

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY
RULEMAKING AND
ADMINISTRATIVE SERVICES

Before Administrative Judges: Peter B. Bloch, Presiding Officer
Richard F. Cole, Special Assistant

In the Matter of:)

INTERNATIONAL URANIUM)
(USA) CORPORATION)

(source material license amendment))

) Docket No. 40-8681-MLA-4

) ASLBP No. 98-748-03-MLA

) October 23, 1998

STATE OF UTAH'S MOTION TO HEAR RELATED
LICENSE AMENDMENT REQUEST
OR IN THE ALTERNATIVE
REQUEST FOR HEARING AND
PETITION FOR LEAVE TO INTERVENE

International Uranium (USA) Corporation ("IUC") submitted a license amendment request to the NRC dated October 15, 1998 to receive, process and dispose of alternate feed material at the White Mesa Mill in Blanding, Utah, from Ashland 1, in Tonawanda, New York. Ashland 1 is located at the same U.S. Army Corp of Engineer's cleanup site as the Ashland 2 and the issues presented in the Ashland 1 license amendment request mirror those in the Ashland 2 license amendment currently before the Presiding Officer.

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BACKGROUND

A. Procedural History

On May 8, 1998, IUC submitted a letter to NRC for an amendment to its Source Material License No. SUA-1358 that would allow IUC to receive and process material from the Ashland 2 Formerly Utilized Sites Remedial Action Program ("FUSRAP") site, near Tonawanda, New York. The NRC approved IUC's license amendment request in an undated letter from Joseph J. Holonich of the NRC Staff to IUC. The basis for the NRC Staff approving the amendment was attached to Mr. Holonich's letter in an undated NRC Staff Technical Evaluation Report.

On July 23, 1998, the State of Utah filed a Request for Hearing and Petition for Leave to Intervene in the Ashland 2 license amendment request, and, as authorized by the Presiding Officer, filed an amendment thereto on August 18, 1998. The Presiding Officer granted the State's request for a hearing on September 1, 1998. Since that time, the parties have submitted a Stipulated Proposed Filing Schedule

By letter dated October 15, 1998, which is attached as Exhibit 1, IUC submitted a request to NRC to amend Source Material License SUA-1358 to receive and process material from the Ashland 1 FUSRAP site, near Tonawanda, New York. The State received a full copy of the license amendment request on October 16, 1998. On information and belief, the NRC has not acted on this amendment request.

B. Factual History

The U.S. Army Corps of Engineers has issued a plan to cleanup three discrete units of the Tonawanda FUSRAP site. These units are Ashland 1, Ashland 2 and Seaway. See U.S. Army Corps of Engineer, *Proposed Plan for the Ashland 1 and Ashland 2 sites*, Tonawanda, New York (November 1997) at 3, Fig. 1.¹ IUC has been granted a license amendment to receive up to 25,000 cubic yards of alternate feed stock, with uranium content from nondetectable to about one percent by weight, from the Ashland 2 unit of the Towawanda site. IUC's current license amendment request for the Ashland 1 unit is for 25000 to 30,000 cubic yards of alternate feed stock, with uranium content from nondetectable to about 0.4 percent by weight. See Exhibit 1.

The factual and legal issues presented in IUC's license amendment request for Ashland 1 materials parallel those presented in the license amendment for the Ashland 2 materials. Accordingly, consolidation of the Ashland 1 request with Ashland 2 amendment would be conducive to proper dispatch of business and the ends of justice, as contemplated by 10 CFR § 2.716.

¹ This document is listed in the Hearing File under item 1, Accession No. 9805190111.

DISCUSSION

Any person whose interest may be affected by a grant of a license amendment under 10 CFR Part 40 may submit a request for a hearing within "30 days after the requestor receives actual notice of a pending application." 10 CFR §§ 2.1205(a) and 2.1205(d)(2)(i). IUC sent the State a copy of the Ashland 1 license amendment request on October 16, 1998, thereby requiring the State to file this pleading now in order to meet the deadline imposed by 10 CFR § 1.1205(d)(2)(i). The NRC, however, has not yet acted on the Ashland 1 license amendment request, and thus, it is impossible at this stage for the State to raise issues associated with NRC's actions.

