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June 10, 1994
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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE PRESIDING OFFICER

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	Docket No. 40-8681-MLA-3
UMETCO MINERALS CORPORATION)	
)	ASLBP No. 94-693-02-MLA-3
(Source Materials License No. SUA-1358))	

NRC STAFF'S RESPONSE TO REQUESTS FOR HEARING FILED BY
STEVE ERICKSON FOR DOWNWINDERS, INC. AND BY NORMAN BEGAY

On May 12, 1994, a request for informal hearing was filed pursuant to 10 C.F.R. § 2.1205, by Steve Erickson on behalf of Downwinders, Inc. ("Downwinders"), in connection with a proposed amendment of Source Materials License No. SUA-1358 held by Umetco Minerals Corporation ("Umetco"),¹ to permit it to receive and dispose of approximately 2.6 million cubic yards of materials from the U.S. Department of Energy ("DOE") Monticello Tailings Project. On May 14, 1994, an additional request for hearing on this matter was filed by Norman Begay, an individual who indicated he resides at the White Mesa Native American community near Blanding, Utah. On May 31, 1994, a Presiding Officer was designated to rule upon hearing requests and petitions

¹ On May 25, 1994, Umetco's license was amended to reflect transfer of the license to Energy Fuels Nuclear, Inc., following that company's acquisition of Umetco's White Mesa Mill.

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for leave to intervene and, if necessary, to serve as the Presiding Officer in the event an informal hearing is ordered.²

The NRC Staff ("Staff") hereby files its response to the requests for hearing filed by the Downwinders and Mr. Begay in this matter. For the reasons set forth below, the Staff opposes the request for hearing filed by Mr. Erickson on behalf of Downwinders, Inc. and recommends that it be denied. With respect to the request filed by Mr. Begay, the Staff believes that it fails to establish his standing in this proceeding, but would not oppose his being afforded an opportunity to file a supplemental request with further information demonstrating that the proposed licensing activity could result in injury-in-fact to his interests and that he has standing to request a hearing in this matter.³

INTRODUCTION

On April 18, 1994, the NRC published in the *Federal Register* a notice of its receipt of an application to amend Umetco's source materials license for its White Mesa uranium mill located near Blanding, Utah.⁴ As set forth therein, Umetco seeks to amend its license to authorize its receipt and disposal of 2.6 million cubic yards of materials

² Umetco Minerals Corp., "Designation of Presiding Officer," 59 Fed. Reg. 29451 (June 7, 1994).

³ Pursuant to 10 C.F.R. § 2.1213, the Staff hereby states that it wishes to participate as a party to the proceeding, in the event that the Presiding Officer determines to conduct an informal hearing in this matter.

⁴ Umetco Minerals Corporation, White Mesa Mill, "Notice of Receipt of a Request to Amend Source Material License SUA-1358 to Receive and Dispose of Approximately 2.6 Million Cubic Yards of Materials From the Department of Energy's Monticello Tailings Project," 59 Fed. Reg. 18426 (April 18, 1994).

from the DOE Monticello Tailings Project. The notice indicated that Umetco had received notification from DOE that it had been selected "as the primary alternative site for the permanent receipt and disposal of the Monticello Tailings material." 59 Fed. Reg. 18426. The notice described the materials and proposed amendment as follows:

The materials would be disposed of in a dry state in Cell 4A and Cell 3 of the present tailings impoundment system. The composition of the materials would be uranium and vanadium mill tailings, mill structures, vicinity property cleanup materials, and a small amount of uranium-vanadium ore samples. The Department of Energy has committed to Umetco that no shipments of RCRA materials would be made to the White Mesa Mill.⁵

Id. The notice advised that interested persons may request a hearing pursuant to the procedures set forth in 10 C.F.R. § 2.1205, within 30 days after publication of the notice. *Id.*

In response to the *Federal Register* notice, on May 12, 1994, a timely request for hearing was filed by Steve Erickson on behalf of Downwinders, Inc. On May 14, 1994, a timely request for hearing was filed by Norman Begay. The sufficiency of these requests for hearing are addressed in the discussion below.

