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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE PRESIDING OFFICER

'97 JUN 19 P4:56

In the Matter of	)	
	)	Docket No. 40-8905-MLA
QUIVIRA MINING COMPANY	)	
	)	ASLBP No. 97-728-04-MLA
(Materials License No. SUA-1473)	)	

OFFICE OF SECRETARY
DOCKETING & SERVICE
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NRC STAFF'S NOTICE OF PARTICIPATION AND RESPONSE
TO REQUEST FOR HEARING FILED BY ENVIROCARE OF UTAH, INC.

INTRODUCTION

On November 20, 1995, Quivira Mining Company (QMC), filed an application for an amendment to its source materials license for its Ambrosia Lake facility in New Mexico, which authorizes it to, *inter alia*, possess uranium byproduct material in the form of waste generated by the operations of the mill on site and to accept limited amounts of byproduct material from in situ leach uranium mining facilities (Materials License No. SUA-1473). The requested amendment would allow it to annually receive and dispose of up to 10,000 cubic yards per generator of 11e.(2) byproduct material in tailings impoundment #2, with an annual total limit of 100,000 cubic yards from all generators, at the Ambrosia Lake facility. On April 22, 1997, the NRC issued its Final Finding of No Significant Impact (FONSI) and Notice of Opportunity for Hearing.[1]

On May 28, 1997, a request for a hearing on the proposed amendment and the FONSI was filed by Envirocare of Utah, Inc. (Envirocare), a private company engaged in the disposal

[1] 62 Fed. Reg. 23282 (Apr. 29, 1997).

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of radioactive wastes in the State of Utah.[2] On June 6, 1997, the Commission designated a Presiding Officer to rule upon the hearing request and, if necessary, to serve as the Presiding Officer in the event that an informal hearing is ordered.[3] For the reasons stated below, the NRC staff (Staff) opposes Envirocare's hearing request and recommends that it be denied. In addition, the Staff hereby notifies the Presiding Officer and the parties, pursuant to 10 C.F.R. § 2.1213, that it wishes to participate as a party.

BACKGROUND

In its license amendment application, dated November 20, 1995, QMC sought authority to dispose of byproduct material as defined in § 11(e)(2) of the Atomic Energy Act of 1954, as amended (the Act),[4] at its Ambrosia Lake site, in amounts of up to 10,000 cubic yards per generator per year, for an annual limit of 100,000 cubic yards from all generators.[5] QMC also requested that material from in situ leach facilities be excluded from the limits. The request noted that QMC is licensed to possess byproduct material in the form of uranium process

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[2] Request for Hearing of Envirocare of Utah, Inc., May 28, 1997 (Request).

[3] Designation of Presiding Officer, June 6, 1997. The Order designating the presiding officer was signed on June 6, 1997, but not docketed or served until June 9, 1997.

[4] The term "byproduct material" is defined in § 11(e) of the Act as:

> (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material or (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

[5] Letter from Bill Ferdinand, Manager, Radiation Safety, Licensing & Regulatory Compliance, QMC, to Joe Holonich, Uranium Recovery Branch, NRC, dated November 20, 1995, transmitting Quivira Mining Company Byproduct Disposal Request, November 1995. (Amendment Request).

tailings or other wastes generated by QMC's processing operations (in standby status since 1986), and is authorized to accept and dispose of byproduct wastes from its Wyoming in situ leach facility and damaged yellowcake drums from Sequoyah Fuels. The site already contains 33 million tons of tailings in two impoundments. QMC proposed to accept material similar to material already on site and material for which it had prior authorization to accept. The material proposed for disposal would be put into "earthen cells constructed on top of the finished NRC approved radon attenuation cover system on impoundment #2". The cell would have a impermeable clay liner, at least one foot thick. QMC provided additional details regarding the site and the amendment request, including reclamation considerations and environmental impact.

The Staff performed an appraisal of the environmental impacts of the requested amendment in accordance with 10 C.F.R. Part 51 and determined that the request "will not result in significant environmental impacts because the impacts will be a small fraction of those that could result due to currently approved activities. . . .".[6] On April 22, 1997, the NRC issued its Final Finding of No Significant Impact.[7] *Id.* at 23282.

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[6] 62 Fed. Reg. at 23283. The Staff also performed a technical evaluation of the technical and safety aspects of the requested amendment and concluded that (1) there was sufficient volume remaining in impoundment #2 for disposal, (2) the acceptance criteria will provide reasonable assurance that the material disposed will be similar to current tailings, (3) the radiation protection program is sufficient to ensure compliance with 10 C.F.R. Part 20, and (4) the proper procedures are in place for receipt and disposal to meet future stabilization concerns.

