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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'99 MAY -7 P3:10

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

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OFFICE OF THE  
BOARD OF  
ADJUDICATORS

IN THE MATTER OF:

INTERNATIONAL URANIUM (USA)  
CORPORATION

(Source Material License Amendment)

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Docket No. \_\_\_\_\_

ASLBP No. \_\_\_\_\_

May 4, 1999

**INTERNATIONAL URANIUM (USA) CORPORATION'S  
OPPOSITION TO ENVIROCARE OF UTAH, INC.'S  
REQUEST FOR HEARING**

I. INTRODUCTION

International Uranium (USA) Corporation ("IUSA") owns and operates, in accordance with Source Material License No. SUA-1358 issued by the United States Nuclear Regulatory Commission ("NRC"), the White Mesa Mill (the "Mill"), a uranium recovery facility located in Blanding, Utah. The Mill processes uranium-bearing materials for the purpose of extracting uranium therefrom. The residuals from this process, or "mill tailings," are defined as "11e.(2) byproduct material," under the Atomic Energy Act of 1954, as amended, ("AEA") and are permanently disposed of in an NRC-licensed "cell" or tailings impoundment at the Mill. IUSA's Mill is regulated by the NRC, pursuant to the AEA, and the Uranium Mill Tailings Radiation Control Act of 1978, ("UMTRCA"), as amended, and NRC's implementing regulations set forth at 10 C.F.R. Part 40, Appendix A to that Part, and applicable guidance documents.

SECY-EHD-006

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On March 2, 1999, IUSA submitted to NRC a request for a license amendment specifically allowing IUSA to receive and process up to 1, 029,000 cubic yards of uranium-bearing materials (specifically, 11e.(2) materials) from the St. Louis, Missouri Formerly Utilized Sites Remedial Action Program (“FUSRAP”) site (“St. Louis site”). On April 26, 1999, Envirocare of Utah, Inc. (“Envirocare”) filed a Request pursuant to 10 C.F.R. § 2.1205, for a hearing on IUSA’s license amendment application. Envirocare’s request should be dismissed for lack of standing.

## II. ARGUMENT

While Envirocare’s persistence is commendable, (with this pleading, Envirocare is making at least its sixth attempt at securing standing in an NRC licensing proceeding on the basis of alleged economic or “competitor” injury), its arguments are wanting. As the Commission, the NRC Staff, and no doubt the Presiding Officer to be assigned to this case, are well aware, on May 28, 1997, Envirocare filed a Request for Hearing to challenge a materials license amendment granted to the Quivira Mining Company. The amendment authorized Quivira to accept and dispose of 11e.(2) byproduct material at its facility near Grants, New Mexico. As later characterized by the Commission, “Envirocare’s core complaint is that the license amendment permits Quivira to become a general commercial disposal facility like Envirocare, but that the NRC did not require Quivira to meet the same regulatory standards the agency imposed upon Envirocare when Envirocare sought its license to become a commercial disposal facility for 11e.(2) material.”<sup>1</sup> Envirocare alleged that NRC’s “unfair and inconsistent” application of standards caused it to suffer a “severe competitive disadvantage” and that

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<sup>1</sup> In the Matter of Quivira Mining Company, CLI-98-11 (July 17, 1998) at 2. (emphasis in original).

Envirocare thus had an economic interest in NRC's consideration and issuance of Quivira's license amendment.<sup>2</sup>

The Atomic Safety and Licensing Board found that Envirocare lacked standing to challenge the amendment and terminated the proceeding.<sup>3</sup> On Envirocare's appeal of that Order, the Nuclear Regulatory Commission, in a lengthy and well-considered opinion, affirmed the Board, holding that Envirocare's alleged "competitor" injuries did not fall within the zone of interests of the National Environmental Policy Act ("NEPA") or the Atomic Energy Act ("AEA").<sup>4</sup>

On July 23, 1998, Envirocare filed a Request for Hearing to challenge a materials license amendment allowing IUSA, to receive and process 11e.(2) byproduct material known as the "Ashland 2" materials. Finding that Envirocare's interest in the matter was "purely economic" and "convinced that this case is on all fours with Quivira," this Court dismissed Envirocare's Request for lack of standing.<sup>5</sup> Again, Envirocare appealed to the Commission and again, the Commission affirmed.<sup>6</sup> Finding again that purely economic harm unrelated to environmental or radiological injury did not fall within the zone of interests of NEPA or the AEA, the Commission again held that Envirocare lacked standing to challenge the subject license amendment.

Not to be deterred, Envirocare brought yet another Request for Hearing challenging IUSA's application for a license amendment to process the Ashland 1 materials which are similar to the Ashland 2 materials discussed above. To nobody's surprise, the Court dismissed

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<sup>2</sup> Id. at 3 (citations omitted).

<sup>3</sup> In the Matter of Quivira Mining Company, LBP-97-20, 46 NRC 257 (1997).

<sup>4</sup> Quivira Mining, CLI-98-11.

<sup>5</sup> In the Matter of International Uranium (USA) Corporation, Memorandum and Order at 2 (August 19, 1998).