⁵ Umetco's license amendment application indicates that most of the DOE materials consist of "byproduct material" as defined in § 11(e)2 of the Atomic Energy Act of 1954, as amended (the "Act") -- *i.e.*, "the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content." *Id.*, 42 U.S.C. § 2014. Umetco states that approximately 2 million cubic yards of the materials is organized in four "piles", of which "most are clearly 11(e)2 materials," although "there has been some question as to the classification of the 'Vanadium Pile.'" See Letter from Richard A. Van Horn, Director of Operations (Umetco) to Ramon E. Hall, Director, Uranium Recovery Field Office (NRC), dated March 25, 1994. A copy of Mr. Van Horn's letter, without attachments, is attached hereto; a complete copy will be included in any hearing file prepared in this matter.

DISCUSSION

A. Legal Requirements for Standing to Participate in Commission Proceedings.

Pursuant to 10 C.F.R. § 2.1205(c), interested persons may request a hearing on a proposed amendment to a materials license under the Commission's informal hearing procedures set forth in 10 C.F.R. Part 2, Subpart L. Such requests for hearing are to be filed within thirty days following publication of a *Federal Register* notice, where (as here) a notice has been published. 10 C.F.R. § 2.1205(c)(1).

It is fundamental that any person or entity that wishes to request a hearing (or to intervene in a Commission proceeding) must demonstrate that it has standing to do so.

Section 189a(1) of the Atomic Energy Act, 42 U.S.C. § 2239(a), provides that:

In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license . . . , the Commission shall grant a hearing upon the request of *any person whose interest may be affected by the proceeding*, and shall admit any such person as a party to such proceeding.

Id. (emphasis added).

In addition, pursuant to 10 C.F.R. § 2.1205(d), where a request for hearing is filed by any person other than the applicant in connection with a materials licensing action under 10 C.F.R. Part 2, Subpart L, the request for hearing must describe in detail:

- (1) The interest of the requestor in the proceeding;
- (2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in [§ 2.1205(g)];
- (3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with [§ 2.1205(c)].

Pursuant to 10 C.F.R. § 2.1205(g), in ruling on any request for hearing filed under 10 C.F.R. § 2.1205(c), the Presiding Officer is to determine "that the specified areas of concern are germane to the subject matter of the proceeding and that the petition is timely." The rule further provides as follows:

The presiding officer also shall determine that the requestor meets the judicial standards for standing and shall consider, among other factors --

- (1) The nature of the requestor's right under the Act to be made a party to the proceeding;
- (2) The nature and extent of the requestor's property, financial, or other interest in the proceeding; and
- (3) The possible effect of any order that may be entered in the proceeding upon the requestor's interest.

The Commission has long held that contemporaneous judicial concepts of standing will be applied in determining whether a petitioner for leave to intervene has sufficient interest in a proceeding to be entitled to intervene as a matter of right under Section 189a of the Act. *See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 332 (1983); Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976); Envirocare of Utah, Inc. (Byproduct Material Waste Disposal License), LBP-92-8, 35 NRC 167, 172 (1992).* These established requirements for standing have been applied to requests for hearing in numerous informal Commission proceedings held under Subpart L. *See, e.g., Sequoyah Fuels Corp. (Gore, OK Site Decontamination and Decommissioning Funding),*

LBP-94-5, 39 NRC 54, 66-67 (1994); *Babcock and Wilcox Co.* (Pennsylvania Nuclear Services Operations, Parks Township, PA), LBP-94-4, 39 NRC 47, 49 (1994); *Babcock and Wilcox* (Apollo, PA Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 80-81 (1993); *Umetco Minerals Corp.* (Source Materials License No. SUA-1358), LBP-92-20, 36 NRC 112, 115 (1992); *Sequoyah Fuels Corp.* (Source Material License No. SUB-1010), LBP-91-5, 33 NRC 163, 164-65 (1991); *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-89-30, 30 NRC 311, 312-13 (1989).

