

**BEFORE THE UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
RADIATION CONTROL BOARD**

In re:

**INTERNATIONAL URANIUM (USA)
CORPORATION**

*Revised 11e.(2) Materials License
Number UT1900479 Amendment #2
(June 13, 2006)*

*Revised Ground Water Quality
Discharge Permit UGW370004
(June 13, 2006)*

File No. _____

REQUEST FOR AGENCY ACTION/PETITION TO INTERVENE

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INTRODUCTION

1. This matter concerns recent approvals of the Utah Division of Radiation Control ("DRC") to allow the receipt, processing and disposal of uranium-bearing wastes at the International Uranium (USA) Corporation Uranium Mill (hereinafter, "IUSA Mill") on White Mesa, San Juan County, Utah. These radioactive wastes contain small amounts of recoverable uranium, contain significant radioactive and hazardous constituents and elements, and were created in various metals manufacturing and milling processes that removed tantalum and niobium from ores, tin slags, and other metal industry wastes in a now-bankrupt Muskogee, Oklahoma metals facility.

2. Pursuant to Utah Code Revised ("UCR") §63-46b-3 and Utah Administrative Code ("UAC") R313-17-6, the Glen Canyon Group of the Utah Chapter of the Sierra Club (hereinafter, "Petitioner") respectfully requests the commencement of a Formal Adjudicative Proceeding before the Utah Radiation Control Board (hereinafter, "Board"). By this request, Petitioner invokes the jurisdiction of the agency and seeks Board review of *Revised 11e.(2) Materials License Number UT1900479 Amendment #2* and the *Revised Ground Water Quality Discharge Permit UGW370004* (hereinafter, jointly referred to as *Orders*) issued by the Director of the DRC on June 13, 2006.

3. The *Revised 11e.(2) Materials License Number UT1900479 Amendment #2* and the *Revised Ground Water Quality Discharge Permit UGW370004* were issued to the International Uranium (USA) Corporation (hereinafter, "IUSA") on June 13, 2006. The DRC's *Orders* authorize the IUSA Mill to receive, process, and dispose of radioactive metals manufacturing waste from the *FMRI, Inc.*, facility at Muskogee, Oklahoma (hereinafter, "FMRI").

4. Pursuant to UAC R313-17-7, Petitioner also files this as a petition for intervention to commence a Formal Adjudicative Proceeding in accordance UAC R313-17-6. As outlined and discussed herein, Petitioner qualifies as an Intervenor under U.C.R. §663-46b-9. Petitioner's legal rights or interests are substantially affected by the DRC's *Orders* and Petitioner has standing to commence and participate in a Formal Adjudicative Proceeding before the Board. UAC R313-17-7(c).

5. Petitioner contests the validity of the DRC *Orders* and seeks to invalidate the *Revised 11e.(2) Materials License Number UT1900479 Amendment #2* and the *Revised Ground Water Quality Discharge Permit UGW370004* which were issued contrary to Federal and State law.

6. Here, Federal and State law provides no authority for DRC to authorize the receipt, processing, and disposal of uranium-bearing metal manufacturing wastes from the FMRI facility at the IUSA Mill. Moreover, IUSA's license amendment and ground water permit revision (and therefore DRC's *Orders*) were not issued in compliance with State and Federal laws that prohibit the introduction of metals manufacturing wastes the nuclear fuel cycle.

II. STATEMENT OF LEGAL AUTHORITY AND JURISDICTION

7. Petitioner files this request for agency action pursuant to UCR §63-46b-3 and UAC R313-17-6. Petitioner also files this as a petition for intervention to commence a Formal Adjudicative Proceeding pursuant to UAC R313-17-7 in accordance with UAC R313-17-6.

8. Petitioner has exhausted its administrative remedies before the DRC by participating in a public hearing in Blanding, Utah on January 5, 2006 and submitting timely written comments on December 8, 2005 and again on January 5, 2006.

9. UAC R313-17-5(1) provides for Formal Adjudicative Proceedings to “contest the validity of initial order[s]” before the Board. A request for agency action or petition for intervention must be filed within thirty (30) days of any DRC order by filing a written request for agency action with the Board. UAC R313-17-6(2); UAC R313-17-7(2).

10. The DRC *Orders* challenged by Petitioner became “effective June 13, 2006” and were sent to Petitioner on June 13, 2006. Initial proceedings are now closed and the commencement of a Formal Adjudicative Proceeding is appropriate. This Request for Agency Action/Petition for Intervention was timely filed on or before July 13, 2006.

11. Upon information and belief, the removal and shipment of wastes from the FMRI facility in Oklahoma to the IUSA Mill has not begun.

III. STATEMENT OF INTERESTS

12. Petitioner is a proper party to request commencement of and participation in the Formal Adjudicative Proceedings requested herein. Petitioner meets all requirements for party status and/or intervention and is entitled to: (1) a grant of party and intervenor status; (2) commencement of a Formal Adjudicative Proceeding; and, (3) participation as a full party in the requested Formal Adjudicative Proceeding.

13. Under the Utah Administrative Code, “parties” to a Formal Adjudicative Proceeding, include “[a]ll persons whose legal rights or interests are substantially affected by the proceeding, who have standing to participate in the proceeding, and to whom the Board has granted intervention.”). UAC R313-17-7(1)(C). The intervention standards of UAC R313-17-7(2), incorporate UCR §63-46b-9(2) by reference, which in turn provides that “[t]he presiding officer shall grant a petition for intervention if the presiding officer determines that: a) the petitioner’s

legal interest may be substantially affected by the formal adjudicative proceeding; and b) the interests of justice and the orderly and prompt conduct of the adjudicative proceeding will not be materially impaired by allowing the intervention.” UCR §63-46b-9(2).

