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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

DOCKETED
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98 AUG 12 A11:30

STENOGRAPHY
RULE MAKING AND
ADJUDICATION STAFF

Title: PRE-HEARING TELEPHONE
CONFERENCE
INTERNATIONAL URANIUM (USA)
CORPORATION

Case No.: 40-8681-MLA-4

Work Order No.: ASB-300-401

LOCATION: Rockville, MD

DATE: Friday, August 7, 1998

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of: :

PRE-HEARING TELEPHONE :

CONFERENCE : Docket No. 40-8681-MLA-4

INTERNATIONAL URANIUM (USA) :

CORPORATION :

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Nuclear Regulatory Commission

Room 3-B51

White Flint Building 2

11555 Rockville Pike

Rockville, Maryland

Friday, August 7, 1998

The above-mentioned matter came on for a
pre-hearing telephone conference, pursuant to notice, at
2:00 p.m.

BEFORE:

THE HONORABLE PETER B. BLOCK, Administrative Judge

THE HONORABLE RICHARD F. COLE, Administrative

Judge

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1 APPEARANCES:

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16 On Behalf of the NRC Staff:

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1 APPEARANCES: [Continued]

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C O N T E N T S

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WITNESS

EXAMINATION

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[NONE.]

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E X H I B I T S

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P R O C E E D I N G S

[2:00 p.m.]

JUDGE BLOCH: My name is Peter Bloch and I am Presiding Officer for this case involving the International Uranium USA Corporation's amendment to NRC Source Material License, SUA-1358. With me today is my Special Assistant Richard Cole.

We have a reporter today and -- I had planned to write your name down. Your name, sir? Mark. His name is Mark Mahoney. Anyone wanting to order a copy of the transcript at the remainder -- at the end of the call should stay on the line to do that.

I would like the parties to identify themselves for the record beginning with the State of Utah.

MR. NELSON: Fred Nelson and Denise Chancellor from the Attorney General's Office, representing the State. With me in the room is Bill Sinclair, the Director of the Division of Radiation Control, James Sinefrock and Rob Herbert are here. They are staff with the Division. Also in the room is Jason Harden, he is a Clerk with our office.

JUDGE BLOCH: If for some reason one of them should choose to speak, please introduce them by name and spell their name for the record.

For Envirocare?

MS. POHLMAN: Jill Pohlman of the Law Firm of

ANN RILEY & ASSOCIATES, LTD.
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1 Stoel, Rives for Envirocare. In the room with me is Tim
2 Orden, an Environmental Specialist from Envirocare; Ken
3 Alchemia, Vice President of Corporate Development; and George
4 Helstrom, an Associate Counsel. Also joining us is Britt
5 Ives, a Law Clerk with our office.

6 JUDGE BLOCH: The tone quality of that was
7 difficult, Ms. Pohlman. Can you be closer to the phone?

8 MS. POHLMAN: Sure. Is this better?

9 JUDGE BLOCH: Let's try it again, because the
10 reporter had difficulty.

11 MS. POHLMAN: Okay. I apologize. Again, my name
12 is Jill Pohlman, spelled P-o-h-l-m-a-n. I am an attorney
13 with Stoel, Rives and I represent Envirocare. With me today
14 is Tim Orden, an Environmental Specialist; Ken Alchemia, Vice
15 President of Corporate Development; George Helstrom,
16 Associate Counsel, and Britt Ives, a Law Clerk.

17 JUDGE BLOCH: All right. And now for
18 International Uranium.

19 MR. PHILLIPS: Thank you, Your Honor. Fred
20 Phillips, counsel for International Uranium. With me in the
21 room here is another lawyer in our office, David Kimm, and
22 also joining us is a summer associate with our office,
23 Robert Logan. Participating by telephone from Denver is
24 Michelle Raymond, I hope. Michelle, are you there?

25 MS. RAYMOND: Yes, I am Fred.

1 MR. PHILLIPS: She's the Environmental Manager
2 with International Uranium.

3 JUDGE BLOCH: All right. And for the staff?

4 MR. HOM: Your Honor, for the staff, today only
5 for the purpose of this hearing, Steve Hom from the Office
6 of General Counsel, representing the staff. Susan Uttal
7 from the Office of General Counsel, also for today only.
8 Mitzi Young is going to be counsel for the staff when she
9 returns on Monday. And I have two members of the staff
10 here. I will have them introduce themselves and spell their
11 names.

12 MR. HOLONICH: Joe Holonich, H-o-l-o-n-i-c-h,
13 Chief of the Uranium Recovery Branch.

14 MR. PARK: My name, Your Honor, is James Park,
15 P-a-r-k. I am a Project Manager in the Uranium Recovery
16 Branch.

17 JUDGE BLOCH: All right. What I would like to
18 propose for our order, unless I hear an objection, is that
19 we begin with the discussion of irreparable injury and,
20 logically, the Movant, which is the State of Utah, should be
21 first on that question.

22 MR. HOM: Your Honor, this is the staff.

23 JUDGE BLOCH: Yes.

24 MR. HOM: Steve Hom. I would propose, actually,
25 that the first issue on the agenda should be the timeliness

1 of the stay motion filed by the State of Utah, in light of
2 10 CFR Section 2.1263.

3 MR. PHILLIPS: Your Honor, Fred Phillips for IUSA.
4 We would join in that. And before we even got to that, Your
5 Honor, I would ask why Envirocare is participating in this
6 hearing?

7 JUDGE BLOCH: Well, neither Envirocare nor the
8 State have been admitted as parties, and while we indicated
9 that we may side with your argument, we haven't ruled. So
10 if there is standing to ask for a stay here, it is the
11 standing of a Petitioner.

