

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 07/30/01

COMMISSIONERS:

SERVED 07/30/01

Richard A. Meserve, Chairman
Greta Joy Dicus
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

IN THE MATTER OF)
)
INTERNATIONAL URANIUM (USA))
CORPORATION)
)
(Source Material License Amendment)
License No. SUA-1358))
_____)

Docket No. 40-8681-MLA-8

CLI-01-18

MEMORANDUM AND ORDER

Petitioner Sarah Fields has filed an appeal, pro se, of the Presiding Officer's decision denying her request for a hearing in this license amendment proceeding. See LBP-01-08, 53 NRC 204 (2001). Finding no error in the Presiding Officer's ruling that Fields has not demonstrated standing, we affirm.

I. Background

International Uranium (USA) Corporation (IUSA) seeks to amend NRC Source Material License SUA-1358 to allow IUSA to receive and process up to 2000 cubic yards of alternative feed material at its White Mesa Uranium Mill near Blanding, Utah. The alternative feed material is "monazite sand" which has been processed by Heritage Minerals, Inc., to remove minerals, particularly titanium, and which still contains uranium and thorium. IUSA intends to process the material to extract uranium, and dispose of the remainder onsite.

If the license amendment is approved, the material will be shipped from New Jersey by truck through Moab, Utah, on Utah State Highway 191 on its way to White Mesa. Petitioner Fields lives in Moab, one block from Highway 191, and also works one block away from the highway on the other side. She contends that she will be affected by radioactive emissions from the trucks passing by. In addition, should there be an accident, she contends that high winds could spread the material all over the neighborhood where she lives and works.

After considering Fields's petition and its addenda, as well as IUSA's response and supporting expert opinion, and after conducting a telephone conference with all parties, the Presiding Officer concluded that Fields had not shown that the requested amendment could cause her a concrete and particularized injury. IUSA's undisputed statements indicated that about 10 trucks per week for 1-3 months would be carrying Heritage material through Moab. See 53 NRC at 210. The Presiding Officer found, based on uncontroverted expert opinion, that the radiological emissions from the material were minute and that any potential exposure, even in the case of an accident, would be negligible. *Id.* at 219-20. In addition, the Presiding Officer found that Fields had not shown that any danger presented by the Heritage material was different from or greater than that presented by the material IUSA is already licensed to receive and process at White Mesa. *Id.* at 220. Concluding that the Heritage materials would not present a new or increased danger to Fields, the Presiding Officer found that Fields had not shown any injury traceable to the license amendment. *Id.* The Presiding Officer therefore concluded that two elements of standing -- injury-in-fact and traceability to the requested amendment -- were lacking. *Id.*

II. Discussion⁽¹⁾

A. Allegation of a Violation of Law Does Not Create Presumption of Standing

To demonstrate standing in a Subpart L materials licensing case, a petitioner must allege

- (1) an actual or threatened, concrete and particularized injury, that
- (2) is fairly traceable to the challenged action,
- (3) falls among the general interests protected by the Atomic Energy Act ... and
- (4) is likely to be redressed by a

favorable decision.

Sequoyah Fuels Corp. (Gore, Oklahoma Site Decommissioning), CLI-01-02, 53 NRC 9, 13 (2001).

Fields's appeal fails almost entirely to address the threshold issue of standing, *i.e.*, how the amendment could injure her personally. For standing, she relies on a merits-based argument that the proposed license amendment would be unlawful, and that this unlawfulness gives rise to a presumption of standing. If we understand her merits argument correctly, Fields claims that because the Heritage material contains more thorium than uranium, it is primarily "thorium source material" rather than "uranium source material." Because the thorium is not to be extracted, Fields claims, the material left after processing at White Mesa will not be "byproduct material," as that term is defined in section 11e(2) of the Atomic Energy Act ("11e(2) material"),⁽²⁾ and hence not licensable at White Mesa. She therefore concludes that if IUSA receives and disposes of the monazite sand at White Mesa, it will be in violation of the AEA.

