



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

PDR

July 7, 1999

The Honorable Michael O. Leavitt
Governor of Utah
Salt Lake City, Utah 84114-0601

Dear Governor Leavitt:

I am responding to your May 21, 1999 letter to my predecessor as Chairman, Dr. Shirley Ann Jackson, regarding the regulation of uranium recovery operations and the issue of ex parte communications.

You state your view that the May 13, 1999 letter to former Chairman Jackson from Mr. Hoellen of International Uranium Corporation (IUC) constitutes "inappropriate ex parte communications on a matter pending before the Commission." The Commission believes that the IUC letter expresses their concerns on the general issues surrounding the promulgation of several proposed amendments to Utah's regulations and does not address a specific case directly. Therefore, we do not consider the IUC letter to be an inappropriate ex parte communication.

The proposed amendments to your regulations that are of concern were published for public comment in the May 1, 1999 edition of the Utah State Bulletin, Volume 99, Number 9, on pages 24-29 and 31-33. I have enclosed a copy of the NRC staff letter to Mr. William Sinclair providing the NRC's view that these proposed amendments raise serious jurisdiction and authority issues related to Utah's regulation of uranium milling operations and disposal of material resulting from the processing of alternate feed material.

I trust this letter responds to the issue of ex parte communications. We look forward to continuing to work with your staff on the issue of alternate feed material and on other uranium recovery operations issues.

Sincerely,

Greta Joy Dicus
Greta Joy Dicus

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Enclosure: As stated

cc: Dianne R. Nielson, Executive Director
Utah Department of Environmental Quality

Earl E. Hoellen
President and Chief Executive Officer
International Uranium Corporation

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PDR COMMS NRCC
CORRESPONDENCE PDR

X M-13 URANIUM



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 28, 1999

Mr. William Sinclair, Director
Division of Radiation Control
Department of Environmental Quality
168 North 1950 West
P.O. Box 144850
Salt Lake City, UT 84114-4850

Dear Mr. Sinclair:

We received a copy of several proposed amendments to your regulations published in the May 1, 1999 edition of the Utah State Bulletin, Volume 99, Number 9 on pages 24-29 and 31-33.

We believe that these proposed amendments raise serious jurisdiction and authority issues related to Utah's regulation of uranium milling operations and disposal of 11e.(2) byproduct material resulting from the processing of alternate feed material. The current Atomic Energy Act Section 274 Agreement (Agreement) between Utah and the Nuclear Regulatory Commission (NRC) explicitly provides that NRC retains its authority to regulate "the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material." (Agreement, Article II, § E [as amended May 9, 1990]). Accordingly, under the current Agreement, NRC did not cede to Utah authority over uranium recovery operations and we are, therefore, of the view that Utah cannot legally promulgate regulations on the radiological aspects of uranium milling or 11e.(2) byproduct materials.

Therefore, before you promulgate final regulations, we would appreciate having you inform us of your intention to attempt to assert State authority in this area. This would enable us to consider and discuss with you the implications of Utah proceeding to implement such a rule on the Agreement Utah holds with the NRC and will allow us to determine what further action NRC must take to clarify Utah's lack of authority over NRC licensees in this area.

If you have any questions regarding our review, please contact Paul H. Lohaus of my staff at (301) 415-3340, or PHL@NRC.GOV.

Sincerely,

Frank J. Meraglia
for William D. Travers
Executive Director
for Operations

cc: Dianne R. Nielson, Executive
Director, DEQ

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

CHAIRMAN

Mr. Earl E. Hoellen
President and Chief Executive Officer
International Uranium Corporation
Independence Plaza, Suite 950
1050 Seventeenth Street
Denver, Colorado 80265

Dear Mr. Hoellen:

I am responding to your letters of May 13 and May 25, 1999, on the proposed amendments to Utah's regulations regarding Uranium Recovery Operations.

The staff reviewed the proposed amendments and found that if implemented, they would raise jurisdiction and authority issues as noted in the enclosed letter to Mr. William Sinclair.

On the issue of ex parte communications, we do not believe that your letters referenced above constitute ex parte communications. The Commission also is sending a letter to Governor Leavitt informing him of this decision.

If you have any questions, please contact Paul Lohaus of my staff at (301) 415-3340, or PHL@NRC.GOV.

Sincerely,

William D. Travers
Executive Director
for Operations

Enclosure:
As stated

cc: The Honorable Michael O. Leavitt
Governor of Utah
Salt Lake City, Utah 84114-0601

Dianne R. Nielson
Executive Director
Utah Department of Environmental Quality

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

PAPER NUMBER: CRC-99-0501 LOGGING DATE: May 27 99

ACTION OFFICE: ELO

AUTHOR: MICHAEL LEAVITT, GOVERNOR
AFFILIATION: UTAH

ADDRESSEE: CHAIRMAN JACKSON

LETTER DATE: May 21 99 FILE CODE: MHS-11 URANIUM MILL

SUBJECT: COMMENTS TO THE MAY 13 LTR FM HOELLEN RE THE STATE
OF UTAH'S EFFORTS TO REGULATE URANIUM RECOVERY
OPERATIONS..