12 Could you repeat, Mr. Hom, could you repeat the
13 section, please, 10 CFR?

14 MR. HOM: It's 10 CFR Section 2.1263. And I will
15 read the relevant language.

16 JUDGE BLOCH: I have read that section.

17 MR. HOM: Okay.

18 JUDGE BLOCH: Oh, tell me, the relevant section
19 that has to do with there not being -- what is the relevant
20 part that you want to point to?

21 MR. HOM: The relevant part is the filing of a
22 stay request that must be filed at the time the hearing
23 request is filed, or within 10 days of the staff's action,
24 whichever is later.

25 JUDGE BLOCH: So the latest is 10 days of the

1 staff's action?

2 MR. HOM: Right. Well, in this case, I believe
3 that the staff action preceded the request for a hearing and
4 that, therefore, the State was obligated under this rule to
5 file a stay request at the time it filed its request for a
6 hearing.

7 JUDGE BLOCH: All right. So if there is no
8 objection, we could start with this point. Do I hear an
9 objection to that way of proceeding?

10 [No response.]

11 JUDGE BLOCH: There being none, I would like the
12 State to address whether it's stay motion should be
13 considered timely.

14 MR. NELSON: Judge Bloch, this is Fred Nelson. If
15 I could just mention something preliminary. We faxed to you
16 a number of documents. Hopefully, you got them in response
17 to your request this morning.

18 JUDGE BLOCH: I do have them. Is there one that
19 addresses this question?

20 MR. NELSON: No, but I wanted to make sure that
21 all the parties were aware we tried to do that. We also
22 tried to fax it to the other parties, but it was a matter of
23 how quickly we could do it over our fax machine.

24 JUDGE BLOCH: I think as it turns out that these
25 materials are largely already with me from the staff or from

1 some other sources. There may be some of this that is not.

2 MR. NELSON: Okay. Let me address the issue then
3 on timeliness. We --

4 JUDGE BLOCH: Oh, just one second. I would like
5 to ask, Mr. Nelson, that for the completeness of the
6 information of the other parties, that when you get a
7 chance, they should, of course, be served with these
8 materials.

9 MR. NELSON: We will do that.

10 JUDGE BLOCH: Now, please continue.

11 MR. NELSON: We knew the date that the amendment
12 was issued, and we knew that we had 30 days within which to
13 file a petition to intervene. We did not know that the
14 process for shipment was going to be starting the day after
15 the amendment was issued. And we were under the
16 understanding that there were a number of things that had to
17 take place, to include the submission of a sampling and
18 testing protocol before shipments were going to take place.
19 We didn't have any information that that process had
20 occurred. And the first that we learned that, in fact,
21 shipments were being made was by a fax that was sent to us.

22 Our hearing request was filed on July 23rd. The
23 shipments started on July 24th. We believe that we have
24 made a reasonable effort to comply with that. We would also
25 -- and while this issue is -- has been just first raised,

1 and I assume it would be raised in a response by IUT, we
2 would like to have the opportunity to respond to that
3 formally. I do not have the cite to the opinion, but we
4 understand that there is a decision of the Commission that
5 specifically indicates that it is not timely to file a
6 motion for stay, that it is not appropriate to file a motion
7 for stay if the action is not imminent and ready to happen.
8 And we have evaluated that and we believe that we are
9 timely.

10 As soon as we found out that the shipments were
11 started, we began the process of getting the motion in, and
12 we believe we have done it as expeditiously as we can.

13 JUDGE BLOCH: Now, it looks like the stay
14 provision that staff has pointed me to requires that the
15 timing be related to the licensing actions.

16 MR. HOM: Your Honor, this is Steve Hom from the
17 staff. I would point out language is "must be filed," it is
18 not may be filed, but must be filed.

19 JUDGE BLOCH: Okay. Mr. Hom, I am engaging in a
20 dialogue now with Mr. Nelson, and I would like some
21 cooperation in its just being a dialogue.

22 It seems to say that the request must be timed
23 according to the staff's licensing action or the request for
24 a hearing. I don't see a way out of that. Do you see
25 something? I understand your problem. You are saying you

1 could not file at the time -- at that time because there was
2 no irreparable injury at that time. Is that what I am
3 hearing?

4 MR. NELSON: That's right. And I recognize the
5 language is pretty absolute. But the question is what is
6 the -- within 10 days of the action, and I guess you could
7 interpret that to be broader than simply the issuance of the
8 amendment, because we understood that there had to be
9 certain approval granted before shipment could take place,
10 and we weren't aware that those approvals had been given by
11 the staff, and we believe that the shipments, when they
12 started, we are still timely in that process.

13 JUDGE BLOCH: So you are saying that the staff's
14 action is not the action of issuing the license?

15 MR. NELSON: Well, the action of issuing an
16 amendment obviously took place on July 23rd. If that is the
17 way that this rule is to be construed, is that I have to
18 anticipate, the State has to anticipate any action that
19 could occur from thereon out that we may want to request a
20 stay for, then that is a pretty restrictive interpretation
21 of that language, it would seem to be, and pretty unfair.
22 Because you don't want to consider something prematurely.

23 And, for example, there was -- and I recognize we
24 haven't submitted this yet, but we would, in response to any
25 kind of a motion on the part of the Applicant, we would

1 respond -- for example, there's a June 11th, 1998 letter
2 that was issued, or sent by IUC that said, "Details of a
3 sampling and analysis protocol with respect to the hazardous
4 waste portion will be submitted prior to receipt of the
5 Ashland 2 materials." It is that kind of information that
6 we don't have, that we haven't analyzed, and we didn't
7 recognize that the shipments were going to start that early.