14. With regard to standing, the ability to meet any of the following three tests set forward by the Utah Supreme Court in National Parks & Conservation Ass'n v. Board of State Lands, 869 P.2d 909, 913 (Utah 1993) confers standing as a full party:

- a. Distinct and Palpable Injury Test: This test recognizes standing where there is: (1) the existence of an adverse impact on the plaintiff's rights; (2) a causal relationship between the governmental action that is challenged and the adverse impact on the plaintiff's rights; and, (3) the likelihood that the relief requested will reduce the injury claimed.
- b. Public Issues Test: This test recognizes standing if: (1) no one else has a greater interest in the outcome; (2) the issues are unlikely to be raised at all unless that particular plaintiff has standing to raise the issues; and, (3) the legal issues are sufficiently crystallized to be subject to judicial resolution. The rationale underlying this standard is that important issues regarding the lawfulness of governmental action ought to be judicially resolved if they can be presented by one having the necessary adverseness.
- c. Great Public Importance Test: This test recognizes standing where there exists the need to have issues of great public importance resolved in compliance with the law. The dispute must (1) raise a statutory or constitutional issue of substantial public import; (2) be presented by adverse parties; and, (3) otherwise be suitable for resolution by the courts.

15. As set forward below and in the attached Exhibits, Petitioner is a proper party and/or Intervenor because: (1) Petitioner's legal rights or interests are substantially affected by DRC's *Orders*; (2) the interests of justice would be served and agency interests would not be impaired by allowing party status and intervention; (3) the interests of justice would be served and agency interests would not be impaired by the orderly and prompt commencement of a Formal Adjudicative Proceeding; and, (4) under governing caselaw, Petitioner has standing to both request commencement and participate as a full party in a Formal Adjudicative Proceeding.

16. The legal rights and interests of Petitioner are substantially and adversely affected by the challenged license amendment and by actions that may be taken based on the license amendment. *See*, Exhibits 1-3.

17. Petitioner is a not-for-profit, non-governmental organization that has been active in issues related to uranium milling in Southeastern Utah for a number of years. *See*, Exhibits 1-3. Petitioner has actively participated in public hearings, public meetings, and public education associated with uranium milling and the disposition of uranium mill tailings in Grand and San Juan Counties. *Id.* Petitioner and its members' recreational, environmental, health and safety interests in the area are significantly affected by the unlawful approval of IUSA's amendment request to receive, process, and dispose of the FMRI material. *Id.* Petitioner and its members live, work, and own property in areas impacted by an increased presence of and transportation of radioactive waste. *Id.* As of July 10, 2006, there were ninety-four (94) members living in seventy-five (75) households in Grand County and twenty-one (21) members living in nineteen (19) households in San Juan County. The total Glen Canyon Group membership in San Juan and Grand counties is one-hundred and forty-one (141) members in one-hundred and nineteen (119) households. In San Juan County, seven (7) members live in Monticello, nine (9) in Bluff and the remainder in Blanding and La Sal.

18. Petitioner and its members reside in San Juan and Grand Counties. *See*, Exhibits 1-3. Petitioner and its members hunt, recreate, and camp in the vicinity of the IUSA uranium mill. *Id.* At least one member lives and works within one block of the transportation route that will be used to transport the FMRI material to the IUSA mill. *See* Exh. 2.

19. The challenged *Orders* increase and extend the health risks to Petitioner and its members that reside, live, travel, recreate, hunt, and work in the vicinity of the IUSA Mill or in the vicinity of the transportation route for the FMRI radioactive waste. *See*, Exhibits 1-3. Members who live near the transportation route and who spend time in San Juan County in the vicinity of IUSA Mill may be impacted by airborne radioactive and chemical particulates. *Id.*

20. DRC *Orders* allow introduction of numerous compounds and elements that have not been previously monitored and quantified at the IUSA Mill. *See*, Exhibits 1-3. The materials from the FMRI facility contain high levels of thorium-232 and thorium-228. *Id.* Source material thorium has progeny that are more radioactive than the progeny of uranium. The Nuclear Regulatory Commission ("NRC") required IUSA to handle high-thorium content material in a more protective manner and take extra precautions in disposing of the tailings. *See* Exh. 2. There is no indication in the Application and the November 2005 SER that IUSA's High Thorium Content Standard Operating Procedures or other necessary precautions will require protection of individuals in the vicinity of the IUSA Mill from the adverse impacts related to the presence of thorium-232 and progeny and potential release during the transport, receipt, processing, or disposal approved by the license amendment.

21. Petitioner has exhausted its administrative remedies before the DRC by participating in a public hearing in Blanding, Utah on January 5, 2006 and submitting timely written comments on December 8, 2005 and again on January 5, 2006.

22. Petitioner has submitted written and oral comments to the Nuclear Regulatory Commission ("NRC"), the Department of Energy ("DOE"), other federal agencies and the agencies of the State of Utah on matters related to uranium mining and processing in Utah

generally, the licensing and operation of the IUSA Mill in particular, and Utah's amendment of its Agreement State agreement in 2004 to allow Utah to conduct licensing of the IUSA Mill pursuant to federal law.

23. Petitioner has been granted standing and party status by the NRC to challenge a previous license amendment application at the IUSA Mill. *See*, Exhibits 1-3.

24. Petitioner is the primary citizen organization in San Juan and Grand Counties that advocates for the protection of public health and environment from the adverse effects of radioactive waste receipt, processing and disposal at the IUSA uranium recovery facilities. Based on extensive experience in IUSA regulatory proceedings, the GCG can adequately represent its members and raise issues of public interest in the requested formal adjudication.