[7] The license amendment was approved by the Staff on May 16, 1997. Letter to Marvin Freeman, V.P., Quivira Mining Co., from Joseph J. Holonich, Chief, Uranium Recovery Branch, NRC, Subject: Acceptance of Byproduct Materials at Quivira's Ambrosia Lake Site Amendment No. 37 to License SUA-1473. Envirocare's Request for Hearing addresses only the issuance of the FONSI and the proposed amendment.

(continued...)

DISCUSSION

In its request for hearing dated May 28, 1997, Envirocare identified itself an NRC licensee authorized to receive and dispose of uranium and thorium by-product material (§ 11e.(2) byproduct material) at a site in Clive, Utah. Request at 2. Envirocare asserts that it has standing to request a hearing on QMC's amendment request and the issuance of the FONSI (*Id.* at 10-15), and identifies eleven areas of concern which it states are germane to the subject matter of the QMC amendment request and the issuance of the FONSI. *Id.* at 16-19.[8] For the reasons set forth below, the Staff submits that Envirocare has not demonstrated standing to request a hearing on the QMC amendment request or the issuance of the FONSI, and that its request should, therefore, be denied.

(...continued)

The license amendment, as issued, differs from the amendment request in that it includes in situ material in the limits on material received. QMC had requested that in situ materials be excluded from the limitation. Material License No. SUA-1473, Amendment No. 37, Condition 41. In addition, the amendment also provides for, *inter alia,* an analysis, prior to the receipt of any material, of the costs of reclamation based on disposal of the maximum amount of byproduct material permitted under the amendment; a total limitation on the amount of 11e.(2) material which may be accepted; limits on the average annual Ra-226 concentration from any one generator; a restriction that byproduct material shall be free of standing liquid; and that a final reclamation plan be submitted at the end of receipt operations. *Id.*

[8] Envirocare's concerns include questions concerning the NRC's compliance with statutory and regulatory requirements, and NEPA standards; the purported lack of environmental analyses and evaluations; the failure of QMC to demonstrate compliance with the requirements of 10 C.F.R. Part 40, and; the disparate treatment afforded QMC and Envirocare by the NRC regarding regulatory requirements. Assuming arguendo that the Presiding Officer finds standing, the Staffsubmits thatat leastsome of the concerns raised by Envirocare would be germane to a hearing. Concerns 5.6.1 through 5.6.5 are not concerns and should not be addressed. Concerns 5.6.6 and 5.6.9 appear to be germane. Concern 5.6.7 appears to be germane in so far as it concerns regulatory requirements. The remaining concerns do not appear to be germane and should not be addressed.

A. Envirocare Lacks Standing To Request A Hearing In This Matter, In That It Has Failed To Demonstrate A Cognizable Interest In This Proceeding

It is fundamental that any person or entity that wishes to request a hearing (or intervene in a Commission proceeding) must demonstrate that it has standing to do so. Section 189a(l) 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.

In addition, pursuant to 10 C.F.R. § 2.1205(d), where a request for informal 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 requester in the proceeding;
>
> (2) How that interest may be affected by the results of the proceeding, including the reasons why the requester 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), the Presiding Officer must determine "that the requester meets the judicial standards for standing," and shall consider, among other factors, "(1) [t]he nature of the requestor's right under the Act to be made a party to the proceeding; (2) [t]he nature and extent of the requestor's property, financial, or other interest in the proceeding; and (3) [t]he 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 I 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); *Babcock and Wilcox* (Apollo, PA Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 80-81 (1993); *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). These judicial standards of standing are applicable to informal hearings held pursuant to Subpart L. *Chemetron Corp.* (Bert Avenue, Howard Avenue, McGean-Rohco Sites, Newburgh Heights and Cuyahoga Heights, Ohio), LBP-94-20, 40 NRC 17, 18 (1994).

To show an interest in the proceeding sufficient to establish standing, the requester 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 I 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 requester) must establish: that he personally has suffered or will suffer "distinct and palpable" harm that constitutes injury in fact; that the injury can fairly be traced to the challenged action; and that the injury may 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, supra,* 37 NRC at 81; *Envirocare, supra,* 35 NRC at 173. *See also Warth v. Seldin,* 422 U.S. 490, 504 (1974). A petitioner (or requester) 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 (1979). While the petitioner's stake need not be a "substantial" one, it must be "actual,' "direct" or "genuine." *Id.* at 448.