8 JUDGE BLOCH: So you were suggesting that we could
9 wait to decide the stay until you had a chance to brief this
10 question, is that right?

11 MR. NELSON: Yes, I believe that the language of
12 2.1263, we ought to be able to formally respond to a
13 dismissal. The question I think that we are considering
14 today is simply the temporary stay. They have not had a
15 chance to respond to the motion to stay, and we would expect
16 that we would have additional information to provide on
17 viewing their response.

18 JUDGE BLOCH: So you -- but you think a temporary
19 stay is necessary?

20 MR. NELSON: Yes, we do.

21 JUDGE BLOCH: So in the next 10 days, what is the
22 irreparable injury that someone will suffer?

23 MR. NELSON: The irreparable injury to the State
24 revolves around the natural resources interest that the
25 State of Utah has. The State of Utah is the trustee for

1 ground water and surface water in the state. It is
2 responsible for protecting natural resources. The shipment
3 --

4 JUDGE BLOCH: Can we quantify it at all in terms
5 of what injury might be done to them and compare it amount
6 of radioactive material already in the tailings?

7 MR. NELSON: The issue is not the radioactivity.
8 It is the hazardous waste potential. We believe that there
9 is a significant potential that hazardous waste will be
10 coming into the State of Utah in these shipments. That is
11 the primary point at this point with respect to the
12 immediate irreparable injury.

13 JUDGE BLOCH: And if they were deposited in such a
14 way that you could get them out, if they were denied the
15 license, would the irreparable injury go away?

16 MR. NELSON: If they were placed in a location
17 which was protective of the resources of the state, would
18 not have any releases to ground water and then could be
19 moved back to the location, if that kind of a plan were
20 developed, I would think it would mitigate irreparable
21 injury. But there has been no plan like that developed.
22 There's no alternatives listed. There's no processes that
23 have been defined. The testing protocol isn't defined.

24 And this goes to the test required issues, but I
25 think it is related to the irreparable injury. We need to

1 take a few minutes and explain our position on why we
2 believe there is a significant potential for hazardous waste
3 being in those -- in those wastes, because that directly
4 ties to the irreparable injury. If those hazardous wastes
5 come into the state, where will those go?

6 JUDGE BLOCH: Don't you want to wait to see
7 whether there has been testing that we can be told about
8 before you argue that there might be hazardous waste?

9 MR. NELSON: We could.

10 JUDGE BLOCH: All right. So why don't you reserve
11 your time on that. What I have got for you so far is 8
12 minutes and 20 seconds. Do you have anything further to
13 say? Right now.

14 MR. NELSON: So long as the wastes are not
15 processed and placed in the entailment and adequate
16 provisions are made to ensure that there will be no releases
17 if the wastes are brought in, I guess at that point it is
18 the risk of the company as to whether they will turn around
19 and have to ship it again. But it makes no sense, as far as
20 the State of Utah is concerned, to go through that whole
21 process when there is no alternative injury to leaving them
22 in place where they are until we can get those issues
23 resolved. So I believe that is all I have on that issue.

24 JUDGE BLOCH: Okay. We have 9 minutes for the
25 State so far. You have the remainder left for later.

1 So that all of the arguments in favor of the
2 motion are heard together, I think it might be appropriate
3 to hear from Envirocare now. Would Envirocare --

4 MS. POHLMAN: Yes, Your Honor.

5 JUDGE BLOCH: There are two issues. One is the
6 timeliness and the other one is irreparable injury.

7 MS. POHLMAN: We concur with the State on the
8 issue regarding timeliness. I won't say a lot, but we
9 believe that their position is well taken, that it is
10 inappropriate to bring a motion before irreparable harm may
11 occur. And so because the motion was brought within 10 days
12 from when we received notice that waste was being shipped,
13 it is an appropriate and a timely motion at this time.

14 As far as irreparable injury goes, Envirocare will
15 be irreparably harmed if these shipments continue to come
16 into the state. Envirocare is a licensed disposal facility
17 who intended to compete for the contract with the Corps to
18 bring this waste into the state, and it has been precluded
19 from competing for that contract following the NRC's grant
20 of the license to IUC.

21 JUDGE BLOCH: Ms. Pohlman, you say that that is an
22 irreparable injury. I assume that if the license is now
23 denied, which could happen in three months, let's say, --

24 MS. POHLMAN: Yes.

25 JUDGE BLOCH: -- that something is going to have

1 to done to dispose of that material. Why would there be an
2 irreparable injury under those circumstances?

3 MS. POHLMAN: It will be irreparable because if
4 the waste is shipped into the state, then the contract will
5 be completed and Envirocare will not be able to compete for
6 that contract and we will not be able to recover lost
7 profits that results from our failure to be able to perform
8 the contract for the Corps of Engineers.

9 JUDGE BLOCH: Okay. Do you have further remarks?

10 MS. POHLMAN: That's it, Your Honor.

11 JUDGE BLOCH: That's 1 minute and 26 seconds.
12 For International Uranium?

13 MR. PHILLIPS: Yes, Your Honor. Fred Phillips.
14 First of all, I want to reiterate something I started to say
15 earlier, which is I am at a little bit of a loss to
16 understand why Envirocare is being asked to speak on the
17 State of Utah's pending petition for stay, and is justifying
18 the State's petition for stay by, again, arguing economic
19 harm to a private company. I don't -- it's hard for me to
20 understand how that could possibly justify granting a
21 State's petition for stay which Mr. Nelson said was brought
22 to protect against irreparable injury to the state's natural
23 resources. It is hard to see what the connection here is
24 and why Envirocare is even participating in the hearing.