To show an interest in the proceeding sufficient to establish standing, the requestor must show that the proposed action will cause "injury in fact" to its interest and that its interest is arguably within the "zone of interests" protected by the statutes governing the proceeding. *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993); *Three Mile Island, supra*, 18 NRC at 332-33; *Pebble Springs, supra*, 4 NRC at 613-14. Further, it has been held that in order to establish standing, the petitioner (or requestor) must establish (a) that he personally has suffered or will suffer a "distinct and palpable" harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding. *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988); *Vogtle, supra*, 38 NRC at 32; *Babcock and Wilcox* (Apollo, PA Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 81 (1993); *Envirocare, supra*, 35 NRC at 173. A petitioner (or requestor) must have a "real stake" in the outcome of the proceeding to establish injury in fact for standing. *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48, *aff'd*, ALAB-549,

9 NRC 644 (1979). While the petitioner's stake need not be a "substantial" one, it must be "actual," "direct" or "genuine." *Id.* at 448. A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the requestor must allege some injury that will occur as a result of the action taken. *Puget Sound Power and Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 983 (1982), citing *Allied General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976); *Id.*, LBP-82-26, 15 NRC 742, 743 (1982). Similarly, an abstract, hypothetical injury is insufficient to establish standing to intervene. *Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 252 (1991), *aff'd in part on other grounds*, CLI-92-11, 36 NRC 47 (1992).

It is axiomatic that a person may obtain a hearing or intervene as of right on his own behalf but not on behalf of other persons whom he has not been authorized to represent. *See, e.g., Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (individual could not represent plant workers without their express authorization); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977) (mother could not represent son attending university absent allegation that he is a minor or under legal disability); *Combustion Engineering, Inc.* (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 145 (1989) (legislator lacks standing to intervene on behalf of his constituents).

An organization may meet the injury-in-fact test either (1) by showing an effect upon its organizational interests, or (2) by showing that at least one of its members would suffer injury as a result of the challenged action, sufficient to confer upon it "derivative" or "representational" standing. *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 646-47 (1979), *aff'g* LBP-79-10, 9 NRC 439, 447-48 (1979). Where the organization relies upon the interests of its members to confer standing upon it, the organization must show that at least one member who would possess standing in his individual capacity has authorized the organization to represent him. *Id.*; *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-94, 396 (1979); *Babcock and Wilcox Co.* (Pennsylvania Nuclear Services Operations, Parks Township, PA), LBP-94-4, 39 NRC 47, 49 (1994).⁶ Finally, where an individual files a request for hearing on behalf of an organization, he must show that he has been expressly authorized by the organization to represent its interests in the proceeding. *Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 583 (1978); *see also Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-90-29, 32 NRC 89, 92 (1990).

The question of whether proximity to a nuclear facility (or a site at which the possession of nuclear materials is authorized) is sufficient to confer standing upon an individual or entity has been addressed in numerous Commission decisions. While residence within 50 miles of a nuclear power reactor has often been held to confer

⁶ It has also been held that the alleged injury-in-fact to the member must fall within the purposes of the organization. *Curators of the University of Missouri* (TRUMP-S Project), LBP-90-18, 31 NRC 559, 565 (1990).

standing in construction permit or operating license proceedings, such distance is not necessarily sufficient to confer standing in other types of proceedings. Rather, in other proceedings, the requestor must demonstrate that the risk of injury resulting from the contemplated action extends sufficiently far from the facility so as to have the potential to affect his interests. See, e.g., *Boston Edison Co.* (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 99 (1985), *aff'd on other grounds*, ALAB-816, 22 NRC 461 (1985) (risk of injury from proposed spent fuel pool expansion was not demonstrated where petitioner resided 43 miles from the facility); *Cf. Sequoyah Fuels Corp.* (Gore, OK Site Decontamination and Decommissioning Funding), LBP-94-5, 39 NRC 54, 67-71 (1994) (residence adjacent to contaminated fuel fabrication facility might not be sufficient to confer standing if the proposed action had no potential to affect the requestor's interests); *Babcock and Wilcox Co.* (Pennsylvania Nuclear Services Operations, Parks Township, PA), LBP-94-4, 39 NRC 47, 51-52 (1994) (standing and injury-in-fact can be inferred in some cases by proximity to the site, but a greater demonstration of injury may be required where the activity has no obvious offsite implications); *Babcock and Wilcox* (Apollo, PA Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 83-84 and n.28 (1993) (petitioners' residences within one-eighth of a mile to approximately two miles from a fuel fabrication facility were insufficient to confer standing to intervene in a decommissioning proceeding, absent "some evidence of a causal link between the distance they reside from the facility and injury to their legitimate interests"); see also, *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 44-45 (1990)