25. DRC's interpretations of "alternative feed material" and "byproduct material" is challenged here on an as-applied basis and raises a serious public issue. Evidence that this issue has sufficiently crystallized to support standing is provided by the Executive Secretary's 2003 statement that when the use of the NRC guidance and DRC decisions regarding the "definition of byproduct material may become an issue," such interpretations will be "subject to challenge before the board." Since the DRC is an agency of statutory creation and has only those powers expressly granted by statute, it is important for the Board to review the DRC's actions in light of the applicable federal and state statutes. *See Olympus Oil Inc. v. Harrison*, 778 P.2d 1008, 1010 (Utah Ct. App. 1989).

26. In deferring Petitioner's request for action by the Board regarding the DRC interpretation of the meaning of "byproduct material" as it concerns licensing at the IUSA Mill, the Executive Secretary declined to make a regulatory determination and explicitly stated that "[a]ny final

action will be subject to challenge in an adjudicatory proceeding before the RCB [Radiation Control Board].” The present request seeks to commence a Formal Adjudicative Proceeding that challenges DRC *Orders* regarding receipt, processing, and disposal of “alternative feed materials” and “byproduct material” that are contrary to State and Federal law.

27. The issues raised by Petitioner are issues of first impression and have never been decided by the Board. Thus, and from the perspective of the agency, a Formal Adjudicative Proceeding is necessary to establish the agency record and prior to any potential judicial review.

28. The issues raised by the licensing of IUSA Mill to receive, process and dispose of the FRMI metals manufacturing wastes have never been directly addressed or decided by the Board and, are of great importance to the public and to regulatory program developed by the State of Utah to regulate 11e.(2) byproduct material and uranium recovery facilities. It is in interest of the public, industry, and the DRC that these questions be resolved by the Board in a timely manner and prior to any judicial review.

29. Failure to stay agency proceedings during any Formal Adjudicative Proceedings could result in judicial review prior to development of any agency record and final Board decision.

30. Petitioner has standing to both request commencement and participate as a fully party in a Formal Adjudicative Proceeding. National Parks & Conservation Ass'n v. Board of State Lands, 869 P.2d 909, 913 (Utah 1993).

31. Petitioner meets the “distinct and palpable injury” test which is the same as the “may be substantially affected” standard set out by Utah statute and the DRC rules.

32. Petitioner is a proper party based on the distinct and palpable impact on the interests of the organization and of the members as demonstrated by this statement of facts and by the affidavits of Mr. Love, Ms. Fields and Mr. Weisheit which are attached as Exhibits 1-3.

33. Petitioner meets the "public issues" test and appropriately requests review of agency action based on its active participation in advocating the environmental and public health issues implicated by the DRC *Orders* that would allow the receipt, processing, and disposal of FRMI's metal manufacturing wastes at the IUSA Mill.

34. Petitioner meets the "pubic interest test" for standing and is an appropriate and well suited Intervenor based on its active participation in bringing forth the environmental and public health issues associated with milling and disposal of radioactive wastes in Utah in general and at the IUSA Mill in particular.

35. On information and belief, no other group or individual that has participated in the initial proceeding regarding DRC's *Orders* has plans to raise these important public issues in Formal Adjudicative Proceedings.

36. Petitioner also has standing to request agency action that commences Formal Adjudicative Proceedings by "raising issues that are so 'unique and of such great importance that they ought to be decided in furtherance of the public interest.'" National Parks, 869 P. 2d at 913 (citing Terracor v. Utah Bd. of State Lands, 716 P. 2d 796, 798 (Utah 1986)).

37. The issues regarding metal manufacturing waste receipt, processing and disposal at the IUSA Mill and raised by Petitioner are unique and of great importance to the public interest and are likely to remain unaddressed, inadequately considered, and/or unlawfully decided unless the present request is for Intervention/Agency Action granted.

38. In particular, in issuing the license, there was no competent analysis or finding regarding whether or not the FMRI materials meet the Federal or State law regarding what may be licensed as alternate feed stocks at the IUSA mill. This issue was raised numerous times by Petitioner at both the programmatic and site-specific level.

39. In sum, Petitioner respectfully submits based on all facts contained in the foregoing statement, attached Exhibits, and other sections of this request, that Petitioner is a proper party to request Formal Adjudicative Proceedings based upon provisions of law set forth by Utah statute, DRC regulation, and caselaw of the Utah Supreme Court.

40. The interests of justice weigh in favor of a Formal Adjudication Proceeding before Board. No prejudice to any party will result from granting Petitioner's Request for Agency Action and Petition for Intervention, because this action is provided for by the administrative procedures that can be found in the Radiation Control Act and administrative code provisions. Further, the Executive Secretary has made a policy decision that Formal Adjudicative Proceedings are an appropriate setting to address the questions of what qualify as "alternate feed material" and "byproduct material" and therefore what license amendments may properly be granted to the IUSA Mill.

41. Last, no prejudice can flow because in approving the 2004 amendment to Utah's Agreement State status (and based on a full review of Utah law) the NRC stated, consistent with Petitioner's current request, "[a]ll licensing actions taken by the Division of Radiation Control may be appealed to the Radiation Control Board."

42. Regardless of the standard applied, the Glen Canyon Group of the Sierra Club is entitled to the grant of this Request for Agency Action/Petition for Intervention and the interests of

justice would be served (and not impaired) by adjudicating these unique matters of public interest and great public importance.

IV. STATEMENT OF FACTS AND REASONS AND LEGAL BASIS FOR RELIEF

43. On March 8, 2005, IUSA submitted an application for an amendment to IUSA's Source Materials License (hereinafter, "Application") to authorize the IUSA Mill located near Blanding, Utah to receive, process, and dispose of metal manufacturing wastes created at the Oklahoma FMRI facility during the removal of tantalum and niobium from ores, tin slags, and other metal industry wastes. The Application was subsequently supplemented and IUSA and the DRC participated in a negotiated license amendment process.