25 JUDGE BLOCH: So now could we get on to what you

1 think is important.

2 MR. PHILLIPS: I think that is important, Your
3 Honor. But besides that, on the timeliness issue, the
4 regulations are quite clear. The regulations say that the
5 request for the stay must be filed within 10 days of the
6 staff action. It is hard to imagine how -- how the staff
7 action in this context could be anything other than the
8 issuance of the license amendment.

9 In terms of the foreseeability or ripeness of
10 irreparable harm -- well, first of all, I would suggest that
11 it is a disingenuous argument because the arguments that are
12 being raised in terms of irreparable harm are the same
13 arguments that the State has raised in its pending motion
14 for a hearing. So evidently they were able to foresee, at
15 least by the time that they filed for their hearing, which,
16 indeed, according to regulations is the time at which they
17 should have asked for the stay, that there was some
18 potential for -- or at least in their eyes, some potential
19 for irreparable harm.

20 I mean the irreparable harm that they complain of,
21 if it were to occur at all, would occur as a result of the
22 effectuation, if you will, of the license amendment, which
23 IUSA was free to effectuate at any time after its issuance.

24 JUDGE BLOCH: Well, if I am correct, the license
25 amendment prohibits the importation of hazardous waste, is

1 that right?

2 MR. PHILLIPS: That's correct.

3 JUDGE BLOCH: So how can we assure the State that
4 there is no hazardous waste in the shipment?

5 MR. PHILLIPS: Well, Your Honor, this, again, is
6 the subject of -- Part I of the subject of the State of
7 Utah's petition for a hearing, and the response to that I
8 think would be the same as it was, as our response was to
9 that petition, which is that data, all available data on the
10 testing of that material was submitted in due course to the
11 NRC, and in accordance with NRC procedure.

12 That material was reviewed by the technical staff
13 of the NRC, whose function by law it is to undertake a
14 review of license applications.

15 JUDGE BLOCH: Okay. Is that material is about
16 this -- are the tests of this material now in the public
17 record?

18 MR. PHILLIPS: Yes, sir, I believe -- yes, they
19 were filed in support of the license amendment application.

20 JUDGE BLOCH: All right. So they are in the
21 public record. Could you refer us and the State of Utah to
22 where this test -- these tests are reported?

23 MR. PHILLIPS: I would have to do some --

24 JUDGE COLE: The test results.

25 JUDGE BLOCH: The test results.

1 MR. PHILLIPS: Michelle, can you -- do you happen
2 to know what the answer to that is?

3 MS. RAYMOND: Yes. This is Michelle Raymond. I
4 would like to comment on that. In our amendment
5 application, International Uranium referred to a series of
6 characterization programs that were carried out for the site
7 from which these materials are being excavated. Those
8 programs were carried out under a CERCLA process, an IRSS
9 type of process, to investigate the site and gain
10 information about characteristics and nature and extent of
11 contamination. And those were performed between 1988 and
12 1989.

13 The data were reported in one document as the
14 Remedial Investigation Report for the tunnel on the site,
15 which includes not only the Ashland 2 site but associated
16 sites. That was published in February of '93 and I believe
17 that the State has a copy of that document available to
18 them, based on letters that we have received referring to
19 that document. We have also sent copies of the data
20 directly to the State and copies of amendment application.

21 JUDGE BLOCH: Okay. Could you just -- Ms.
22 Raymond, I just would like the name of the title of that
23 document once again so I can make sure I have it.

24 MS. RAYMOND: Yes, sir. It's the Remedial
25 Investigation Report.

1 JUDGE BLOCH: And do you have a date?

2 MS. RAYMOND: It is 19 -- that particular document
3 is 1993.

4 JUDGE BLOCH: And it was submitted by
5 International Uranium?

6 MS. RAYMOND: We submitted portions of the report.
7 It's an extremely large report.

8 JUDGE BLOCH: Portions submitted by -- and the
9 other portions were not requested by the staff?

10 MS. RAYMOND: No. The staff did request
11 additional data. In our initial application, as was pointed
12 out earlier, we stated that in addition to use of these data
13 to confirm that the materials that would be excavated would
14 not contain hazardous materials, a sampling and analysis
15 plan was undergoing completion and would be submitted prior
16 to excavation.

17 The NRC staff replied that they would like to have
18 that sampling and analysis plan before they approved the
19 amendment. And in a follow-up submittal on June 3rd of
20 1998, IUC submitted -- or International Uranium Corporation
21 submitted that sampling and analysis plan. And the State is
22 aware of this because we sent them a copy of that follow-up
23 submittal to the NRC.

24 JUDGE BLOCH: All right. Would it be possible to
25 send that, fax -- how long is that plan, the sampling and

1 analysis plan?

2 MS. RAYMOND: It's quite large, it's a standard
3 sampling and analysis plan, including quality assurance,
4 data quality objectives and so on. It is approximately 100
5 pages.

6 JUDGE BLOCH: All right. And are there results in
7 that or is it just a sampling plan?

8 MS. RAYMOND: No, sir. That does not contain the
9 results. The results are in the Remedial Investigation and
10 other reports that we also used. And that report was used
11 to give us the information that the materials to be
12 excavated would not contain hazardous constituents.

13 JUDGE BLOCH: All right. So this is a second
14 step. First, you did a study of the site, which was the
15 Remedial Investigation Report. And now you have done a
16 sampling plan of the materials that are actually being
17 shipped, is that right?

18 MS. RAYMOND: That's correct. Actually, there are
19 three steps. The first is the existing data to confirm that
20 those data show that the materials to be excavated will not
21 contain hazardous materials. The site does have some areas
22 that contain some hazardous materials, however, but they are
23 not the materials that are the scope of this removal
24 reaction.