(person who regularly commutes past the entrance to a nuclear facility once or twice a week possessed the requisite interest for standing).⁷

An application of these principles to the requests for hearing filed by Mr. Erickson on behalf of Downwinders, Inc. and by Mr. Begay indicates that they have failed to satisfy the standards required to demonstrate injury-in-fact and standing in this materials license proceeding.

B. The Request Filed by Steve Erickson on Behalf of Downwinders, Inc.

In his letter of May 12, 1994, Mr. Erickson stated that he was filing his request for hearing on behalf of Downwinders, Inc., which he described as "a non-profit, educational foundation." However, apart from providing an unexplained return address of "c/o 961 East 600 South, Salt Lake City, UT 84102,"⁸ Mr. Erickson provided no further information as to the identity of Downwinders, Inc. or any of its members; he provided no information which would indicate that either he, Downwinders, Inc., or any

⁷ In adopting Subpart L, the Commission considered whether proximity to a materials license facility is sufficient to establish standing. Noting that it had already rejected the 50-mile rule for materials licensing, the Commission further rejected a suggested presumption that persons who reside and work outside a five-mile radius of a materials site would not have standing. The Commission stated, "[t]he standing of a petitioner in each case should be determined based upon the circumstances of that case as they relate to the factors set forth in [10 C.F.R. § 2.1205(g)]." Statement of Consideration, "Informal Hearing Procedures for Materials Licensing Adjudications," 54 Fed. Reg. 8269 (Feb. 28, 1989); *see also, id.*, Proposed Rule, 52 Fed. Reg. 20089, 20090 (May 29, 1987).

⁸ It is unclear whether the address provided by Mr. Erickson is his own residential address, the address of Downwinders, Inc., or the address of some other entity or individual. Further, the Staff notes that the address is located in Salt Lake City, which lies about 135 miles from Blanding and about 125 miles from Monticello, quite remote from the likely situs of any impacts which could result from the proposed action.

of its members has a legitimate interest which could suffer injury-in-fact as a result of this proceeding; he provided no information which would indicate that he, Downwinders, Inc., or any of its members possess standing to request a hearing in this matter; he provided no information to show that he is authorized to represent Downwinders, Inc. here; and he provided no information as to the concerns he or Downwinders, Inc. seeks to raise in this proceeding or whether those concerns are germane to the subject matter of the proceeding. In sum, Mr. Erickson's letter fails to provide any basis upon which his request for hearing could be granted. For these reasons, the Staff opposes Mr. Erickson's request for hearing and recommends that it be denied.⁹

C. The Request Filed by Norman Begay.

1. Standing to Request a Hearing.

In his request for hearing of May 14, 1994, Mr. Begay stated that he is "a member of the White Mesa band of the Ute Mountain tribe and resides at the White Mesa Native American community near Blanding, Utah" (Begay Request at 1); that the White Mesa

⁹ To be sure, persons who request a hearing have occasionally been allowed to amend their filings to provide additional information on standing issues. In those cases, however (as in the case of Mr. Begay, discussed *infra*), the initial request for hearing appears to have contained sufficient information to warrant a presiding officer's exercise of his discretion to permit the requestor to supplement its filing -- and thereby effectively extend the mandatory deadline for filing provided under 10 C.F.R. § 2.1205(c). See, e.g., *Babcock and Wilcox Co.* (Pennsylvania Nuclear Services Operations, Parks Township, PA), LBP-94-4, 39 NRC 47, 49 (1994) (supplemental filing permitted where "the hearing request is otherwise meritorious -- and it appears . . . that the requestors have a good chance of establishing their standing"). *Id.*, 39 NRC at 39 n.4, citing *Babcock and Wilcox* (Apollo, PA Fuel Fabrication Facility), LBP-92-24, 36 NRC 149 (1992), and *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-89-30, 30 NRC 311, 312-17 (1989). See also, 10 C.F.R. § 2.1205(k)(1) (requirements for considering untimely requests for hearing or petitions for leave to intervene).