44. In November 2005, the DRC issued a public notice of an amendment to IUSA's license (UT 19 UT1900479) and Ground Water Quality Discharge Permit (No. UGW370004). The DRC sought public comment on its proposal to amend the existing license to allow delivery, processing, and disposal of FMRI materials (*a.k.a.* "alternate feedstock material"). A thirty (30) day public comment period was extended and closed on January 5, 2006. Petitioner participated in a public hearing in Blanding, Utah on January 5, 2006, and submitted timely written comments on December 8, 2005, and again on January 5, 2006.

45. The FMRI facility (formerly the *Fansteel, Inc.* facility) is licensed by the Nuclear Regulatory Commission ("NRC") under Source Material License SMB- 911, Docket No. 40-7580. FMRI is a wholly owned subsidiary of *Fansteel, Inc.* and was established to carry out the decommissioning of the Muskogee Facility as part of *Fansteel, Inc.*'s bankruptcy proceedings. The FMRI facility extracted tantalum and niobium from ores, tin slags, and industrial wastes. These refractory metals are highly resistant to heat and corrosion and are used in the manufacture

of electronic components and metal alloys. Due to the uranium and thorium content of the feed stocks, the FMRI facility was required to hold a source materials license from the NRC. The FMRI facility stopped processing in 1989 and is currently undergoing decommissioning and decontamination.

46. The FMRI facility did not process materials in the nuclear fuel cycle.

47. The FRMI facility was used to remove tantalum and niobium from ores, tin slags, and other metal industry wastes.

48. The FRMI facility did not process materials for the extraction of source materials.

49. The FRMI facility is not, and has never been, licensed to process materials for the extraction and use of source materials in the nuclear fuel cycle.

50. The decommissioning of the FMRI facility contemplates the removal of metal manufacturing/milling wastes from FRMI's disposal Ponds 2 and 3 for receipt, processing and disposal at the ISUA Mill.

51. The DRC *Orders* did not authorize FMRI to transport this material from Oklahoma to the ISUA Mill.

52. According to the *Revised 11e.(2) Materials License Number UT1900479 Amendment #2* §10.19 issued on June 13, 2006, "[t]he licensee [IUSA] is authorized to receive and process source material from Ponds 2 and 3 of the FMRI's Muskogee Facility located in Muskogee, Oklahoma, in accordance with statements, representations, and commitments contained in the amendment requests and submittals to the Executive Secretary dated March 7, 2005, June 22, 2005, and April 28, 2006." Clean-up of the FRMI facility would be accomplished by removing

the wastes from Ponds 2 and 3 and shipping this material to the IUSA Mill for receipt, processing and permanent waste disposal/storage.

53. Wastes from the FMRI facility may be transported to the IUSA Mill, approximately 4-miles south of Blanding, Utah. These radioactive materials may be transported in intermodal containers by rail and offloaded at Cisco, Utah. Thereafter, the radioactive wastes would be trucked to Interstate-70 to Route 191 through Moab, Monticello, and Blanding to the IUSA Mill.

54. The radioactive material from the FMRI facility to be received at the IUSA Mill for processing was categorized by the DRC during this licensing proceeding as “alternate feed material.” Further, “[t]he License has been conditioned to limit the alternate feed to Pond 2 and 3 material...” *Public Participation Summary* (June 12, 2006) at 33.

55. The *Revised 11e.(2) Materials License Number UT1900479 Amendment #2* issued on June 13, 2006, authorizes receipt of “alternate feed material” from the FMRI facility. Specifically, “[t]he licensee is authorized to receive and process source material from Ponds 2 and 3 of the FMRI’s Muskogee Facility located in Muskogee, Oklahoma...” *Id.* §10.19.

56. There is no Federal definition of “alternate feed material” in the Atomic Energy Act of 1954 (“AEA”), *as amended*. There is no definition of “alternate feed material” in Environmental Protection Agency (“EPA”) and/or NRC regulations promulgated to implement the Uranium Mill Tailings Radiation Control Act (1978).

57. There is no federal statutory provision that allows the DRC to issue the challenged license.

58. Federal law prohibits the DRC from issuing the challenged license.

59. The State of Utah defines “alternate feed material” as “a natural or native material: (i) mined for the extraction of its constituents or other matter from which source material may be extracted in a licensed uranium or thorium mill; and (ii) may be reprocessed for its source material content.” UCR §59-24-102(1). “Alternate feed material” does not include material containing hazardous waste, natural or unprocessed ore, or “naturally occurring radioactive materials containing greater than 15 picocuries per gram of radium-226.” Id.

60. The radioactive material from the FMRI facility to be received by the IUSA Mill for processing is not a natural or native material mined for the extraction of its constituents or other matter.

61. The radioactive material from the FMRI facility to be received by the IUSA Mill for processing was not extracted in a licensed uranium or thorium mill.

62. The FRMI facility used numerous metals manufacturing and milling processes that removed tantalum and niobium from ores, tin slags, and other metal industry wastes that incidentally contained uranium and thorium.

63. According to DRC’s Safety Evaluation Report (“SER”) at 7, the radium content of Pond 1 and Pond 2 materials from the FMRI facility to be received by the IUSA Mill ranges from 138 to 400 picocuries per gram (pCi/g).

64. The radioactive material from the FRMI facility to be received by the IUSA Mill for processing is not “unrefined and unprocessed ore” as defined by 10 C.F.R. §40.4.

65. The radioactive material from the FRMI facility to be received by the IUSA Mill for processing is not “ore” as under its common meaning or as used by state or federal law.

66. The radioactive material from the FMRI facility to be received by the IUSA Mill for processing is not "byproduct material" as defined by 42 U.S.C. §2014(e)(2), 10 C.F.R. §40.4, U.R.C. §19-3-102(3), and R313-12-3(b).