25 JUDGE BLOCH: All right. So you have not -- you

1 have not removed anything from the areas identified in 1993
2 as having hazardous materials?

3 MS. RAYMOND: That is correct. That is not
4 included in this program. It is specifically excluded from
5 this program.

6 The second step is, as the contractor, ICF Kaiser
7 excavates the materials, they are performing on-site
8 sampling and additional analysis, both field testing and
9 laboratory testing.

10 And the third step is, as the materials arrive at
11 White Mesa Mill, we will collect additional samples to
12 perform final confirmatory testing to confirm the absence of
13 hazardous constituents.

14 JUDGE BLOCH: All right. And who at this point
15 has seen or reviewed the ICF Kaiser tests?

16 MS. RAYMOND: We have begun receiving data from
17 the ICF Kaiser tests as they are performing them, because we
18 receive that information before they even place that
19 material for shipment to our facility.

20 JUDGE BLOCH: All right. And there is nothing, in
21 your opinion, that indicates that there is hazardous
22 material in the shipment?

23 MS. RAYMOND: That's correct.

24 JUDGE BLOCH: Now, is it possible to share some of
25 that with the State of Utah to allay its fears?

1 MS. RAYMOND: Sure.

2 JUDGE BLOCH: All right. And let me ask, how soon
3 would you think -- well, why don't you speak now outside
4 your time, which is now 8-1/2 minutes, why don't speak with
5 the State of Utah to see if you can arrange a time for the
6 exchange of that information? I will -- we are off the
7 record now.

8 [Recess.]

9 JUDGE BLOCH: During the off-the-record time, the
10 State and International Uranium had a conversation and it
11 was agreed that International Uranium will mail, overnight
12 mail, to the State the information we have been discussing
13 and that is acceptable to the State.

14 Now the State wants to ask for the use of some of
15 its time at this point.

16 MR. NELSON: Certainly. I think it would be
17 appropriate that we address specifically our concerns with
18 the testing issue if we are through with the irreparable
19 injury portion of the argument.

20 The testing issue directly relates to the
21 discussion we just had and it is the primary concern of the
22 State of Utah at this point.

23 We did receive the summaries of the testing that
24 was done, not by IUC but the remedial investigation process
25 that happened as part of the CERCLA process. We did receive

1 that. We have reviewed that -- that is the basis for our
2 concern here.

3 The first part of the concern on testing is that
4 the material is being tested after it comes out of the
5 ground. Listed hazardous waste --

6 JUDGE BLOCH: Mr. Nelson, if I may, I want to see
7 if we can both have the same understanding.

8 What I understood from the discussion with
9 International Uranium is that there are two stages to this
10 testing. One was in the ground, which you have read -- the
11 investigation report -- and they said they used that and in
12 fact they have avoided the areas in which there are
13 hazardous wastes and taking things out of the ground, and
14 then the second step is what the testing is after it comes
15 out of the ground.

16 Are we sharing the same understanding now?

17 MR. NELSON: We are. The area -- the testing that
18 was done before in 1989 to -- 1988 to -89 we believe has to
19 be specific to this area and rather than test it before
20 it -- or after it comes out of the ground we believe that it
21 is critical that it be tested before it comes out of the
22 ground.

23 JUDGE BLOCH: Okay. I don't understand the
24 irreparable injury from that or why that is even a serious
25 problem

1 Why do things have to be tested before they come
2 out of the ground instead of after they do?

3 MR. NELSON: Because listed hazardous wastes are
4 listed by definition and if you pull them out of the ground
5 and you mix them and you combine them with other materials
6 you aren't getting an adequate assessment of what you just
7 pulled out of the ground, so if you pull it out of the
8 ground and you mix it up and you distribute it --

9 JUDGE BLOCH: Mix it up with what? Are they
10 bringing other sawdust in here or what are they mixing it up
11 with?

12 MR. NELSON: Because you may have concentrated
13 portions of listed waste which will then be diluted and so
14 the sampling protocol has to be sufficient, and that is why
15 we need to look at the sampling plan, to make sure that they
16 are not taking concentrated areas, mixing it with areas that
17 have no wastes, diluting it to the point where it is no
18 longer in their minds a problem, but in our minds that
19 violates the rules and it violates the requirements to
20 hazardous waste rules that you can't dilute or mix.

21 JUDGE BLOCH: All right. Now my understanding
22 from what they said is that they are avoiding the areas that
23 were shown to be hazardous previously.

24 Is there some kind of a hole in the previous
25 testing plan where that is not adequate?

1 MR. NELSON: Yes. It is very difficult unless you
2 punch -- in the first place, we haven't seen what testing
3 was done in this area.

4 JUDGE BLOCH: They are talking about a 1993
5 report. You don't have that?

6 MR. NELSON: We only were issued the little
7 summary portion that they submitted to NRC. NRC doesn't
8 even have the full report, it's our understanding.

9 JUDGE BLOCH: All right, and your belief is that
10 what you have is not adequate to understand what was done?

11 MR. NELSON: Yes. That is exactly right.

12 JUDGE BLOCH: So do you also want a way of sharing
13 the rest of that in fairly short order? Is that right?

14 MR. NELSON: We would. We would like to see what
15 testing was done in the area to determine that there wasn't
16 listed waste.