With respect to its "interest" in the proceeding, Envirocare states, in its Request, that as a commercial business licensed by the NRC to receive and dispose of 11e.(2) byproduct material from other persons and required to follow strict standards, it has an:

> economic interest in ensuring that all licensees that propose to accept 11e.(2) byproduct material from other persons for disposal comply with applicable NRC standards. Additionally, Envirocare has an interest, as a member of a environmentally sensitive and controversial industry, in ensuring that the environmental laws designed to protect human health and the environment from the hazards of radioactive waste are uniformly applied and enforced by the NRC.

Request at 11. Envirocare states further that if QMC is not required to comply with the same requirements as Envirocare,[9] then Envirocare will be placed at a severe competitive disadvantage because QMC's lower costs will allow it to attract Envirocare's customers. Envirocare will be harmed by the alleged inconsistent and uncertain application of NRC regulations. Request at 11-12. Further, if QMC is not held to the same strict standards "there is a risk" that the operation at Ambrosia Lake "might result in harm to the public health and

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[9] Envirocare insists that the regulatory requirements contained in the Notice of Receipt of Application for Byproduct Material Waste Disposal License previously issued by the Commission relating to Envirocare's application are applicable to 11e.(2) disposal facilities in general. Request at 3-4. But that notice itself clearly states: "By this notice, the Commission is establishing the applicability of its regulations to *this specific application* for the commercial disposal of section 11e.(2) byproduct material." 56 Fed. Reg. 2959 (Jan. 25, 1991).

safety." Request at 13. The failure to prepare an EIS and to identify potentially negative environmental impacts, alternatives,[10] and permit public comment and participation "potentially threatens public health and the environment and threatens to undermine public confidence in the licensing and operation of 11e.(2) radioactive waste disposal facilities. Request at 14. Essentially, Envirocare is complaining that the NRC has required Envirocare to comply with certain standards but has, allegedly, allowed QMC, a potential competitor, to avoid compliance with those same standards. Envirocare states, "failure to impose comparable requirements on QMC creates an unfair competitive advantage for QMC and a concomitant disadvantage for Envirocare." Request at 14. This, according to Envirocare, satisfies the judicial standards for standing in that the adverse effects alleged satisfy the injury-in-fact requirement. Request at 14. Envirocare states that its financial interests as an operator of a byproduct disposal business are within the zone of interests protected by the Act, and its environmental and economic interests are within the "zone of interests" protected by the Act and NEPA. Request at 15.

The Injuries Alleged Do Not Fall Within The Zone of Interests Protected by the Atomic Energy Act or NEPA

An analysis of Commission and judicial precedent demonstrates that Envirocare has failed to establish an interest within the zone of interests protected by the Act or NEPA, since the alleged injury described by Envirocare is essentially an injury to its economic interest, caused by an alleged competitive advantage afforded to its competitor. This is not an interest within the zone of interests protected by statute, and does not confer standing upon Envirocare to request a hearing, as discussed below.

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[10] Alternatives to granting the license amendment were considered, but not evaluated because the Staff concluded that there were no significant environmental impacts associated with allowing the amendment. 62 Fed. Reg. at 23283.

It has long been established that purely economic concerns are not within the "zone of interests" sought to be protected by the Atomic Energy Act or NEPA. *Public Service Co. of New Hampshire* (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975, 978 (1984) ("The zone of interests affected does not include general economic considerations"); *Philadelphia Electric Co.* (Limerick Generating Station, Units I and 2), ALAB-789, 20 NRC 1443, 1447 (I *984); Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit No. 1), ALAB-424, 6 NRC 122, 128 n.7 (1977); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units I and 2), ALAB-423, 5 NRC 1418, 1420-1421 (1977); *Detroit Edison Co.* (Greenwood Energy Center, Units 2 and 3), ALAB-376, 5 NRC 426, 428 (1977); *Pebble Springs, supra,* 4 NRC at 614; *Virginia Electric and Power Co.* (North Anna Power Station, Units I and 2), ALAB-342, 4 NRC 98, 105-07 (1976); *Consumers Power Co.* (Palisades Nuclear Power Facility), LBP-81-26, 14 NRC 247, 251 (1981).