Based on NRC's actions in granting IUC's Ashland 2 license amendment request, there are two fundamental issues that will likely emerge from NRC's actions: (1) whether there is sufficient information for NRC to determine that there is no listed hazardous waste in the Ashland 1 materials that will be shipped to the White Mesa Mill; and (2) whether NRC correctly applies the Commission's *Final Position and Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores*, 60 Fed. Reg. 184, September 22, 1995, in determining whether IUC will process the Ashland 1 material primarily for its source material content.

The similarity of the Ashland 1 license amendment request and the Ashland 2 license amendment that has already been granted warrants joinder of these two actions. If, however, the Presiding Officer, finds that the State must initiate a separate

proceeding to obtain consideration of the Ashland 1 license amendment request, the State submits that it meets the standing requirements under Section 189a(1) of the Atomic Energy Act, 42 U.S.C § 2239(a), and under 10 CFR § 2.1205(e).

The State of Utah has demonstrated standing to intervene in the Ashland 2 license amendment request. *See* Memorandum and Order (Grant of Utah's Petition for a Hearing) dated September 1, 1998. The State submits that the same factual situation relates to Ashland 1 materials as those the State was granted standing for involving the Ashland 2 materials. IUC will receive the Ashland 1 materials from the same general site as the Ashland 2 material. IUC will use the same methods to process and dispose of the Ashland 1 materials and it does for the Ashland 2 materials. Therefore, the State of Utah submits that its Request for Hearing and Petition for Leave to Intervene, dated July 23, 1998, and Amendment to its Request for a Hearing and Petition for Leave to Intervene, dated August 18, 1998, relating to the Ashland 2 license amendment request, satisfies the standing requirements for the Ashland 1 license amendment request. The State incorporates herewith its Petitions dated July 23 and August 18, 1998, in their entirety into this pleading.

The State's areas of concern with the Ashland 1 materials are whether the materials contain listed hazardous waste and whether the materials are being processed primarily for their source material content. The State may have other concerns if and when the NRC takes final action on the Ashland 1 license amendment request.

CONCLUSION

For the reasons stated above, the State requests the Presiding Officer to consolidate the Ashland 1 license amendment request into the current proceeding. Alternatively, if the State must initial a separate action for the Ashland 1 license amendment request, the State has demonstrated that it has standing to intervene in the proceeding because it has already shown injury-in-fact to its interests and has raised issues that are germane to the IUC license amendment.

DATED this 23rd day of October, 1998.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Denise Chancellor", is written over a horizontal line.

Fred G Nelson, Assistant Attorney General
Denise Chancellor, Assistant Attorney General
Attorney for State of Utah
Utah Attorney General's Office
160 East 300 South, 5th Floor, P.O. Box 140873
Salt Lake City, UT 84114-0873
Telephone: (801) 366-0290, Fax: (801) 366-0292

CERTIFICATE OF SERVICE

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USNRC

98 OCT 28 4:26

I hereby certify that copies of STATE OF UTAH'S MOTION TO HEAR
RELATED LICENSE AMENDMENT REQUEST OR IN THE ALTERNATIVE
REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE

were served on the persons listed below by first class mail, on October 23, 1998:

Attn: Docketing & Service Branch
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
(original and two copies)

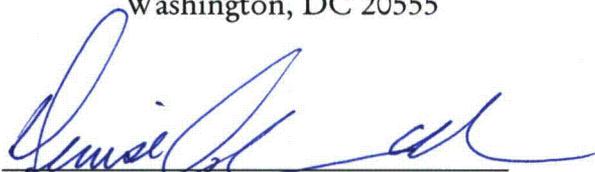
Administrative Judge
Peter B. Bloch, Presiding Officer
Atomic Safety & Licensing Board
Mail Stop T-3 F23
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Richard F. Cole, Special Assistant
Atomic Safety & Licensing Board
Mail Stop T-3 F23
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Anthony J. Thompson, Esq.
Frederick S. Phillips, Esq.
Shaw Pittman Potts &
Throwbridge
2300 N. Street, N.W.
Washington, DC 20037-1128