ACTION: Direct Reply

DISTRIBUTION: CHAIRMAN, COMRS, OCAA, OGC, RF

SPECIAL HANDLING: SECY TO ACK

CONSTITUENT:

NOTES: REF: CRC 99-0465.....COMMISSION
CORRESPONDENCE.... SECY/RAS (EXPARTE)

DATE DUE: Jun 14 99

SIGNATURE: DATE SIGNED:
AFFILIATION:



MICHAEL O. LEAVITT
GOVERNOR

STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114-0601

OLENE S. WALKER
LIEUTENANT GOVERNOR

May 21, 1999

Dr. Shirley A. Jackson
Chairman
U.S. Nuclear Regulatory Commission
Two White Flint North
Rockville, Maryland 20852-2738

Dear Chairman Jackson:

This letter is sent because of a letter from Mr. Earl E. Hoellen to you dated May 13, 1999, regarding the State of Utah's Efforts to Regulate Uranium Recovery Operations.

The substance of Mr. Hoellen's letter relates directly to an appeal before the Commission. The State of Utah considers that letter as an inappropriate ex parte communications on a matter pending before the Commission.

I have not considered it appropriate to correspond with you directly concerning the proposals of International Uranium Corporation (IUC) to process material at the White Mesa Mill. As you know, the State of Utah has followed prescribed procedures and filed an appeal of the Presiding Officer's decision in the Matter of International Uranium (USA) Corporation, LBP-99-5 (February 9, 1999). The Commission has agreed to hear the appeal. The State believes it will receive a full and fair review under the Commission's appellate processes based solely on the hearing record and not in any way based on Mr. Hoellen's ex parte letter—a letter which contains misrepresentations of State actions and positions. Properly, the State's arguments will be presented in its brief which will be filed on May 24, 1999 and to which IUC will have an appropriate forum before the Commission in which to file a response brief.

The State has had extensive, ongoing discussions with IUC regarding the NRC guidance on alternate feed material and the actions of International Uranium Corporation (IUC) to process that material at the White Mesa Mill. When material does not contain recoverable uranium or thorium of economic value sufficient to justify processing and there is no other reasonable justification for reprocessing, then IUC must obtain a commercial waste disposal permit from the State of Utah prior to processing, treating, and disposing of such material at the White Mesa

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REC'D BY SECY

27 MAY 99 2:00

Dr. Shirley A. Jackson

Page 2

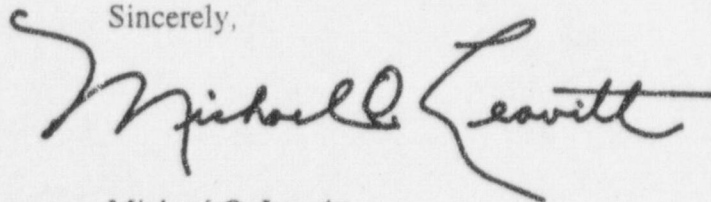
Mill. And regardless of whether IUC is operating as a uranium mill or under laws governing commercial waste disposal, its operations must also be conducted under a State groundwater permit. The State has consistently taken this position for all similar facilities to IUC and permits have been obtained by these operations.

The State has not rejected the processing of all alternate feed materials. On the contrary, the State has concurred with requests to process material which can be shown to meet the above criteria, including the Cotter Concentrates, Allied Signal, Cabot Corporation, and Cameco materials requested between 1996 and 1998. However, when the recipient of alternate feed material collects a disproportionate amount of revenue from disposing of the waste, while failing to demonstrate that the material is being processed primarily for recovery of uranium or thorium, the action constitutes commercial waste disposal.

Of final note, this letter is not intended to be a response to IUC's statements concerning the proposed rules of Utah Radiation Control Board. Such a response is, at this time, inappropriate under State law. If IUC or any other person or agency submits comments on the proposed rules, the comments will be properly, objectively, and carefully evaluated by the Utah Radiation Control Board in making the decision whether to finalize the rule.

I appreciate your consideration of these issues.

Sincerely,

A handwritten signature in black ink, reading "Michael O. Leavitt". The signature is fluid and cursive, with the first name "Michael" and last name "Leavitt" clearly legible.

Michael O. Leavitt
Governor

MOL:DRN:dco

cc: Lane Beattie, President, Utah Senate
Marty Stephens, Speaker, Utah House of Representatives
Earl Hoellen, IUC