The Commission has never held that a claimed violation of law creates a presumption of standing, without some showing that the violation could harm the petitioner. In support of her standing argument, Fields cites *Energy Fuels Nuclear Inc.* (White Mesa Uranium Mill), LBP-97-10, 45 NRC 429 (1997), which involved a similar license amendment to allow processing additional feed material. The Presiding Officer in that case found that the petitioner, an adjacent property owner, had failed to show a "mechanism for injury" for the disputed materials to enter his property. In the passage Fields quotes to support her standing argument, the Presiding Officer noted that "if ... there is a law preventing a particular material from being stored pursuant to the amendment, then there may also be a presumption of standing." *Energy Fuels Nuclear*, 45 NRC at 431. But taken in context, it is clear that the Presiding Officer was merely suggesting that if the materials were stored improperly, it could be presumed that they might escape onto the petitioner's property, causing the injury requisite for standing. In contrast, Fields does not live near the White Mesa Mill, but near the transportation route. There is no reason to presume that any alleged unlawful processing or storage at the mill could injure Fields. The Presiding Officer's ruling in *Energy Fuels Nuclear* does not endorse a general theory that a violation by a licensee gives standing to any person who is offended in principle, but not injured in fact, by the violation.

Further, without delving deeply into Fields' argument that the license amendment would be unlawful, we observe that even though the monazite sand may contain more thorium than uranium, as long as it is, in fact, processed to extract either uranium or thorium, the resulting tailings will be 11e(2) byproduct material. See *International Uranium (USA) Inc.* (White Mesa Uranium Mill), CLI-00-1, 51 NRC 9, 15-16 (2000).

B. Presiding Officer's Finding of No Injury Was Not Abuse of Discretion

The Commission generally defers to the Presiding Officer's determinations regarding standing, absent an error of law or an abuse of discretion. See *International Uranium (USA) Corporation* (White Mesa Uranium Mill), CLI-98-6, 47 NRC 116, 118 (1998); *Georgia Institute of Technology* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 116 (1995). Here, the Presiding Officer reasonably found that Fields failed to show how the amendment of this license would affect her. While on appeal Fields voices some complaints about the Presiding Officer's choice of words in her opinion, none of these complaints addresses standing questions, and therefore none shows an error of law or abuse of discretion in the denial of the hearing request.

In challenging a license amendment, a petitioner must show that the amendment will cause a "distinct new harm or threat" apart from the activities already licensed. *Commonwealth Edison Company* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 192 (1999). The evidence before the Presiding Officer showed that the potential radiological consequences to Fields from the transportation of the Heritage material, even in the case of an accident on the highway, are negligible. See 53 NRC at 218-19. Similarly, Presiding Officers in the past have declined to find that the mere increase in the traffic of low-level radioactive material on a highway near the petitioner's residence, without more, constitutes an injury traceable to a license amendment that primarily affects a site hundreds of miles away. See, *e.g.*, *Northern States Power Co.* (Pathfinder Atomic Plant) LBP-90-3, 31 NRC 40 (1990). Fields did not present any evidence that this material differs from material IUSA is already authorized to receive with respect to the type of hazard presented. On the contrary, much of the material IUSA is already authorized to ship to White Mesa through Moab on Highway 191 has equal or higher concentrations of uranium and thorium. See *id.* at 222-23.

For the reasons stated, the Commission *affirms* LBP-01-08.

It is so ORDERED.

For the Commission

/RA/

ANDREW L. BATES
Acting Secretary of the Commission

Dated at Rockville, Maryland
this 30th day of July, 2001

1. As an initial matter, we note that our regulations give Fields the right to appeal from an initial decision denying her hearing request in its entirety. See 10 C.F.R. § 2.1205(o). She was not required, as IUSA has argued, to meet the standards for discretionary Commission review set forth in 10 C.F.R. §2.786. IUSA points to 10 C.F.R. §2.1253, which requires a party to meet the §2.786 standards when petitioning for review of an initial decision following an informal hearing. The Presiding Officer's order here, however, wholly denied Fields's hearing request and therefore §2.1253 does not apply.

2. "The term 'byproduct material' means ... (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." AEA, Sec. 11e(2), 42 U.S.C. § 2014(e)(2).