The question of injury to a competitor's competitive interest was explicitly addressed by the Appeal Board in *Jamesport. Long Island Lighting Co.* (Jamesport Nuclear Power Station, Units I and 2), ALAB-292, 2 NRC 631, 63843 (1975). In that case, where an oil heating industry trade association sought late intervention in a construction permit proceeding alleging competitive harm, the Appeal Board stated that "the Act and its history are barren of the slightest mainfestation of a possible legislative concern (in other than an antitrust context) for the protection of the competitive position of commercial entities." *Id.* at 368. The Appeal Board also made it clear that:

> [A]lleged economic harm comes with the ambit of the NEPA "zone of interests" if it is *environmentally related;* i.e., if it will or may be occasioned by the impact that the federal action under consideration would or might have upon the environment.

Id. at 640 (emphasis in original). The conclusion reached by the Appeal Board in *Jamesport* applies here, as well: An "asserted economic competition interest does not come within the 'zone of interests' protected or regulated by either the Atomic Energy Act or NEPA." *Id.* at 643.

Although Envirocare has alleged that environmental harm might be caused by the issuance of the amendment, the harm is speculative, at best. In addition, the economic harm described, while allegedly resulting from an environmental harm is not a direct harm, that is, it is not "an economic loss which might be *directly* tied to" harm to the public health and safety, such as inability to conduct business in the area affected. *North Anna*, ALAB-342, 4 NRC at 105. In *North Anna,* the concerns of the petitioner "stemmed entirely from its interest in protecting its business reputation and avoiding possible damage claims." *Id.*at 105-06. Those concerns were found to be indirect and not within the zone of interests of the Act. *Id.* Similarly, Envirocare has alleged only indirect loss from any possible health and safety harm, *e.g.*, competitive harm, harm to reputation, and loss of public confidence. It has alleged no direct harm which would or could result from the granting of QMC's amendment request. There has been no showing, other than by conjecture and speculation, that any harm would flow to Envirocare as a result of the granting of the license amendment. Any radiological releases at the Ambrosia Lake site, if they should occur, would have no effect on the operation of Envirocare's Clive, Utah site.

Envirocare cites Section 84a(1) of the Act (42 U.S.C. 2114(a)(1) as authority for its proposition that economic interests are within the zone of interests protected by the Act. Request at 15. That section provides:

> a. The Commission shall insure that the management of any byproduct material, as defined in section 11.e(2), is carried out in such manner as ---
>
> (1) the Commission deems appropriate to protect the public health and safety and the environment from radiological and nonradiological hazards associated with the precessing and with the possession and transfer of such material taking into account the risk to the public health, safety, and the environment, with due consideration of the economic costs and such other factors as the Commission determines to be appropriate. . . .

This section adds economic costs, as well as protection of the public health and safety, as factors to be considered in managing byproduct material. The legislative history of this statute indicates that it was designed to afford flexibility in the application of health and safety regulations and technical requirements to specific sites, so that the cost of compliance would bear a reasonable relationship to the expected benefits. *See e.g.*, 128 Cong. Rec. S 2973, S 2975 (daily ed.March 30, 1982) (statements of Sen. Simpson); 128 Cong. Rec. S 2977 (statement of Sen. Schmitt). The Staff submits that this section does not require the Commission to consider the economic effects of the application on an entity unrelated to the specific site or an entity in competition with the applicant.[11] The statute was designed to afford

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[11] In *Envirocare of Utah, Inc.*, LBP-92-8, 35 NRC 167 (1992), the Licensing Board addressed, in dicta, the effect of this section might have on the ambit of the zones of interest protected by the Act. The Board found that the zones of interests covered by this section are "at least 'arguably' broad enough to encompass the claims" of the intervenor, Kerr-McGee. Envirocare, 35 NRC at 181. The claims made by Kerr-McGee concerned "the adequacy of material storage and isolation [at the Envirocare site] in light of CERCLA [the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607(b)] liability." Id. But that statement by the Board in that case does not aid Envirocare in this case. Kerr-McGee had alleged a potential harm that was arguably related directly to the site which was the subject of the application, that is, inadequate storage at the Envirocare site which could lead to liability claims against Kerr-McGee. Kerr-McGee's claim may be viewed as a direct economic harm. In the instant case, Envirocare makes no such claim of a direct injury to its interests which could be caused by any environmental harm at the Ambrosia Lake site. The nexus between any health and safety problem arising at the QMC site and the possible economic injuries alleged by Envirocare

(continued...)