67. The "alternate feed material" from the FMRI facility to be received by the IUSA Mill for processing is not "byproduct material" as defined by 42 U.S.C. §2014(e)(2), 10 C.F.R. §40.4, U.R.C. §19-3-102(3), and R313-12-3(b).

68. The State of Utah and Federal law define byproduct materials identically. U.R.C. §19-3-102(3)("Byproduct material" has the same meaning as 42 U.S.C. §2014(e)(2).").

69. "Byproduct Material" is defined by the Atomic Energy Act (1953), as amended by the Uranium Mill Tailings Radiation Control Act (1978), as "the tailings or wastes produced by the extraction or concentration of uranium and thorium from any ore processed primarily for its source material content." 42 U.S.C. §2014(e)(2).

70. *Byproduct Material* is further defined by NRC regulations to mean "the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes." 10 C.F.R. §40.4; *accord* R313-12-3(b).

71. The NRC has stated that determining whether materials fall within "the section 11e.(2) definition focuses on the process that generated the radioactive wastes -- the removal of uranium or thorium as part of the nuclear fuel cycle." In re Sequoia 58 N.R.C. 379 (NRC 2003), *quoting* Kerr-McGee Chemical Corp. v. NRC, 903 F.2d 1, 7 (D.C. Cir. 1990). Two NRC adjudications regarding the IUSA Mill concluded that "11e.(2) byproduct material" is limited to those

materials created within the “nuclear fuel cycle.” In re IUSA Corp, 56 N.R.C. 113 (NRC/ASLB 2002); In re IUSA Corp, 51 N.R.C. 9 (NRC, 2000).

72. The State and Federal definition of “by-product material” is limited to tailings from the processes used to recover of uranium or thorium from natural ores. The State and Federal definition of “byproduct material” is limited to those materials created within the “nuclear fuel cycle.”

73. FMRI materials to be received, processed, and disposed of at the IUSA Mill are not limited to tailings from the processing for recovery of uranium or thorium ore.

74. FMRI materials to be received, processed, and disposed of at the IUSA Mill are not limited to those materials created within the “nuclear fuel cycle.”

75. According to the DRC’s *Public Participation Summary* (June 12, 2006) at 3, “all FMRI materials to be disposed of at the IUSA Mill must be ‘by-product materials.’” According to the *Revised 11e.(2) Materials License Number UT1900479 Amendment #2* §10.1(B), IUSA “may not dispose of any material on site that is not ‘byproduct material,’ as that term is defined in 42 U.S.C. Section 2014(e)(2) (Atomic Energy Act of 1953, Section 11(e)(2)).” According to DRC, “[t]he definition of ‘byproduct material,’ in turn constrains the materials that may be milled.” *Public Participation Summary* (June 12, 2006) at 11.

76. The project file demonstrates radioactive material from the FRMI facility to be received by the IUSA Mill for processing contain hazardous wastes that are listed at 40 C.F.R. § 261.30-33.

77. There is no indication that the feed materials are being processed at the IUSA Mill primarily for its source material content. The failure to determine the primary purpose of the

licensed activity at the IUSA Mill fails to provide one of the important guards against what the NRC has termed "sham disposal," i.e. the use of uranium milling to convert uranium bearing wastes into "byproduct material" in order to use the mill's "byproduct material" disposal facilities.

78. The project file indicates that the Safety Evaluation Report is not based on full disclosure of the materials contained in the FRMI facility or the impacts the FRMI materials would have at the IUSA Mill. The SER violates the requirements of R313-24 in general and R313-24-3 in particular.

79. The FMRI materials are hazardous and radioactive and have the potential to adversely impact the health and safety of Petitioner and the environment during transportation, storage, reprocessing, and short-term and long-term disposal.

80. Based on the statement of reasons, authorities, and facts, Petitioner is entitled to the commencement of a Formal Adjudicative Proceeding.

V. STATEMENT OF RELIEF/ACTION SOUGHT AND LEGAL BASIS

Petitioner repeats and incorporates by reference the allegations in the above paragraphs and all paragraphs of this Request for Agency Action/Petition to Intervene AND FOR THESE REASONS, Petitioner respectfully requests that the Board:

1. Approve Petitioner's request for intervention/party status.
 2. Approve Petitioner's request for agency action to commence a Formal Adjudicative Proceeding.
 3. Direct the DRC or its representative to file a responsive pleading within thirty (30) days.
- DCR §63-46b-6.


4. Set a pre-hearing conference. UAC R313-17-8.
5. Direct that any hearing before the Board take place in Blanding, Utah.
6. Stay the implementation of the challenged DRC *Orders* until such time as these matters are resolved by the Board.
7. Invalidate the *Revised 11e.(2) Materials License Number UT1900479 Amendment #2* (June 13, 2006).
8. Invalidate the *Revised* Ground Water Quality Discharge Permit UGW370004 (June 13, 2006).
9. Declare as invalid and legally insufficient the environmental reports prepared in conjunction with the *Revised 11e.(2) Materials License Number UT1900479 Amendment #2* (June 13, 2006).
10. Declare that DRC lacks legal authority under the federal and state law to license the IUSA Mill to process materials other than natural ores.
11. Declare that the DRC lacks authority under federal and state law to license the receipt, processing, and disposal of FRMI metal manufacturing wastes as “alternate feed materials” due to their origin outside the nuclear fuel cycle. *See e.g.* Utah Code § 59-24-102(1)(definition of “alternate feed material”); Utah Code §19-3-102(3); and, R313-12-3 (definitions of “byproduct material”).
12. Declare that allowing milling of FMRI materials would violate the Utah statutory definition of “alternate feed material” due to its radium content. *See e.g.* Utah Code § 59-24-102; §19-3-105.

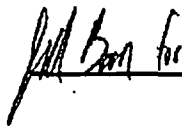
13. Declare that IUSA's application and DRC review does not comply with state and federal requirements for environmental analysis and disclosure of environmental impacts to the public. See e.g. R313-24-1, et. seq.

