is, highly mobile) parameters used as indicator parameters, then IUSA would expand the list of monitoring parameters in accordance with NRC requirements. However, it is not necessary to monitor for an expanded list when continuous monitoring of parameters which are highly mobile, are known to exist in the tailings, and are not present in high levels in the existing groundwater, shows that the Mill is not causing any change in the existing water quality. The relatively benign tailings from processing of the Ashland 2 materials will pose no greater hazard to the well-protected groundwater system at the Mill than does the existing operation.

11. As demonstrated by the 1994 Titan Report, there is no cause to believe that the Mill will discharge any pollutant into the perched zone. And even if leakage were to occur, it would take a pollutant at least 150 years to reach the perched zone. Given that the groundwater flow direction in the perched zone is to the southwest, there is also no reason to believe that even after those 150 years the pollutants would discharge to canyons to the west of the Mill where contact springs have been observed. This is due to the fact that the groundwater in the perched zone flows in a south to southwesterly direction, whereas the perched zone seeps into the Canyon in the westerly direction from the Mill. Nevertheless, the fact that such seepage can be observed is clear evidence of the competence of the rock strata underlying the formation in which the perched groundwater occurs, and the fact that this underlying unit prevents downward migration of groundwater to the regional aquifer.

12. The current amendment to IUSA's license does not pose any greater potential harm to groundwater than those posed by preexisting milling activities which to date have had no impact, and are expected to have none. Processing of the Ashland 2 materials and subsequent placement of the resulting tailings in the Mill's tailings impoundments will result in less than one (1) percent increase in volume of the tailings impoundment.

13. The U.S. Army Corps of Engineers ("USACE") remediation contractor, ICF Kaiser Engineers ("ICFKE"), has agreed to IUSA's contract condition which requires that no listed hazardous waste may be delivered to IUSA, and that if IUSA, based on our on-site sampling, determines that any of the material contains a listed hazardous waste, such material must be removed from the Mill by ICFKE, at its own expense.

14. In addition, ICFKE and IUSA are conducting confirmatory sampling to ensure that the Ashland 2 materials are not significantly different from the characterization presented in the RI.

(a) ICFKE is performing three types of excavation sampling: (1) pre-excavation characterization, consisting of 15 samples of unexcavated materials, has been conducted for a full suite of parameters with the addition of "total" analyses (as opposed to TCLP analyses only) for volatile organic compounds ("VOCs") and semi-volatile organic compounds ("SVOCs"), using standard grab sampling techniques for such analyses; (2) visual inspection and organic vapor analysis of material as it is excavated to determine whether any materials appear to contain organic constituents; and (3) testing of excavated materials at one sample per 500 CY for VOC and SVOC.

(b) IUSA is conducting sampling of the material, in accordance with our Sampling and Analysis Plan ("SAP") as it is delivered to the Mill, at a rate of one sample per 100 CY, up to the first 1,000 CY; then, one sample per 500 CY, up to the entire material volume delivered. We understand that IUSA's on-site confirmatory sampling program for VOCs and SVOCs is substantially the same as would be applied for any 11e.(2) tailings site in taking this material.

15. The Mill is in full compliance with all applicable federal laws and regulations. The NRC conducted an inspection on June 9-11, 1998, and in its inspection report dated July 9, 1998, confirmed that the operations were being conducted in full compliance with license conditions. No violations were discovered.

FURTHER AFFIANT SAYETH NOT.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 25 day of August 1998.


Michelle R. Rehmann

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges: Peter B. Bloch, Presiding Officer
Richard F. Cole, Special Assistant



IN THE MATTER OF:

INTERNATIONAL URANIUM
CORPORATION
(Source Material License Amendment)

*
*
* Docket No. 40-8681-MLA-4
* ASLBP No. 98-748-03-MLA
*
*

CERTIFICATE OF SERVICE

I hereby certify that I caused true and complete copies of the foregoing IUSA's Response to State of Utah's Amended Request for Hearing and Petition for Leave to Intervene in the above-captioned matter to be served, via facsimile and by Certified Mail, Return Receipt Requested, on this 25th day of August, 1998 to:

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Rockville, MD 20852

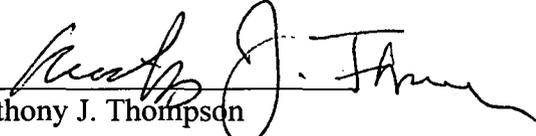
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