flexibility in Commission licensing procedures. The Commission will balance the cost of compliance with the expected increase in the protection of public health and safety in individual licensing proceedings. The section cannot be viewed as a means to expand standing to include aggrieved competitors. Envirocare's complaint should not be addressed in this forum.. The objections raised by Envirocare are related to the licensing procedure it faced, and this is not the time or place to raise those objections. Envirocare does not now have standing to raise those issues here, under the guise of protecting the industry or the public health and safety. The claim that the industry may be harmed, public confidence shaken, and business may suffer, if something happens at the Ambrosia Lake site is indirect, remote, speculative and general. The issuance of the license amendment to QMC will have no direct effect on Envirocare. Standing cannot be asserted based on a diffuse, generic interest. *See e.g. Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 333 (1983). The economic interests alleged to be affected are not within the zone of interests protected by the section 84a(1) or any other section of the Act.

Envirocare Has Failed to Demonstrate That It Will Suffer an Injury in Fact.

Envirocare has failed to demonstrate that it has or will suffer an injury in fact. The injuries alleged are economic injuries and are speculative, remote and indirect.

The Commission has emphasized that injury to an economic interest can establish injury-in-fact under NEPA only when it flows from environmental damage:

> It is true that NEPA does protect some economic interests; however, it only protects against those injuries that result from environmental damage. For

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[11](...continued)
is attenuated at best.

> example, if the licensing action in question destroyed a woodland area, those persons who would be deprived of their livelihood in a local timber industry could assert a protected interest under NEPA....

Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992) (and the cases cited therein). The injury used as an example in *Rancho Seco*, and the injuries in the cases cited in support thereof, are direct injuries to economic interests due to environmental effects.[12] *Id.*

Moreover, in a proceeding not involving a reactor construction permit or operating license, "a petitioner who wants to establish 'injury in fact' for standing purposes must make some specific showing outlining how the particular radiological (or other cognizable) impacts from the . . . materials involved in the licensing action at issue can reasonably be assumed to accrue to the petitioner." *Atlas Corp.* (Moab, Utah Facility), LBP-97-9, NRC (1997), citing *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-96-7, 43 NRC 235, 247-48 (1966). Envirocare has made no such specific showing. Indeed, it could not because it is not reasonable to assume that any environmental impacts arising at the Ambrosia Lake site would accrue to Envirocare.

It is apparent that the economic and environmental interests cited by Envirocare are, at best, speculative and remote, rather than "actual," "direct" or "genuine." Here, Envirocare contends, among other things, that if QMC's license amendment application is granted, Envirocare may suffer economic and competitive losses because it had to invest more money in

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[12] In an unpublished opinion, the U.S. Court of Appeals for the 9th Circuit denied a petition for review of the Commission's decision denying intervention, reiterating the axiom that "while NEPA does encompass economic harms, those harms must be caused by environmental damage." *Environmental and Resources Conservation Organization v. NRC*, 996 F. 2d 1224 (Table) (June 30, 1993).

its initial licensing due to different licensing requirements,[13] and, therefore, QMC will be able to charge less and attract away Envirocare's customers. These alleged economic injuries have little, if any, relationship to any environmental harm which may occur at the Ambrosia Lake site. The other possible injuries alleged are speculative, at best: that the failure to hold QMC to the same standards as Envirocare poses a "risk" that "might" result in harm to the public health and safety. Request at 13. Even if Envirocare is correct in this assertion, there is no showing that it would result in harm to Envirocare. That harm is stated by Envirocare to be harm to the "public image of and public confidence in the entire byproduct material disposal industry, including Envirocare." Request at 13. But this injury too is speculative and generalized; there is no showing that the harm may occur. Indeed, the opposite may well be conjectured: that a problem at the Ambrosia Lake site will lead to more business for Envirocare. The same may be said of Envirocare's assertion that failure to require an EIS "threatens public health and threatens to undermine public confidence. . . ". Request at 14. The assertion that not requiring an EIS in this matter threatens public health is speculative. Adding to that the claim that this will lead to harm to Envirocare, is conjecture upon speculation. Thus, Envirocare has failed to show that any alleged injury to its interests is realistically threatened or immediate, or that such injury would be redressed by a decision in

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[13] Envirocare and QMC are not similarly situated in the context of licensing for authorization to receive 11e.(2) byproduct material. Envirocare sought a license to receive and dispose of 11e.(2) material from other persons in an area that previously had not been utilized for disposal of such material. On the other hand, QMC is seeking a license amendment to permit it to receive and dispose of materials which are similar to materials already disposed of in impoundment #2. The amount it is seeking authorization for is far less than that already authorized under its license. The major salient difference between QMC's prior license and the amended license is authorization to receive more 11e.(2) material from outside entities under the amended license, which may place it in competition with Envirocare.

this proceeding . Nor has Envirocare shown that the injuries alleged can be fairly traced to the issuance of this amendment. Envirocare has therefore failed to demonstrate "injury in fact" to any interest cognizable under the governing statutes. *Dellums, supra,* 863 F.2d at 971; *Envirocare, supra,* 35 NRC at 178-79; *South Texas, supra,* 9 NRC at 447-48.