14. Direct the DRC to take appropriate steps to inform relevant regulatory agencies that the FRMI materials may not be transported, delivered, processed, or disposed at the IUSA Mill.

15. Provide such other relief as the Board deems just and proper.

RESPECTFULLY SUBMITTED July 13, 2006.

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Attorneys for Petitioner

EXHIBIT LIST

Exhibit 1 Affidavit of William Love
Exhibit 2 Affidavit of Sarah Fields
Exhibit 3 Affidavit of John S. Weisheit


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*Request for Agency Action/Petition to Intervene
Filed by Petitioner Glen Canyon Group of the Utah Chapter of the Sierra Club*

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2006, copies of this REQUEST FOR AGENCY ACTION/PETITION TO INTERVENE has been hand-delivered to the following persons:

Mr. Dane Finerfrock
Executive Secretary
Division of Radiation Control
Department of Environmental Quality
168 North 1950 West
P.O. Box 144850
Salt Lake City, Utah 84114-4850
DFINERFROCK@utah.gov (also by e-mail attachment)

 s/ Joel Ban, esq.
Joel Ban, Esq.

I hereby certify that on July 13, 2006, copies of this REQUEST FOR AGENCY ACTION/PETITION TO INTERVENE has been mailed to the following persons by First Class U.S. Mail/Return Receipt Requested, except where otherwise noted:

Mr. David C. Frydenlund
Vice President and General Counsel
International Uranium (USA) Corporation
Independence Plaza, Suite 950
1050 Seventeenth Street
Denver, CO 80265
daveof@intluranium.com (also by e-mail attachment)


Mr. E. Jonathan Jackson
President, FMRI, Inc.
Ten Tantalum Place
Muskogee, OK 74403
jjackson@carthlink.net (also by email attachment)

Mr. James C. Shepherd, Project Manager
Decommissioning Branch
Division of Waste Management
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
jcs2@nrc.gov (also by e-mail attachment)

Mr. George Brozowski
Regional Health Physicist
U.S. Environmental Protection Agency,
Region VI
1445 Ross Avenue
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Dallas, Texas 75202
brozowski.george@epa.gov (by e-mail attachment)

Mr. Mike Broderick, Administrator
Oklahoma Department of Environmental Quality
Waste Management Division
Radiation Management Section
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677
mike.broderick@deq.state.ok.us (also by e-mail attachment)

Sarah M. Fields
Chair, Nuclear Waste Committee
GCG/Sierra Club
P.O. Box 143
Moab, Utah 84532
sarahmfields@earthlink.net (also by e-mail attachment)


s/Travis E. Stills esq.
Travis E. Stills, Esq.

**BEFORE THE UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
RADIATION CONTROL BOARD**

In the Matter of the Amendment of
Source Materials License No. UT1900479,
Amendment No. 2; Revised Ground Water
Quality Discharge Permit UGW370004

Glen Canyon Group of the Sierra Club

Petitioners

vs.

Dane Finerfrock,
Executive Secretary of the Utah Radiation
Control Board

Respondents

**AFFIDAVIT OF WILLIAM LOVE
SUPPORT OF PETITION FOR
INTERVENTION**

File No. _____

William Love, being first duly sworn, deposes and says:

1. I am a United States citizen, a resident of the State of Utah and of Grand County, over the age of 21, and make this statement on the basis of personal knowledge, to which I would testify if called and sworn.
2. I am a member of the Glen Canyon Group of the Utah Chapter of the Sierra Club. The Glen Canyon Group of the Utah Chapter of the Sierra Club has participated extensively in the regulation of the IUSA mill in federal, state, and local regulatory forums
3. I have hunted, hiked, drank surface water, and visited the area around the White Mesa Mill owned by IUSA almost every year that I have resided in Utah and expect to do the same in the future.
4. My health and recreational activity will be affected by the shipment, storage, and processing of the FMRI waste. My family and my health would be affected by eating contaminated big game or drinking contaminated water that comes from the area.
5. Utah's Department of Wildlife has data classifying the area that I use as high value or critical habitat for winter deer range. Contamination of the area will destroy my use and the use by thousands of Utah hunters.

6. I depend on meat from hunting to provide me and my family with part of our livelihood.

7. Utah State Water Rights Department data shows that pollution in ground water from the plant has only to move 2 to 4 miles before the pollution reaches the ground surface in springs and seeps that will endanger my health and recreation.

8. On information and belief, waste is often dumped directly on the ground for extensive periods of time at the IUSA Mill, which may allow rain to wash chemicals from the waste into the stream beds and washes that I use for recreation.

9. The NRC gave me standing for the Molycorp waste processed at IUSA several years ago (Docket No. 40-8681-MLA-11, ASLBP NO. 02-795-02-MLA). The reasons for which I receiving standing from the NRC have not changed.

Dated this 12 day of July 2006

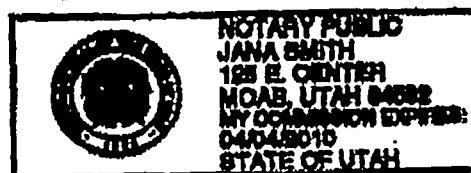
William Love

William Love
2871 E. Bench Rd.
Moab, Utah 84532

Subscribed and sworn to before me this 12th day of July 2006

Jane Smith
Notary Public

My commission expires: 4/4/2010



**BEFORE THE UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
RADIATION CONTROL BOARD**

In the Matter of the Amendment of
Source Materials License No. UT1900479,
Amendment No. 2; Revised Ground Water
Quality Discharge Permit UGW370004

Glen Canyon Group of the Sierra Club

Petitioners

vs.