mill and "a portion" of the White Mesa community are located in an area known as the White Mesa (*Id.*); and that he and other members of the White Mesa community would be affected by the proposed amendment of Umetco's license (*Id.* at 1-2). In particular, Mr. Begay alleged that the White Mesa area contains land that is sacred to him and many other Native Americans of various tribes, and that the Umetco site contains culturally significant ruins; that "the establishment of a commercial disposal facility for imported radioactive tailings at the Umetco site will threaten and defame the religious, historical and cultural heritage" of Mr. Begay and other Native Americans; that he and approximately 300 other residents of the White Mesa community use drinking wells "situated down-gradient" from the White Mesa mill and that "the establishment of a commercial disposal facility will jeopardize" his and other persons' drinking water supply; and that "the high volume of traffic generated by a commercial disposal facility" will threaten his safety and that of other residents of the White Mesa community who use the road which would be used by vehicles going to and from the Umetco site. *Id.* In conclusion, Mr. Begay requested "a full hearing on Umetco's license amendment, including a complete review and analysis of all cultural, religious and environmental impacts relating to the requested amendment." *Id.* at 3.

While Mr. Begay's request for hearing is substantially more informative than the request of Mr. Erickson, it nonetheless lacks sufficient information to demonstrate his standing to intervene. First, while residence or property usage within proximity of the facility is not strictly required, Mr. Begay has not clearly indicated the proximity of his residence and activities from the Umetco site. Thus, while he states that he "resides at

the White Mesa Native American community," and that the Umetco site and "a portion of the White Mesa community" are both located "in an area known as the White Mesa" (Request at 1), he does not state that he, himself, resides in that "portion" of the community which is located in the White Mesa area. Further, he has not identified any specific mileage distances between his residence and activities and the Umetco site. Similarly, while Mr. Begay states that his drinking well is located "down-gradient" from the Umetco site, he has not stated the distance between his drinking well and the Umetco site. There is thus no basis upon which to evaluate his assertion that activities authorized under the requested license amendment "will jeopardize [his] drinking water supply" (Request at 2) or will otherwise adversely affect his interests.

Second, apart from providing generalized statements that "the establishment of a commercial disposal facility" at the Umetco site will affect his interests,¹⁰ Mr. Begay

¹⁰ Mr. Begay's description of the proposed license amendment as a request to create a "commercial waste facility" is incorrect. Umetco's application appears to seek authority to dispose of byproduct materials, not "waste" materials, although a final determination as to the nature of the materials has not been made (*see* n.4, *supra*). Any application to establish a commercial waste facility would be governed by other regulatory provisions, such as 10 C.F.R. Part 61 (Licensing Requirements For Land Disposal of Radioactive Waste), which sets forth the requirements for licensing a low-level waste facility. The definition of "waste" specifically excludes the DOE tailings at issue here, to the extent that they consist of § 11(e)2 materials:

Waste means those low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-Level Waste Policy Act, that is, radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11e.(2) of the Atomic Energy Act (uranium or thorium tailings and waste).

10 C.F.R. § 61.2; emphasis added. *Cf.* 10 C.F.R. § 40.4 ("byproduct material").

has provided little reason to believe that a causal connection exists between the specific license amendment at issue here (which would permit Umetco to receive and dispose of the DOE tailings) and an injury to his interests. To the contrary, Umetco is already authorized to dispose of radioactive materials at its Blanding site, and the impacts of such disposal were considered at the time Umetco's license was issued; any showing of potential injury resulting from this proposed license amendment should properly focus on the extent to which the impacts of this amendment could affect the requestor's interests. Thus, while Mr. Begay recites the historic, cultural and religious importance of the White Mesa area, he has provided no reason to believe that Umetco's receipt and disposal of the DOE tailings would affect those interests any more than continued operation of Umetco's uranium mill and its disposal of the mill tailings on the site.¹¹

