UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 11/14/01

COMMISSIONERS

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In the Matter of	)	
INTERNATIONAL URANIUM (USA) CORPORATION	)	Docket No. 40-8681-MLA-9
(White Mesa Uranium Mill)	)	

CLI-01-21

MEMORANDUM AND ORDER

Petitioner, the Glen Canyon Group of the Sierra Club (the "Group"), has appealed the Presiding Officer's decision denying its request for a hearing in this license amendment proceeding. *See* LBP-01-15, 53 NRC 344 (2001). We affirm the Presiding Officer's decision that the Group has not demonstrated standing.

I. Background

International Uranium (USA) Corporation ("IUSA") seeks to amend its source material license to receive and process up to 17,750 tons of alternate feed material at its White Mesa Uranium Mill near Blanding, Utah. The alternate feed material, from the Molycorp site at Mountain Pass, California, is a result of extraction of lanthanides and other rare earth metals from bastnasite ores. *See* "International Uranium (USA) Corporation; Notice of Receipt of Request to Process Alternate Feed," 66 Fed. Reg. 1,702 (Jan. 9, 2001). The material, which is currently being stored in ponds as lead sulfide sludge, has a uranium content of approximately 0.15 percent or greater. *See id.* IUSA proposes to process the material for its uranium content

and dispose of the byproduct material in the mill's tailings cells. *See id.* Approximately 60-70 trucks per week will be shipped for a period of 60 to 90 days. *See id.* The trucks will be lined, covered, aluminum end-dump trailers. *See id.* The proposed transportation route for the material will follow route I-15 and I-70 to Crescent Junction, Utah, and then south on U.S. Highway 191 to the mill. *See id.*

In its petition for a hearing in this matter, the Group asserted that it has standing to participate and described areas of concern.[1] The Presiding Officer permitted the Group to respond to IUSA's reply to the hearing request, and conducted a telephone conference with the parties on April 11, 2001. The Presiding Officer concluded that the hearing request did not establish Petitioner's standing to maintain this action. *See* LBP-01-15, 53 NRC at 351.

II. Discussion

To demonstrate standing in a Subpart L materials licensing case, a petitioner must meet the "judicial standard for standing." 10 C.F.R. § 2.1205(h). The concept of judicial standing requires a showing of "(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), *citing Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), CLI-98-11, 48 NRC 1, 5-6(1998). For an organization to represent the interests of one of its members (*i.e.*, to demonstrate representational standing), the organization must show how at least one of its members may be affected by the licensing action, must identify the member, and must show that the organization

[1]Pursuant to 10 C.F.R. § 2.1213, the NRC Staff did not participate as a party to this proceeding.

is authorized to represent that member. *See Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 293 (2000).

Since a license amendment involves a facility with ongoing operations, a petitioner's challenge must show that the amendment will cause a "distinct new harm or threat apart from the activities already licensed." *See International Uranium (USA) Corp*., CLI-01-18, 54 NRC __ (2001); *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 192 (1999). Conclusory allegations about potential radiological harm from the facility in general, which are not tied to the specific amendment at issue, are insufficient to establish standing. *See Zion*, 49 NRC at 192.

The Group focuses on two portions of the proposed activity: (1) transportation of the Molycorp material to the mill, and (2) storage, after processing, of the material in the mill's tailings cells. Transportation allegedly will generate harmful dust, as will the material's storage and processing at the site. In addition, the material allegedly will contaminate groundwater near the site.

In support of standing, the Group states that it has an interest in state and federal environmental laws and in the land, water, air, wildlife and other natural resources that would be affected by the license amendment. Further, the Group has members who live in the communities allegedly affected by the license amendment and who engage in work or recreational activities in the vicinity of the White Mesa Mill. *See* "Sierra Club Request for a Hearing and Petition for Leave to Intervene," at 3 (Feb. 7, 2001).

With its petition to intervene, the Group submitted a sworn declaration of a member, Herb McHarg, and an affidavit by an hydrology expert, Loren Morton. Mr. McHarg says that he resides "just off" Highway 191 approximately 25 miles from the Mill, that his employment requires him to drive Highway 191 on a daily basis, frequently past the White Mesa Mill, and

that he bikes and walks frequently on Highway 191 near the White Mesa Mill. *See* "Declaration of W. Herbert McHarg," at ¶¶ 2-4 (Feb. 7, 2001). He states that in the past dust from transport trucks and dust plumes coming from the White Mesa site have blown into the windows of his vehicle, onto his face and body, and into his eyes, nose, and mouth. *See id.* at ¶ 3. Such materials injure him, he says, as they have cracked his windshield, and the dust immediately irritates his skin, eyes, and nose. *See id.* Mr. McHarg believes that the dust is harmful to his health and the environment in the long term. *See id.* Mr. McHarg also states that he drinks from waters that he believes may be affected by the materials subject to this amendment. *See id.* at ¶ 4. The Group's hydrology expert concludes that "there is a significant potential for undetected seepage discharge from the IUSA tailings cells to groundwater." *See* "Affidavit of Loren Morton," at ¶ 11 (Aug. 18, 1998). The Group maintains that Mr. McHarg's statement that he would be injured by the Molycorp feed material is reasonable considering the hazardous nature of the material -- lead sulfide sludge -- and its potential migration off the site.

