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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 WASHINGTON, D.C. 20460

APR 7 5 2001

OFFICE OF  
 AIR AND RADIATION

Mr. William von Till  
 Fuel Cycle Licensing Branch  
 Division of Fuel Cycle Safety and Safeguards  
 U.S. Nuclear Regulatory Commission  
 Mail Stop T-8A33  
 Washington, D.C. 20555

Dear Mr. von Till:

This is a follow-up to our previous letter to you of February 12, 2001. That letter expressed our concerns with the application of International Uranium Corporation (IUSA) to amend its source material license SUA-1358 to receive and process alternate feed materials. IUSA applied to have its license amended to allow for the processing of alternate feed material consisting of lead (Pb) slurries containing uranium isotopes and decay products of the U<sup>235</sup> and U<sup>238</sup> series from MolyCorp's Mountain Pass facility in California.

The Environmental Protection Agency (EPA) Headquarters and Regional personnel discussed the key legal and factual issues raised by IUSA's proposed processing of the MolyCorp slurries. Determining whether the MolyCorp slurries are hazardous waste requires resolution of a threshold issue which involves a number of site-specific factors, one being whether the materials are regulated "solid wastes." From the facts available to us, it appears likely that, under the federal Resource Conservation and Recovery Act (RCRA) recycling regulations, the slurries would be classified as either by-products or sludges which exhibit one of the RCRA hazardous waste characteristics. Such by-products and sludges are not classified as solid wastes when they are legitimately reclaimed. Materials which are not solid wastes are not regulated as hazardous wastes under Subtitle C of RCRA.

Under the federal rules, the entities handling recycled materials are responsible for determining whether legitimate recycling is occurring and whether the material is a solid waste, with oversight by the responsible regulatory agency. EPA has authorized the States of California and Utah to implement state RCRA programs in lieu of the federal RCRA program, making them primarily responsible for this oversight within their state. In addition, authorized state RCRA programs are sometimes broader in scope or more stringent than the federal program and may

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regulate materials not regulated under the federal regulations. Thus, we recommend that NRC, obtain the States' views by contacting the following individuals:

Mr. Watson Gin  
Deputy Director, Hazardous Waste  
Management Program  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

Mr. Don Verbica  
Division of Solid & Hazardous Waste  
P.O. Box 144880  
Salt Lake City, UT 84114-4880

As a procedural matter, the NRC "Interim Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments" and "Interim Position and Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores," both dated November 30, 2000, provide for the applicant to demonstrate that the material to be processed and/or disposed in the mill tailings impoundment not be a listed hazardous waste. We suggest that the NRC guidance be amended to recommend that the applicant obtain the views, as described above, of authorized States where the material is originally found and where the material is to be processed. We also suggest that applicants consult with States through which the materials may travel on their way to the licensed facility. (For this case, we would recommend that NRC consult with California, Nevada and Utah.) If the material is a characteristic or listed hazardous waste in the state of origin or in any "transit" state, RCRA regulations would apply to storage and transportation. It is our hope that this may help to expedite future such applications.

Thank you for the opportunity to comment on this proposal. Please contact Ms. Teens Wooten of EPA's Office of Solid Waste at 703-308-8751, or Loren Setlow of my office at 202-564-9445 if you have any further question on this matter.

Sincerely,



Frank Marcinowski, Acting Director  
Radiation Protection Division

cc: D. Verbica/VT, Division of Solid & Hazardous Waste  
W. Gin/CA, Dept. Toxic Substances Control  
M. Lammering/EPA/Region 8  
T. Brown/EPA/Region 8  
R. Graham/EPA/Region 8  
M. Bandrowski/EPA/Region 9  
C. Nelson/EPA/Region 9  
B. Cofer/EPA/Region 9