Similarly, while Mr. Begay states that "[t]he high volume of heavy equipment traffic generated by a commercial disposal facility will threaten the safety of Requestor and others using the access road to reach the White Mesa community," he has not shown that such increased heavy vehicle traffic poses a reasonably credible threat to his

¹¹ It has been held that the mere expression of an interest in the social, cultural and historic resources of a geographic area are insufficient to demonstrate the concrete and particularized injury needed to support intervention. *Sequoyah Fuels Corp.* (Gore, OK Site Decontamination and Decommissioning Funding), LBP-94-5, 39 NRC 54, 67 n.12 (1994), citing *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 95 n.10 (1993). It is unclear whether this determination would apply to a Native American's general expression of concern over potential injury to sacred religious sites. For purposes of standing, it would seem most appropriate to distinguish between one's general concern over potential impacts to religious sites and one's concern over potential impacts to religious sites which he, himself, holds sacred.

safety,¹² nor has he described the particular nature of any such purported impacts (e.g., radiological, non-radiological, vehicular accidents, spills, etc.).¹³

Further, although Mr. Begay cites the beliefs and interests of various other persons throughout his request,¹⁴ no showing has been made that they have expressed an interest in this proceeding or that they have authorized Mr. Begay to represent their interests here. In this regard, it is clear that persons who request a hearing must demonstrate their own "injury-in-fact" and standing, and "may not undertake to represent the general public as if they were private attorneys general." *Babcock and Wilcox Co.* (Pennsylvania Nuclear Services Operations, Parks Township, PA), LBP-94-4, 39 NRC 47, 50 (1994). *Cf. Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2),

¹² *Cf. Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40 (1990). There, the presiding officer found that radioactive waste "safely and regularly moves via truck and rail throughout the nation" under NRC and Department of Transportation regulations, and the "mere fact" that shipments of radioactive waste would be made by truck on a highway going through requestor's city did not "*ipso facto*" establish a reasonable opportunity for an accident to occur in the requestor's city or for the radioactive materials to escape. *Id.* at 43.

¹³ At issue here is Umetco's application to receive and dispose of the DOE materials, and only the impacts of that request should be evaluated here. The Staff does not understand that Umetco would be responsible for transportation of the materials from DOE's site in Monticello to the Umetco site, or that Umetco has sought authorization under its license to transport those materials. The extent to which these matters are proper subjects for consideration in this proceeding will be addressed by the Staff in connection with any specific transportation concerns presented for litigation herein.

¹⁴ For instance, Mr. Begay cites the beliefs and/or interests of "many other Native Americans of various tribes," "all other Native Americans who hold the White Mesa area to be sacred land," "300 other residents of the White Mesa community," "all others who use wells in the vicinity," "the residents of the White Mesa community," "pedestrians" in the plant vicinity, and "others using the access road to reach the White Mesa community."

CLI-89-21, 30 NRC 325, 329 (1989). Thus, these expressions of other persons' interests cannot confer standing upon Mr. Begay in this proceeding.

For the reasons discussed above, it is unclear that any impacts resulting from the proposed activity could potentially affect Mr. Begay's interests, or that he has standing to request a hearing in this matter. Nonetheless, because Mr. Begay's request contains sufficient information to suggest that he may possess the requisite standing, the Staff would not oppose his being afforded an opportunity to supplement his request with further information demonstrating that the proposed licensing activity could indeed cause injury-in-fact to his interests, that those interests are within the zone of interests protected by the governing statutes, and that he therefore possesses standing in this matter. See n.9, *supra*.