The Presiding Officer concluded that the license amendment, if granted, would not "break entirely new ground." *See* LBP-01-15, 53 NRC at 350. Of "pivotal significance," in his view, was the Group's failure to show that currently licensed activities at the mill have caused seepage into the groundwater in the past or that activities to be authorized by the instant license amendment would create a greater likelihood of such contamination in the future. *See id*. As for the Group's "dust" claims, the Presiding Officer stressed that lead sulfide sludge will be wet and thus less likely to generate dust than previously licensed alternate feed materials. *See id.* He deemed the Group's claim that the proposed license amendment might cause incremental harm to rest on "unfounded conjecture." *See id.* at 351. Accordingly, he denied standing to the Group.

The Presiding Officer noted disagreement between the parties on numerous merits-based issues, such as an allegation that the material may contain "listed" hazardous waste,[2] the Group's request that an environmental impact statement be prepared to satisfy the National Environmental Policy Act of 1969 ("NEPA"), and the Group's allegation of sham processing of the Molycorp alternate feed material. *See id.* at 348. He declined to address these questions because he found no threat of injury-in-fact. *See id.*

Absent an error of law or an abuse of discretion, the Commission generally defers to the Presiding Officer's determinations regarding standing. *See International Uranium (USA) Corp.* (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 the Group did not show in enough detail how the proposed license amendment would affect it. *See* LBP-01-15, 53 NRC at 348. Specifically, the Group showed no discrete institutional injury to itself, other than general environmental and policy interests of the sort we repeatedly have found insufficient for organizational standing. *See, e.g., Transnuclear, Inc.* (Export of 93.15% Enriched Uranium), CLI-94-1, 39 NRC 1, 5 (1994); *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 59-61 (1992).

The Group fares no better insofar as it seeks "representational" standing on behalf of its members. The Group did submit a sworn declaration by a member, Mr. McHarg, who claims possible injury from contaminated groundwater or from blowing dust, and an affidavit from an expert, Mr. Morton, concerning "undetected seepage" into groundwater. But neither Mr. McHarg nor Mr. Morton outlines a pathway or mechanism for leachate from the tailings piles to

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[2] Hazardous wastes are identified and "listed" in 40 C.F.R. Part 261 pursuant to authority delegated to the Administrator of the Environmental Protection Agency in 42 U.S.C. § 6921.

contaminate water Mr. McHarg or other Group members drink. Any groundwater impact from the Molycorp feed material is unlikely since the material will be placed on a concrete pad that will be bermed to contain moisture. In addition, because the Molycorp material will serve as feed for only a short duration, its contribution to any leachate from the tailings piles will be slight. Moreover, as the Presiding Officer held, the *wet* sludge nature of the Molycorp material renders the Group's "dust" concerns implausible.[3] Judicial standing jurisprudence, and our own, require "a realistic threat...of direct injury."[4] Here, the Group's claims rest "on nothing more than unfounded conjecture." *See* LBP-01-15, 53 NRC at 351.

Before the Presiding Officer the Group pointed to the potential for an accident involving the trucks hauling materials to be dumped, stored and processed at the White Mesa mill. *See* "Declaration of W. Herbert McHarg," at ¶ 3 (Feb. 7, 2001). But the Group's appellate brief does not reiterate or explain its accident theory. Hence, we deem it abandoned. *See Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-947, 33 NRC 299, 322 & n.62 (1991). In any event, speculation about accidents along feed material's transport routes

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[3] The Group does not explain why it or its members reasonably might be expected to suffer injury from dust from the Molycorp material, given IUSA's numerous protective measures during the material's truck transport and during its onsite storage at White Mesa Mill. These measures include covering the material while in transport and keeping it wet and giving it priority processing while in onsite storage.

Similarly, the Group's various references to listed "hazardous wastes" do not substantiate its standing because: (1) the applicant has stated that it will not accept feed material containing listed hazardous waste; (2) Molycorp has certified that the material contains no such wastes; and (3) the application contains a detailed protocol, established by IUSA and acceptable to the State of Utah in a similar context involving other alternate feed material, for screening the feed material for listed hazardous wastes. *See* 66 Fed. Reg. at 1,702; "Amendment request to Process an Alternate Feed Material from Molycorp at White Mesa Uranium Mill, Source Material License No. SUA-1358," Attachments 3 and 4 (Dec. 19, 2000); LBP-00-11, 51 NRC at 180. The Group offers no explanation why the Molycorp material nonetheless poses a meaningful risk to its members.

[4] *See Sequoyah Fuels Corp.* (Gore, Oklahoma), CLI-94-12, 40 NRC 64, 74 (1994). *Accord Central and South West Services, Inc. v. EPA*, 220 F.3d 683, 700-01 (5th Cir. 2000) (collecting cases).

does not establish standing under our case law. *See International Uranium (USA) Corp*., CLI-01-18, 54 NRC at __, slip op. at 5.

Contrary to the Group's view, its allegations do not resemble those the United States Supreme Court found sufficient for standing in *Friends of the Earth, Inc. v. Laidlaw Environmental Services, (TOC), Inc.,* 528 U.S. 167 (2000). In that case, it was "undisputed that...unlawful conduct -- discharging pollutants in excess of permit limits -- was occurring at the time the complaint was filed" and nearby residents reasonably "curtailed" their use of the affected waterway. *Id.* at 184-85. Here, the Group has made no allegations with similar substance and level of detail.

For the foregoing reasons, we *affirm* LBP-01-15.

IT IS SO ORDERED.

For the Commission

ANNETTE L. VIETTI-COOK
Secretary of the Commission

Dated at Rockville, Maryland
this 14th day of November, 2001