17 JUDGE BLOCH: Now let me ask if International
18 Uranium has a problem with trying to share that quickly?

19 MS. RAYMOND: Excuse me, what is the question?

20 JUDGE BLOCH: They want to see the rest of the
21 1993 report that was not filed with the NRC.

22 MS. RAYMOND: We could do that. I understand from
23 a letter that Envirocare gave a copy of that report to the
24 State, but if they would like another copy I can get mine
25 copied. As I said, it's about 10 inches thick but we can

1 copy it and send it along.

2 JUDGE BLOCH: Is it possible that in fact you have
3 the whole thing already, Mr. Nelson?

4 MR. NELSON: No, it's not. We have a quarter-inch
5 report here and we don't believe the NRC has got that
6 report. We believe that is an important point.

7 We think NRC should have evaluated where those
8 samples were taken to see what kind of sampling should be
9 done to ensure there isn't hazardous waste.

10 The reason for that is even in the -- and I am
11 going to continue here with the argument -- the reason for
12 that is because in the short summary that we have got
13 there's specific references to VANE compounds. There are
14 specific references to high PAH concentrations that were
15 found at various locations.

16 JUDGE BLOCH: Are the locations identified?

17 MR. NELSON: No, they aren't and those are
18 specific listed wastes that are generated by refineries and
19 we know that Ashland had a refinery there, that there were
20 listed wastes generated by that refinery, and we feel like
21 it is imperative that those kinds of things are sampled for.

22 That is another reason we need to see the sampling
23 plans. We don't know whether there is sampling for those
24 compounds in determining whether they have got hazardous
25 wastes.

1 JUDGE BLOCH: Okay, Ms. Raymond, if he were to see
2 the whole report, will he understand that in fact those
3 wastes were identified as to location?

4 MR. NELSON: Hopefully --

5 JUDGE BLOCH: Wait a minute. I am asking Ms.
6 Raymond a question.

7 MS. RAYMOND: Yes, and I would like to also
8 comment on something else, if I may.

9 JUDGE BLOCH: Sure.

10 MS. RAYMOND: As far as -- I do think it would be
11 helpful for the State to look at the sampling and analysis
12 plan because I am hearing that there is a concern that there
13 may be some potential for gross areas being excavated and
14 hazardous constituents potentially being mixed in.

15 In fact, the sampling and analysis plan calls for
16 field screening using a device which detects organic
17 constituents or hazardous constituents in situ, so that is
18 testing of the material prior to excavation, and then if
19 areas are identified which potentially are contaminated,
20 those are sampled separately and the sampling and analysis
21 plan details that.

22 JUDGE BLOCH: Do you have a question?

23 [No response.]

24 JUDGE BLOCH: All right. Mr. Nelson, do you want
25 to continue?

1 MR. NELSON: Let's see. I believe that I have
2 made the points of concern with respect to the testing.

3 Just to summarize, we believe it needs to be
4 sampled before it comes out of the ground to make sure we
5 don't have concentrated area of listed wastes.

6 We also believe that we need to be sampling for
7 the right compounds and in order to know that, the review of
8 those plans would be most helpful and we would hope that NRC
9 Staff has reviewed those and made a determination that the
10 listed wastes' constituents, the particular reasons for the
11 waste being listed, are being sampled for.

12 JUDGE BLOCH: Well, if I understand correctly, the
13 State might be able to be satisfied by the documents that
14 are going to be shared providing that the testing is
15 sufficient to identify the areas where the hazardous wastes
16 are, is that correct?

17 MR. NELSON: I think that is a fair statement.

18 JUDGE BLOCH: All right, because that would be the
19 inground testing that you are insisting on.

20 MR. NELSON: Yes.

21 JUDGE BLOCH: And then if that is adequate what
22 more -- you want to make sure that the testing when it is
23 removed is sufficient to detect each of the wastes that you
24 are concerned about?

25 MR. NELSON: Yes.

1 JUDGE BLOCH: Okay. Ms. Raymond, is this going to
2 be something that -- it looks like it is possible that the
3 State and the company could reach an agreement on this.

4 Are you going to be sharing this information with
5 them?

6 MS. RAYMOND: Yes, we will.

7 JUDGE BLOCH: Okay. Would the Staff like to
8 comment?

9 MR. HOM: Yes. Just a few points, Your Honor. I
10 just wanted to correct an earlier date. It was June 23rd
11 was the date of the Staff action, not July 23rd.

12 We don't really have much more to add. I do
13 believe that the regulation is very clear and very firm in
14 that the requests must be filed. There is no apparent
15 flexibility that I see in the regulation that allows for any
16 retiring of a determination of when irreparable harm may
17 occur.

18 It seems that the State had couched irreparable
19 harm in terms of the threat of irreparable harm. It doesn't
20 appear to me that they have made an affirmative showing yet
21 and met their burden of demonstrating irreparable harm.

22 There is certainly some speculation as to whether
23 there may be hazardous waste in some of this material or not
24 but it is more of a speculative claim to me than an
25 affirmative showing of irreparable harm.

1 JUDGE BLOCH: Can we expect the Staff in some way
2 to facilitate these discussions so that if there are
3 analytical problems between the State of Utah and
4 International Uranium that the Staff can be present to
5 facilitate the communication?

6 MR. HOM: I believe that the Staff is available
7 for any inquiries that the State as a licensee may wish to
8 make of the Staff.

9 JUDGE BLOCH: Okay. I would urge that if there
10 seem to be productive discussions going on between those two
11 parties that it might be very productive for the Staff to
12 lend its advice to them and try to see whether there are
13 problems or whether they can be all ironed out.

14 It looks to me like there is a fairly good chance
15 that we could actually resolve not only the stay issue but
16 the case. If we don't, we will have sharpened up the issues
17 considerably and we will have specific issues that we know
18 have to be determined.