Dane Finerfrock,
Executive Secretary of the Utah Radiation
Control Board

Respondents

**AFFIDAVIT OF SARAH M. FIELDS:
SUPPORT OF PETITION FOR
INTERVENTION**

File No. _____

Sarah M. Fields, being first duly sworn, deposes and says:

1. I am a United States citizen, a resident of the State of Utah and of Grand County, over the age of 21, and make this statement on the basis of personal knowledge, to which I would testify if called and sworn.
2. I am a member of the Glen Canyon Group of the Utah Chapter of the Sierra Club.
3. I live, regularly work, recreate, grown vegetables for my own consumption, and carry out other activities just one short block from Main Street (Route 191) in Moab, Utah. Highway 191, which becomes Main Street through the center of Moab, is the transportation corridor through which the FMRI, Inc., material would travel from Muskogee, Oklahoma, to the International Uranium (USA) Corporation (IUSA) Uranium Mill on White Mesa, in San Juan County, Utah.
4. On a daily basis, I shop, walk, ride my bicycle, and carry out other activities on Main Street. I go across Main Street daily.

Plateau, a position I have carried since my residency began in Grand County, Utah, in 1987. I have worked for various river and land outfitting companies, all which are currently located on Main Street in Moab, Utah.

5. I travel, recreate, and participate in educational activities along the San Juan River and in San Juan County, which is in the direct vicinity of the IUSA Uranium Mill. In passing this facility, on Highway 191, I have witnessed particulates from the storage piles blowing into the atmosphere on windy days, and on the very days that I have passed by this facility. I specifically remember one instance when I had to park along the side of the road for safety's sake, since the dust cloud was too thick for safe travel.

6. As a river and land guide, I frequent the Westwater Canyon area adjacent to the Cisco Desert. While engaged in this activity, I pass the location at Cisco, Utah, where these toxic materials are off-loaded from trains and on to trucks. On my return to Moab, from Westwater Canyon, it is necessary for me to pass through Cisco. I have done this river trip over 100 times. In addition, I have also driven shuttle vehicles through Cisco at least 50 times. Many times, perhaps 25 times, Cisco has served me as a rendezvous place to meet friends or clients for private or commercial river trips through Westwater Canyon; sometimes we park shuttle vehicles at Cisco from one or five days. While waiting for people to arrive at this rendezvous point, we are exposed to the transfer site for lengthy periods of time, which is approximately 50 yards from the railroad tracks where we park. I have also recreated in the area on land-based excursions into the Cisco Desert.

7. There has already been a transportation accident near the Cisco rail/truck transfer station involving radioactive waste being transported to the IUSA mill. This accident involved a truck turn-over and spillage of waste.

8. Therefore, since the FMRI material is both radioactive and hazardous, there is a reasonable risk to me from accidents, spillage, and the attendant dispersal from the IUSA Mill into the environment of the radiotoxic material and resultant hazard to my health and safety. I will face increased risks of exposure to radioactive and hazardous materials as a result of the amendment of IUSA's License and the receipt of radioactive and chemically hazardous materials pursuant to the License.

therefore considered to be one of the most hazardous radioactive materials.¹ Radium-228 can be extremely toxic, resembling plutonium and polonium rather than radium; all of the progeny of radium-228 is biologically more active and destructive than radium-226; unlike radon-222 (a decay product of uranium, with a half-life of 3.825 days), radon-220 (a decay product of radium-224 in the thorium-232 decay chain, with a half-life of 54.5 seconds) is not exhaled from the human body.²

11. There is a direct connection between the transportation, storage, processing, and long-term disposal of the FMRI material at the IUSA mill and my interest as a citizen not to be exposed to hazardous and radioactive materials and to be able to carry out my activities without being constrained by concerns about such exposure.

12. On the behalf myself and the Glen Canyon Group of the Utah Chapter of the Sierra Club, I have participated extensively in the regulation of the IUSA mill in federal, state, and local regulatory forums.

13. In 2003, I sought and was denied a ruling on the processing of "alternate feed materials" in Utah. The Executive Secretary stated that this matter would be decided on a case-by-case basis in response to actual factual setting of a license application.

14. I depend upon agency studies and disclosures to provide information on the environmental and health impacts of state and federal agency decisions. The current license approval did not provide adequate information on which I could participate in the licensing process. Even in conjunction with previous studies, the license application and associated materials provided inadequate information on

¹ Albert, Roy E., 1966. Thorium: its industrial hygiene aspects. Prepared under the direction of the American Industrial Hygiene Association and the U.S. Atomic Energy Commission. Academic Press, New York, p. 114.

² Sharpe, William D., M.D., 1994. The New Jersey radium dial workers; seventy-five years later, in *Toxic Circles: Environmental Hazards from the Workplace into the Community*, edited by Helen E. Sheehan and Richard P. Wedeen, Chapter 5, pp. 138-167.

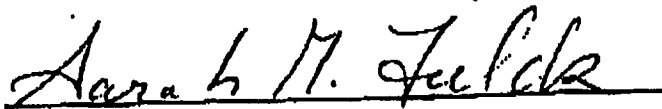
which to review and base approve the license. Many aspects of the current license have never been studied at a programmatic level. For example, there has never been either an NRC nor an Environmental Protection Agency (EPA) generic Environmental Impact Statement (EIS) or equivalent documentation for uranium mills that evaluates the environmental impacts of the disposal of the tailings from the reprocessing of feed material other than natural ore at licensed uranium mills.

15. Many aspects of the current license have never been studied at a site specific-level. For example, there has never been a site-specific EIS or equivalent documentation of the operation of the IUSA mill, nor any supplemental documentation, that evaluates the environmental impacts of the disposal of the tailings from the reprocessing of feed material other than natural ore at the IUSA Mill.