Mitzi A. Young, Esq.
Office of the General Counsel
Mail Stop -- 0-15 B18
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555-0001

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory
Commission
Washington, DC 20555



Denise Chancellor
Assistant Attorney General, State of Utah



INTERNATIONAL
URANIUM (USA)
CORPORATION

Independence Plaza, Suite 950 • 1050 Seventeenth Street • Denver, CO 80265 • 303 628 7798 (main) • 303 389 4125 (fax)

October 15, 1998

Via Overnight Mail

Mr. Joseph J. Holonich, Branch Chief
High Level Waste and Uranium Recovery
Projects Branch
Division of Waste Management
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
2 White Flint North, Mail Stop T-7J9
11545 Rockville Pike
Rockville, MD 20852



Re: Amendment Request to Process an Alternate Feed at White Mesa Uranium Mill
Source Material License SUA-1358

Dear Mr. Holonich:

International Uranium (USA) Corporation ("IUSA") hereby submits the enclosed request to amend Source Material License SUA-1358 to authorize receipt and processing of a uranium-bearing material resulting from the processing of natural ore for the extraction of uranium. For ease of reference, this material is referred to in this letter as the "Uranium Material". The Uranium Material will be removed by a remediation prime contractor, under a contract with the U.S. Army Corps of Engineers ("USACE", or the "Corps") from a site being managed under the Formerly Utilized Sites Remedial Action Program ("FUSRAP") in Tonawanda, New York, known as Ashland 1.

NRC has already approved a license amendment authorizing IUSA's acceptance of Uranium Material from the same process source. A portion of the Uranium Material from the Ashland 1 property was transferred to the Ashland 2 property in 1974. IUSA's license amendment dated June 23, 1998 granted approval for processing the portion of Ashland 1 Uranium Material that had been transferred to Ashland 2. This amendment request seeks authorization to process the remainder of the Uranium Material at the original disposal site at Ashland 1.

The volume of the Uranium Material to be removed and shipped from Ashland 1 will range from approximately 25,000 to approximately 30,000 cubic yards ("CY"). Average uranium content is difficult to estimate, although site history and available data suggest that recoverable uranium is present in amounts that are expected to be greater than, the uranium levels contained in the Ashland 2 material. Analytical data provided to IUSA indicate uranium content of the Uranium Material ranging from non-detectable to approximately 0.4 weight percent, or greater.

The Uranium Materials from Ashland 1 are also reported to contain varying concentrations of vanadium. In addition to recovery of the uranium content of the Uranium Material, vanadium may also be recovered using the secondary vanadium recovery circuit of the Mill that is used when vanadium/uranium feedstock is processed. However, insufficient ore grade data are available to estimate the potential recovery of vanadium or other metals.

This Uranium Material will be processed in the same manner as our conventional ores, and will contribute significant economic benefits to IUSA, as detailed in Section 1.3 of the application. Also, as discussed in that Section, the processing of the Uranium Material at the Mill meets the co-disposal test, set out in the alternate feed Guidance. In order to facilitate NRC's review, and because we have asked that this application be expedited, we have decided to include in the regulatory considerations section of our application more detail than in the majority of our past submissions regarding alternate feed amendment requests.

The processing of the Uranium Material will not increase the mill's production to exceed the License Condition No. 10.1 limit of 4,380 tons of U_3O_8 per calendar year. As production will remain within the limits assessed in the original Environmental Assessment, and as the process will be essentially unchanged, this amendment will result in no significant environmental impacts beyond those originally evaluated.