19 What I would like to propose subject to comment by
20 the parties is that I will not determine the stay issue
21 until next Wednesday. I would expect to hear a report from
22 the parties on Tuesday as to whether they feel that there
23 are productive discussions ongoing and there is a need for
24 me to act or whether I can further defer actions on the
25 stay.

1 Would the parties like to comment on that
2 proposal, starting with the State?

3 MR. NELSON: Next Wednesday --

4 JUDGE BLOCH: I wouldn't act until Wednesday
5 because I would want to hear a report from the parties on
6 Tuesday as to how things are going.

7 MR. NELSON: We'll do the best we can. It is --
8 it will depend on how soon we can get that information and
9 we'll do our best to evaluate it and get a response back.

10 And does International Uranium object to this way
11 of proceeding?

12 MR. PHILLIPS: It's difficult without having
13 conferred with my client. When we're on the telephone, it's
14 hard for me to do that.

15 JUDGE BLOCH: Well, then, why don't we take a 10
16 minute recess and you can speak to them on a separate line
17 if you want.

18 MR. PHILLIPS: I would appreciate that
19 opportunity.

20 JUDGE BLOCH: We will take a 10 minute recess
21 right now.

22 MR. NELSON: Judge Bloch?

23 JUDGE BLOCH: Yes.

24 MR. NELSON: Can I just ask a quick question as
25 far as when does the company anticipate being able to get

1 that information to us on the sampling plan and the full
2 report on where the samples were taken?

3 JUDGE BLOCH: My understanding was that some of it
4 was going to come overnight mail. I guess we don't know
5 when the rest of it will actually get to you.

6 MR. NELSON: We will get it Monday morning then,
7 probably. Is that --

8 JUDGE BLOCH: By 10 a.m. -- well, you should be
9 getting it, if it is overnight mail today, you might be
10 able -- I guess probably Monday morning. Is that what
11 International Uranium is suggesting?

12 MS. RAYMOND: Judge Bloch, I would ask my
13 assistant if she can get it to the State by Saturday.

14 JUDGE BLOCH: Okay, so you might be able to get it
15 into the mail to get it to them tomorrow -- and is that all
16 the material we are talking about or is it just some of it?

17 MS. RAYMOND: I would have the full II report
18 copied and the sampling and analysis plan that the State has
19 requested.

20 JUDGE BLOCH: Okay.

21 MR. NELSON: And also have you got test results
22 for the initial excavated material?

23 MS. RAYMOND: We do have some data and I will
24 share that with you.

25 JUDGE BLOCH: All right, so now we will take our

1 10-minute recess for International Uranium to consult with
2 its lawyers about whether to object to the procedure I have
3 outlined.

4 MR. PHILLIPS: Thank you, Judge. Are we going to
5 be able to call back in to this same number?

6 JUDGE BLOCH: You can either call back in or you
7 can stay on the line and connect with your party on another
8 line. It's up to you. Same number is still available until
9 5:30. I am not going to be on that long, but it is
10 available until 5:30.

11 MR. PHILLIPS: Okay. We'll call back in. Thank
12 you, Your Honor.

13 MS. RAYMOND: Thank you.

14 [Recess.]

15 JUDGE BLOCH: We'll go back on the record. I
16 would to report that while we were awaiting the return of
17 International Uranium, I ascertained that the staff has no
18 objection to the procedure that was outlined. And I also
19 ascertained that Envirocare is concerned about where the
20 materials are going to be put if a temporary stay is not
21 granted.

22 Mr. Phillips, how do you feel about the proposed
23 procedure?

24 MR. PHILLIPS: We have no objection, Your Honor.
25 We will cooperate with the State. We will provide them with

1 the information that they have asked for. However, I want
2 to make clear for the record that we are reserving all of
3 our arguments, those that we made today, and those that we
4 could have made today, that we are not making, in the
5 interests of facilitating this process.

6 JUDGE BLOCH: No problem. And if either party
7 feels that the discussions and the cooperation has broken
8 down, you don't have to wait till the end of Tuesday.

9 MR. PHILLIPS: I would like to make clear also for
10 the record, Your Honor, that the fact that we are providing
11 this information does not mean that we think that there is
12 any merit to the argument that there is a threat here of
13 some irreparable harm.

14 JUDGE BLOCH: Understood. Settlement negotiations
15 don't necessarily require any admission by anybody.

16 MR. PHILLIPS: I just wanted to make that clear,
17 Your Honor. Well, reserving all rights, then we intend to
18 give the State all the data that they have asked for, and we
19 hope to have it to them tomorrow morning.

20 JUDGE BLOCH: All right. Now, the State also
21 indicated they might have one piece -- one question that
22 they would like to ask you while we are still on the call.

23 MR. NELSON: Yes. We wanted to ask for a
24 representation from the company as to how much material has
25 already arrived, how much is in transit, if we are going to

1 be waiting until next Wednesday. Do we have hazardous waste
2 -- or do we have material with the potential for hazardous
3 waste coming into the state before we make a determination?
4 Do you know where the status of the project is at this
5 point?

6 MR. PHILLIPS: I don't, no. I could not tell you
7 with any specificity at all. I know that some material has
8 left the Tonowanda, New York site and, beyond that, I really
9 couldn't tell you very much.

10 JUDGE BLOCH: The timing of what we have in our
11 record suggests that the departure was more than 10 days ago
12 and the trip was expected to be 10 days.