16. The DRC has never released a programmatic or site-specific documentation of mills that evaluates the environmental impacts of the processing or disposal of the tailings from the reprocessing of feed material other than natural ore at licensed uranium mills in general and the IUSA Mill in specific.

17. My legally protected interest in participating in the state/federal regulatory programs as a fully informed member of the public has been harmed by the failure to inform me, the public, and the federal and state decisionmakers regarding the actual and potential environmental and health impacts of processing alternate feed materials at the IUSA Mill.

Dated this 12th day of July 2006



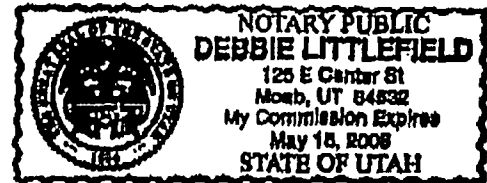
Sarah M. Fields

Subscribed and sworn to before me this 12TH day of July 2006

Debbie Littlefield

Notary Public

My commission expires: MAY 18, 2008



**BEFORE THE UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
RADIATION CONTROL BOARD**

**In the Matter of the Amendment of
Source Materials License No. UT1900479,
Amendment No. 2; Revised Ground Water
Quality Discharge Permit UGW370004**

Glen Canyon Group of the Sierra Club

Petitioners

vs.

**Dane Finerfrock,
Executive Secretary of the Utah Radiation
Control Board**

Respondents

**AFFIDAVIT OF JOHN S. WEISHEIT:
SUPPORT OF PETITION FOR
INTERVENTION**

File No. _____

John S. Weisheit, being first duly sworn, deposes and says:

- 1. I am a United States citizen, a resident of the State of Utah and of Grand County, over the age of 21, and make this statement on the basis of personal knowledge, to which I would testify if called and sworn.**
- 2. I am a charter member of the Glen Canyon Group of the Utah Chapter of the Sierra Club. The Glen Canyon Group of the Utah Chapter of the Sierra Club has participated extensively in the regulation of the IUSA Mill and uranium issues in Southeast Utah.**
- 3. I regularly work and recreate on Main Street (Route 191) in Moab, Utah. Highway 191, which is the transportation corridor through which the FMRI, Inc., material would travel from Muskogee, Oklahoma, to the International Uranium (USA) Corporation (IUSA) Uranium Mill on White Mesa, in San Juan County, Utah. This includes the off-loading area for the FMRI, Inc., material at the Cisco, Utah, train transfer station along US Highway 70.**
- 4. On a regular basis, I shop, work, and recreate along the full length of the transportation corridor. I am seasonally employed as a land and river guide on the Colorado**

5. I travel by car on Highway 191 in Moab, Grand County, and San Juan County, on a regular basis.

6. I travel, recreate, and participate in educational activities in San Juan County in the vicinity of the IUSA Uranium Mill.

7. The FMRI material both radioactive and hazardous. There was a reasonable risk of accidents, spillage, and the attendant dispersal into the environment of the radiotoxic material and resultant hazard to my health and safety. I will face increased risks of exposure to radioactive and hazardous materials as a result of the amendment of IUSA's License and the transport of radioactive and chemically hazardous materials pursuant to the License.

8. A leaking shipment or a spill of radioactive and toxic waste from the FMRI, Inc., poses a health risk to myself because I could likely inhale, ingest, or be exposed to radiation and hazardous materials as a result.

9. Living, working, traveling, recreating, and carrying out other activities on or near to the transportation route and processing site of the FMRI waste, I will potentially be exposed to uranium-228 and uranium-235 and its radioactive decay products from the FMRI waste material during transportation, storage, and disposal for long-term storage at the IUSA mill. Uranium is both a radioactive and toxic material.

10. Living, working, traveling, recreating, and carrying out other activities on or near to the transportation route and processing site of the FMRI waste, I will potentially be exposed to thorium-232 and its radioactive decay products from the FMRI waste material during transportation, storage, and disposal for long-term storage at the IUSA mill. The FMRI material contains source material thorium-232 (with its own decay chain). Thorium-232 is not found in uranium ores of the Colorado Plateau. Thorium-232 decays, in part, to radium-228, thorium-228, radium-224, and radon-220 (thoron). "Soluble thorium-232, as a bone-seeking isotope, is

9. A leaking shipment or a spill of radioactive and toxic waste from the IUSA Mill poses a health risk to myself because I could likely inhale, ingest, or be exposed to radiation and hazardous materials as a result.

10. Living, working, traveling, recreating, and carrying out other activities on or near to the transportation route and processing site of the FMRI waste, I will potentially be exposed to uranium-228 and uranium-235 and its radioactive decay products from the FMRI waste material during transportation, storage, and disposal for long-term storage at the IUSA mill. Uranium is both a radioactive and toxic material.

11. Living, working, traveling, recreating, and carrying out other activities on or near to the transportation route and processing site for the radioactive waste to be received the IUSA Mill, I will potentially be exposed to thorium-232 and its radioactive decay products from the radioactive waste material during transportation, receipt, processing and disposal for long-term storage at the IUSA mill.

12. There is a direct connection between the transportation, receipt, processing, and long-term disposal of the FMRI material at the IUSA mill and my interest as a citizen not to be exposed to hazardous and radioactive materials and to be able to carry out my activities without being constrained by concerns about such exposure.

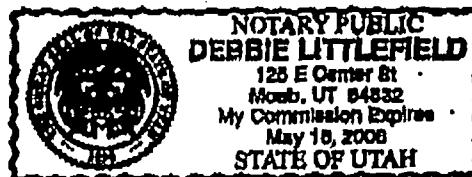
Dated this 12 day of July 2006

John S. Weisheit

John S. Weisheit

Subscribed and sworn to before me this 12TH day of July 2006

Debbie Littlefield
Notary Public



My commission expires: MAY 18, 2008