<sup>6</sup> In the Matter of International Uranium (USA) Corporation, CLI-98-23 (November 24, 1998).

Envirocare's request for lack of standing.<sup>7</sup> Envirocare appealed the decision of the Presiding Officer on March 4, 1999.

Here, Envirocare does not even claim to offer anything new or to distinguish the pending Request from the ones that came before. In fact, the pending Request is virtually identical to the requests filed previously in Ashland 1 and Ashland 2. Envirocare again prefaces its Request:

. . . Envirocare recognizes the NRC's recent decisions in *Quivira Mining Company* (citation omitted) and *International Uranium (USA) Corporation* (citation omitted) wherein the NRC affirmed the dismissal of Envirocare's requests for hearings in those matters for lack of standing. Envirocare respectfully disagrees with the NRC's decisions and has appealed the decisions to the federal court. While its appeals are pending, Envirocare hereby files this request, in good faith, to preserve its right to participate as a party in a hearing on IUSA's latest license amendment application.<sup>8</sup>

### III. CONCLUSION

Envirocare's Request is yet another attempt to employ the NRC hearing process to interfere with Staff decisionmaking in order to gain economic advantage over a competitor. As pointed out by IUSA in its response to Envirocare's request for hearing in Ashland 1, the NRC, in its opinion affirming Envirocare's dismissal from the Ashland 2 proceeding, made clear that it will not countenance this abusive tactic:

Competitors, though, whose only "interest" is lost business opportunities, could readily burden our adjudicatory process with open-ended allegations designed not to advance public health and safety but as a dilatory tactic to interfere with and impose costs upon a competitor. Such an abuse of our hearing process would significantly divert limited agency resources, which ought to be squarely -- genuinely -- focused upon health and security concerns.<sup>9</sup>

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<sup>7</sup> In the Matter of International Uranium (USA) Corporation, Memorandum and Order (Feb. 19, 1999).

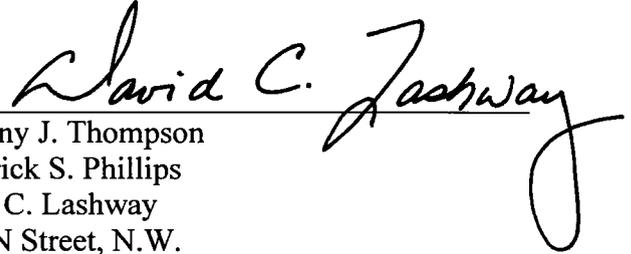
<sup>8</sup> Envirocare Request for Hearing (April 26, 1999) at 1-2 (emphasis added).

<sup>9</sup> International Uranium (USA) Corporation, CLI-98-23 at 8.

As noted above, Envirocare tacitly admits that it raises nothing new in its most recent Request and that, pending the outcome of its appeals, it is bound by the Commission's opinions in Quivira and IUSA. Accordingly, Envirocare lacks standing to challenge IUSA's license amendment request and Envirocare's Request for Hearing in the above-captioned matter must be dismissed.

Respectfully submitted this 4th day of May, 1999.

SHAW PITTMAN POTTS & TROWBRIDGE

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Anthony J. Thompson  
Frederick S. Phillips  
David C. Lashway  
2300 N Street, N.W.  
Washington, DC 20037  
(202) 663-8000

COUNSEL TO INTERNATIONAL  
URANIUM (USA) CORPORATION

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USHRC

ATOMIC SAFETY AND LICENSING BOARD PANEL 99 MAY -7 P3:11

Before Administrative Judges:

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OFFICE OF THE SECRETARY  
RULEMAKING AND  
ADJUDICATIONS STAFF

IN THE MATTER OF:

INTERNATIONAL URANIUM (USA)  
CORPORATION

(Source Material License Amendment)

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Docket No. \_\_\_\_\_  
ASLBP No. \_\_\_\_\_

May 4, 1999

CERTIFICATE OF SERVICE

I hereby certify that I caused true and complete copies of the foregoing International Uranium (USA) Corporation's Opposition to Envirocare of Utah, Inc.'s Request for a Hearing in the above-captioned matter to be served via first class mail, postage prepaid, and e-mail on this 4th day of May, 1999 to:

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

Mitzi A. Young, Esq.  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
11555 Rockville Pike  
Rockville, MD 20852

Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop T3F23  
Washington, DC 20555

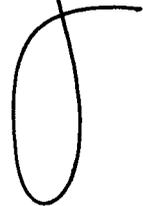
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852

Jill M. Pohlman, Esq.  
David Jordan, Esq.  
Stoel Rives L.L.P.  
One Utah Center, 11th Floor  
201 South Main St.

Salt Lake City, UT 84111-4904

A handwritten signature in black ink that reads "David C. Lashway". The signature is written in a cursive style and is positioned above a horizontal line.

David C. Lashway  
Counsel for IUSA  
Shaw, Pittman, Potts & Trowbridge  
2300 N Street, N.W.  
Washington, DC 20037  
(202) 663-8000

A large, handwritten flourish or mark consisting of a single, continuous, looping stroke that extends downwards and to the right from the end of the signature line.