13 MR. NELSON: Does Michelle Raymond know the answer
14 to that question?

15 MR. PHILLIPS: I suspect she might. Is she not on
16 -- Michelle?

17 MS. RAYMOND: Yes, I am on.

18 MR. PHILLIPS: Well, then she can answer for
19 herself.

20 MS. RAYMOND: As of this morning, no material had
21 arrived at our site.

22 JUDGE BLOCH: Okay. Am I correct in believing
23 that when the material does arrive, that you will know with
24 fair specificity where it is being placed so that if it were
25 absolutely necessary, you would be able to remove it?

1 MS. RAYMOND: Yes, that's correct. I'll make two
2 points. One is as the material arrives, it will be stored
3 in our normal ore area, which is -- it is within our
4 restricted area, and, as I said, we will be testing the
5 material as it arrives.

6 In addition, as to the State's question of whether
7 hazardous materials have been transported to the site, no
8 hazardous materials are being transported to the site. That
9 is the purpose of our initial review of data and the
10 sampling and analysis that is being performed prior to the
11 material being shipped to us, to ensure that no materials
12 are placed on transport to us.

13 MR. NELSON: I am sorry, I didn't -- I did not
14 want to characterize it that way. I just simply want to
15 know how much material is in Utah, and do you anticipate,
16 between now and next Wednesday, a number of more shipments
17 coming into Utah?

18 MS. RAYMOND: The contractor has estimated, in
19 order to meet his September 30 deadline for having all of
20 the material shipped, having approximately 100 containers
21 packaged for shipment by today, and having those en route.
22 I am not sure of the status of those or the location of
23 those as we speak.

24 JUDGE BLOCH: Okay.

25 MR. NELSON: How much is in each container?

1 MS. RAYMOND: I believe the containers are sized
2 to contain on the order of 20 to 22 cubic yards per
3 container.

4 JUDGE BLOCH: I would like to comment that in
5 proposing the procedure that I have, I have not myself made
6 any conclusions about either irreparable injury or
7 timeliness. I do know that if the State of Utah wants to
8 pursue its argument that its stay motion is timely, they
9 should promptly get to me the authority that they say exists
10 in a Commission decision, so that I will know that the rule
11 doesn't mean what it seems to say.

12 MR. NELSON: We will do that.

13 JUDGE BLOCH: Okay. So that can be done during
14 these next -- I expect that I could probably get that on
15 Monday. If the -- if Envirocare wishes to participate in
16 this stay motion, I would suggest that they file their own
17 stay motion, accompanied with their answer to the question
18 already asked about the Quivera case. Until they do that,
19 their standing to support this motion is in doubt because it
20 is not their motion and their status as a party is in
21 serious question.

22 MS. POHLMAN: I understand, Your Honor. Thank
23 you.

24 MR. PHILLIPS: Your Honor, for IUSA, we would ask
25 that the State provide us with the case that they referenced

1 also, please.

2 JUDGE BLOCH: Oh, I assume that anything that
3 comes to the Board will be going to the service list. We
4 don't receive anything from the parties without it going to
5 everybody.

6 MR. PHILLIPS: Thank you, Your Honor.

7 MR. NELSON: Could we have until later, I mean
8 5:00 o'clock on Monday to file that with you?

9 JUDGE BLOCH: No problem at all. That's your
10 time, 5:00 o'clock? It's okay if it is at 5:00 o'clock your
11 time. I will be looking at it Tuesday morning.

12 MR. NELSON: Thank you, Your Honor.

13 JUDGE BLOCH: There being no further comments of
14 the parties --

15 MR. NELSON: Can I ask one other question? Fred
16 Nelson.

17 JUDGE BLOCH: Yes.

18 MR. NELSON: We want to make sure the State has
19 the documents that NRC staff reviewed when they made the
20 determination that there was no hazardous waste. Is there a
21 contact or someone from the NRC staff that we could work
22 with to make sure we get -- that we have all of the
23 documents that NRC had in making that determination?

24 JUDGE BLOCH: Mr. Nelson, if you want to pursue
25 that with the staff, that's fine. But the question before

1 me is not whether the staff was correct in its
2 determination, but whether there is something for me to
3 redress. The fact that they may have made an error is never
4 going to be an important substantive point in the
5 adjudication before me. I have to know what the merits of
6 the issue are.

7 MR. NELSON: I understand that, Your Honor. My
8 reason for asking that is not whether they made a correct
9 determination, it is to make sure that we have all the
10 documents that in any way relate to this issue so we can
11 properly determine whether we have got hazardous waste
12 coming into the State of Utah.

13 JUDGE BLOCH: I can see that that would be
14 helpful, that anything the staff can do to assist you in
15 knowing that would be helpful.

16 MR. NELSON: Thank you.

17 JUDGE BLOCH: Do you need an answer from the staff
18 on the call or not?

19 MR. NELSON: Is there a contact point?

20 MR. PARK: Judge Bloch, my names is James Park. I
21 identified myself earlier.

22 JUDGE BLOCH: Yes.

23 MR. PARK: I would be the appropriate contact to
24 supply that information. It is all -- all the information
25 that was provided is part of the public record. My phone

1 contact number is area code 301-415-6699.

2 JUDGE BLOCH: I would like to thank all the
3 participants for their cooperation. This pre-hearing
4 conference is adjourned.

5 [Whereupon, at 3:18 p.m., the telephone conference
6 was concluded.]

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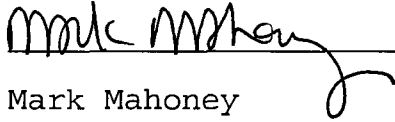
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the matter of:

NAME OF PROCEEDING: PRE-HEARING TELEPHONE CONFERENCE
 INTERNATIONAL URANIUM (USA)
 CORPORATION

CASE NUMBER: 40-8681-MLA-4

PLACE OF PROCEEDING: Rockville, MD

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