2. Mr. Begay's Areas of Concern.

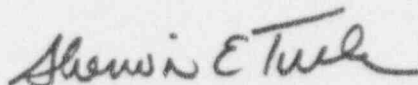
As noted *supra* at 4, 10 C.F.R. §2.1205(d)(3) requires persons who request a hearing to describe in detail his "areas of concern about the licensing activity that is the subject matter of the proceeding." In this regard, Mr. Begay has not set forth a discussion of his areas of concern separate from his list of potentially affected interests, nor has he attempted to demonstrate that his concerns are "germane" to the proceeding. Nonetheless, his filing suggests that his areas of concerns involve the effect the proposed licensing activity may have upon (1) the area's religious, historic and cultural character; (2) archeological ruins located on the Umetco site; (3) local drinking water supplies; and (4) vehicular and pedestrian traffic on an (unidentified) access road to the White Mesa Native American community. It is possible that Mr. Begay may have intended to make

a broader statement of his concerns, and further amplification of these concerns might be helpful. Nonetheless, if the above restatement of these concerns is accurate, these concerns would appear to be germane to the subject matter of this proceeding -- if limited to the effects of this particular license amendment.

CONCLUSION

For the reasons set forth above, the Staff opposes the request for hearing filed by Mr. Erickson on behalf of Downwinders, Inc. and recommends that it be denied. The Staff believes that Mr. Begay's request for hearing fails to establish his standing in this proceeding, but would not oppose his being afforded an opportunity to file a supplemental request with further information demonstrating that the proposed licensing activity could result in injury-in-fact to his interests and that he has standing in this matter.

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 10th day of June, 1994



P.O. BOX 1029
GRAND JUNCTION, COLORADO 81502
☎ (303) 245-3700

ATTACHMENT

March 25, 1994

Mr. Ramon E. Hall, Director
U. S. Nuclear Regulatory Commission
Uranium Recovery Field Office
P. O. Box 25325
Denver, Colorado 80225

**Re: Amendment to License No. SUA-1358 to allow acceptance of
The Monticello Tailings**

Dear Mr. Hall:

Umetco Minerals Corporation hereby requests that Source Materials License SUA-1358 be amended to allow the receipt and disposal at White Mesa of approximately 2.6 MM cubic yards of materials from the Department of Energy's Monticello Tailings Project. The materials would be disposed of in a dry state (as they exist at Monticello) in Cell 4A and in Cell 3, and, along with the proposed mill run, would utilize almost all of our existing tailings capacity. Final reclamation of the cells would be as outlined in our Tailings Reclamation submittal of June, 1988.

The following is a list of materials as characterized by the DOE Project Office in Grand Junction which would be considered for disposal at White Mesa:

Uranium and Vanadium Mill Tailings. Approximately 2 MM cubic yards of materials from previous operations on the sites. These materials are contained in four "piles" as follows: the Carbonate Pile, the Vanadium Pile, the East Pile, and the Acid Pile. While most are clearly 11(e)2 materials, there has been some question as to the classification of the "Vanadium Pile". While delineated as a separate pile, these materials are in fact intermingled with the "uranium" mill tailings, and probably can not be separated. Umetco's position is that they are similar in nature to materials already in the White Mesa tailings impoundments, and indeed, probably came from the same type of ores that provide the mill feed for the White Mesa Mill. Additionally, tests conducted by the DOE show the material to be non-RCRA. However, Umetco believes

that the NRC will have to rule on whether the White Mesa facility can dispose of this material along with the other materials.

Mill Structures. Includes concrete foundations, structural steel, mill equipment, asbestos, sumps leach fields, septic tanks, dry wells, miscellaneous material that may be uncovered at the mill laboratory. Where feasible, by-product material that is not radiologically contaminated will be sent to an alternative disposal site.

Vicinity Property Clean-up. Materials resulting from the clean-up of properties around the Monticello area that had used Monticello tailings for construction.

Ore Samples and Specimens. Small amounts of uranium-vanadium ores found during the vicinity property program. Umetco could either feed this material to the mill during the next mill run or direct dispose of it in tailings.

The DOE has told us that they would warrant that there would be no shipments of RCRA material to the White Mesa Mill. One unanswered question surrounds the use of the mill maintenance buildings by the USBLM as a shop. Umetco assumes that the NRC will clear up the characterization of this material with the DOE and the EPA prior to any material being disposed of. A more detailed description of the wastes proposed for disposal can be found in the March 24, 1994 transmittal from the DOE in the attachments.