The disposal of the 11e.(2) byproduct material resulting from processing the Uranium Material will not change the characteristics of the Mill tailings from the characteristics associated with normal milling operations. In fact, processing of the Ashland 1 material, which is an 11e.(2) byproduct material, to recover the uranium it still contains, is expected to make the resulting 11e.(2) tailings less contaminated, as radioactive uranium will be removed from the Uranium Material.

Complete details are provided in the attached request to amend, which includes the following sections:

INTRODUCTION

- 1.0 Material Composition and Volume
 - 1.1 Radiochemical Data
 - 1.2 Hazardous Constituent Data
 - 1.3 Regulatory Considerations
- 2.0 Transportation Considerations
- 3.0 Process
- 4.0 Safety Measures
 - 4.1 Radiation Safety
 - 4.2 Control of Airborne Contamination
 - 4.3 Vehicle Scan

5.0 Other Information

5.1 Added Advantage of Recycling

5.2 Reprocessing of 11e.(2) Byproduct Materials under UMTRCA

-CERTIFICATION

Attachment 1	Ashland 1 Location Maps, Process History, Flow Diagram, Material Description, Radiological Contaminant Analytical Data, and Organic Contaminant Analytical Data.
Attachment 2	White Mesa Mill Equipment Release/Radiological Survey Procedure
Attachment 3	U.S. Army Corps of Engineers Value Engineering Proposal for Ashland 1 and Ashland 2
Attachment 4	Review of Constituents in Ashland 1 Uranium Materials to Determine Potential Presence of Listed Hazardous Waste
Attachment 5	IUSA letter to ICFKE, July 23, 1998 regarding Ashland 2 Confirmatory Sampling, and IUSA letter to Don Verbica, State of Utah DEQ, September 4, 1998 regarding ICFKE sampling methodologies at Ashland 2.

To ensure that all pertinent information is included in this submittal, the following guidelines were used in preparing this request to amend:

- U.S. Nuclear Regulatory Commission ("NRC") *Final Position and Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores* (Federal Register Volume 60, No. 184, September 22, 1995).
- Energy Fuels Nuclear ("EFN") request to the NRC for the amendment to process uranium-bearing potassium diuranate ($K_2U_2O_7$) in a solution of potassium hydroxide/potassium fluoride in water ("KOH Amendment").
- NRC and State of Utah comments and requests for information relative to the KOH Amendment.
- EFN request to NRC for the Rhone-Poulenc alternate feed amendment.
- NRC and State of Utah comments and requests for information relative to the EFN request for the Rhone-Poulenc alternate feed amendment.
- EFN request to the NRC for the amendment to process uranium-bearing material owned by the Cabot Corporation.

- EFN request to the NRC for the amendment to process uranium-bearing material owned by the U.S. Department of Energy.
- IUSA request to the NRC for the amendment to process uranium-bearing material from U.S. Army Corps of Engineers Ashland 2 site.
- NRC and State of Utah comments and requests for information relative to the IUSA request for the Ashland 2 site alternate feed amendment.

We believe that use of these guidance materials, supported by our discussions with the NRC concerning these amendment requests, has allowed us to prepare a complete, concise submittal. Therefore, IUSA requests that the NRC please attempt to reply to this request within 30 days of this transmittal date.

The established schedule calls for removal actions for Ashland 1 to take place immediately following the excavations at Ashland 2. The contractor, ICF Kaiser, will begin excavations at Ashland 1 in early 1999; start shipping the Material in early 1999; and be completed in mid to late 1999. Early review will allow material from the Ashland 1 site to be transported to IUSA in lieu of other locations. I can be reached at (303) 389.4131

Sincerely,



Michelle R. Rehmann
Environmental Manager

MRR/jat
Attachments

cc James Park, U.S. NRC
Earl E. Hoellen
Thad L. Meyer
Harold R. Roberts
David C. Frydenlund
William N. Deal
Ronald E. Berg
William J. Sinclair, Utah DEQ