In view of the foregoing discussion, it is clear that Envirocare's assertion of economic harm from competition, even though it is tied to alleged environmental concerns, is outside the zone of interests protected by the Commission's governing statutes. Envirocare has failed to demonstrate that it has or will suffer an "injury in fact". Therefore, it has failed to demonstrate that it has an interest which provides it with standing and a right to a hearing on the QMC license amendment.[14]

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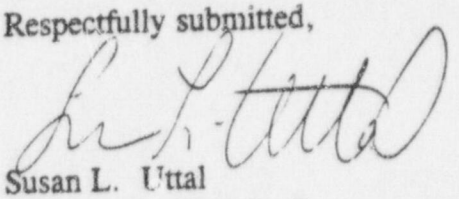
[14] It should be noted that some time ago, Envirocare itself took a similar position with respect to another company's request for hearing on Envirocare's application for a license to operate its byproduct waste disposal site. *See generally, Envirocare of Utah, Inc.* (Byproduct Material Waste Disposal License), LBP-92-8, 35 NRC 167, 172 (1992). There, Envirocare opposed a request for hearing filed by Kerr-McGee Chemical Corporation (a potential user of Envirocare's waste disposal site), on the grounds, *inter alia,* that the company lacked standing, stating that economic injury "is not within the zone of interests protected by the governing statutes," unless such injury 'flows from" the environmental impacts of the contested action. 'Applicant's Answer to Request for Hearing of Kerr-McGee Chemical Corporation," dated March 25, 1991, at 6-7. Envirocare further argued that the other company's interests were "purely financial,' that it therefore "should be denied standing in this proceeding," and that "it should pursue its financial interests in the market place, and not through this licensing proceeding." "Applicant's Answer to Kerr-McGee's Contentions," dated January 24, 1992, at 3.

CONCLUSION

For the reasons stated above, the request for hearing submitted by Envirocare of Utah, Inc. should be denied both for failure to show standing to request hearing, in that it has not shown an injury in fact to an interest protected by the governing statute.

Respectfully submitted,



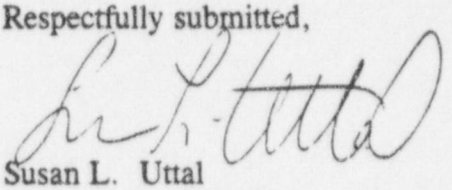
Susan L. Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 19th day of June 1997

CONCLUSION

For the reasons stated above, the request for hearing submitted by Envirocare of Utah, Inc. should be denied both for failure to show standing to request a hearing, in that it has not shown an injury in fact to an interest protected by the governing statutes.

Respectfully submitted,



Susan L. Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 19th day of June 1997

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

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QUIVIRA MINING COMPANY	)	
	)	ASLBP No. 97-728-04-MLA
(Materials License No. SUA-1358)	)	

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:

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Admissions:	United States Supreme Court Supreme Court of New Jersey Supreme Court of Pennsylvania Supreme Court of Maryland
Name of Party:	NRC Staff

Respectfully submitted,

Susan L. Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 19th day of June 1997

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

BEFORE THE PRESIDING OFFICER

'97 JUN 19 P4:57

In the Matter of	)	
	)	Docket No. 40-8905-MLA
QUIVIRA MINING COMPANY	)	
	)	ASLBP No. 97-728-04-MLA
(Materials License No. SUA-1358)	)	

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S NOTICE OF PARTICIPATION AND RESPONSE TO REQUEST FOR HEARING FILED BY ENVIROCARE OF UTAH, INC." 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 19th day of June 1997, or as indicated by double asterisk, by hand delivery:

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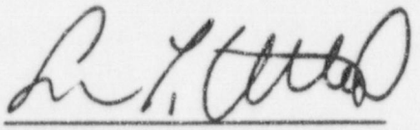

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