Over the last year, the White Mesa Millsite has been evaluated for the final disposal of the Monticello Tailings by the USDOE, USEPA, the State of Utah, and others. Studies conducted during these evaluations have resulted in the White Mesa Mill being chosen as the preferred alternative by the DOE. Umetco has completed the conceptual design of the truck unloading and transfer conveyor systems, and is conducting a Health, Safety and Environmental Review of this system to ensure that the principles of ALARA are maintained.

To assist the NRC in the evaluation of this request, the following documents are attached for your review:

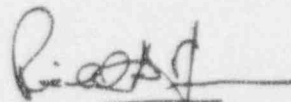
- Index, summary, and bibliography from the Final Remedial Investigation/Feasibility Study-Environmental Assessment for the Monticello, Utah, Uranium Mill Tailings Site, dated January, 1990. Should the NRC not have a complete copy of this document, Umetco would be pleased to supply one.
- DOE letter of August 23, 1993, detailing the volume of materials, geotechnical characteristics of the tailings and the proposed rate of tailings haulage.

- Rust Geotech letter of October 28, 1993, detailing analysis of drilling data and maps showing locations of the borings, and Dames and Moore information on metals and radiological samples.
- Roberts and Schaefer study of February 24, 1994, detailing proposed handling methods at the White Mesa site.
- List of Waste Materials on the Monticello Millsite Proposed for Disposal at the White Mesa Mill, dated March 24, 1994.

Should you require more information on the materials, Umetco suggests that the NRC contact the DOE Project Office in Grand Junction directly. However, to the extent that we have the data, we would be pleased to provide any additional information that we have received from the DOE.

Should you or your staff have any questions or require clarification on any issue with regard to this request, you may contact Butch Brice, Jerry Ray, or Scott Schierman at White Mesa, or, as always, I can be reached in the Grand Junction office at 303-245-3700.

Regards,



Richard A. Van Horn

Director of Operations

cc: W. W. Brice, Umetco - White Mesa
 D. W. Butcher, Umetco - Danbury (w/o attachments)
 S. C. Cain, Umetco - Grand Junction (w/o attachments)
 B. L. Doores, Concord - Denver (w/o attachments)
 J. S. Hamrick, Umetco - Grand Junction (w/o attachments)
 P. J. Morgan, Umetco - Danbury (w/o attachments)
 G. G. Ray, Umetco - White Mesa (w/o attachments)
 H. R. Roberts, Energy Fuels - Denver
 W. J. Sinclair, Utah BRC, Salt Lake City (w/o attachments)
 P. K. Willmott, Concord - Denver (w/o attachments)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE PRESIDING OFFICER

'94 JUN 13 A9:56

In the Matter of)

UMETCO MINERALS CORPORATION)

(Source Materials License No. SUA-1358))

Docket No. 40-8681-MLA-3

ASLBP No. 94-693-02-MLA-3

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

Name: Sherwin E. Turk

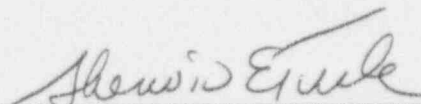
Address: U.S. Nuclear Regulatory Commission
Office of the General Counsel
Washington, D.C. 20555

Telephone Number: (301) 504-1575

Admissions: United States Supreme Court
State of New Jersey
District of Columbia

Name of Party: NRC Staff

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 10th day of June 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE PRESIDING OFFICER

'94 JUN 13 A9:56

In the Matter of)
UMETCO MINERALS CORPORATION) Docket No. 40-8681-MEA-3
(Materials License No. SUA-1358)) ASLBP No. 94-693-02-MEA-3
SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of (1) "NRC STAFF'S RESPONSE TO REQUESTS FOR HEARING FILED BY STEVE ERICKSON FOR DOWNWINDERS, INC. AND BY NORMAN BEGAY," and (2) "NOTICE OF APPEARANCE" for Sherwin E. Turk in the above-captioned proceeding have been served on the following by deposit into the United States mail or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system this 10th day of June 1994:

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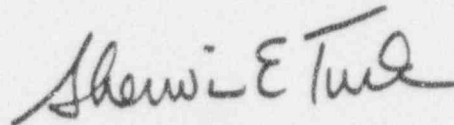
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Sherwin E. Turk
Counsel for NRC Staff