

July 8, 2008

EA-08-054

Mr. Mark Lafferty
Deputy Project Owner
Molycorp Washington Project
Chevron Environmental Management Co.
6001 Bollinger Canyon Road
Room K2100
San Ramon, CA 94582-2324

SUBJECT: CONFIRMATORY ORDER (EFFECTIVELY IMMEDIATELY)
(OFFICE OF INVESTIGATION REPORT NO. 1-2006-054)

Dear Mr. Lafferty:

The enclosed confirmatory order is being issued to the Chevron Environmental Management Co. (CEMC) as part of a settlement agreement between CEMC and the U.S. Nuclear Regulatory Commission (NRC) regarding an apparent violation of 10 CFR 40.7, "Employee protection," issued by the NRC to CEMC, dated February 29, 2008.

In its February 29, 2008, letter, the NRC provided CEMC with the results of an investigation completed by the NRC's Office of Investigations (OI) (OI Report No. 1-2006-054). The purpose of the investigation was to determine whether a radiation safety employee (RSE) was the subject of employment discrimination for raising nuclear safety concerns. Our letter noted that, based on the evidence developed during the investigation, we had concluded that the RSE was terminated, in part, for raising concerns regarding the transportation of potentially contaminated soil samples over public roads and the monitoring of potentially radioactive airborne dust caused by the construction work activities at the site.

Separately, on February 1, 2008, OSHA issued its report relating to a complaint of discrimination which was filed with the U.S. Department of Labor. In that report OSHA concluded that there was reasonable cause to believe that the complainant was discriminated against for engaging in protected activities in violation of the Energy Reorganization Act. In its February 29, 2008 letter, the NRC also expressed its concern regarding a potential chilling effect as a result of that OSHA report.

Accordingly, our February 29, 2008, letter offered you a choice to: (1) attend a pre-decisional enforcement conference, (2) provide a written response to the apparent violation and the potential chilling effect as a result of the OSHA decision, or (3) request alternative dispute resolution (ADR) with the NRC. In response, CEMC requested ADR to resolve the apparent violation of 10 CFR 40.7. An ADR mediation session was held on June 5, 2008, in Washington D.C., at which the parties entered into a settlement agreement. The terms and conditions of that settlement agreement are set forth in Section V of the enclosed confirmatory order.

As part of settlement agreement, CEMC agreed to take a number of actions, generally including: training supervisory employees regarding employees' rights to raise concerns, communicating CEMC's policy and management expectations regarding employees' rights to raise concerns, in writing and in meetings, and distributing a questionnaire to assess employees' willingness to raise nuclear safety concerns. In recognition of these contemplated actions, the NRC agreed to exercise its discretion, and it will not pursue further enforcement action relating to the February 29, 2008, letter. However, the implementation of your commitments related to employee protection will be evaluated during future inspections.

We have enclosed a confirmatory order (Effective Immediately) to confirm the commitments made as part of the settlement agreement. As evidenced by your signed "Consent and Hearing Waiver" Form (copy enclosed) dated July 2, 2008, you agreed to issuance of this letter and confirmatory order.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalties.

You are not required to respond to this letter. However, if you choose to provide a response, please provide it to me within 30 days at U.S. Nuclear Regulatory Commission, Mail Stop O14E1, 11555 Rockville Pike, Rockville, MD 20852

Questions concerning this confirmatory order should be addressed to Shahram Ghasemian, NRC Office of Enforcement, who can be reached at 301-415-3591 or via e-mail at Shahram.Ghasemian@nrc.gov.

A copy of this letter and its enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system

(ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The NRC will also include this letter, and its attached confirmatory order, on its website at www.nrc.gov. Your response, if you choose to provide one, will also be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS).

Sincerely,

/RA/
Cynthia A. Carpenter, Director
Office of Enforcement

Docket No. 04008778
License No. SMB-1393

Enclosures:

1. Confirmatory Order
2. Copy of Consent and Hearing Waiver Form dated July 2, 2008

cc w/enclosures: (via e-mail)
Jeffrey Gordon, Counsel for CEMC
Cedric Scott, Counsel for CEMC

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Sincerely,
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

Chevron Environmental Management)	Docket No. 040-08778
Company)	License No. SMB-1393
Washington, PA Decommissioning Project)	EA-08-054
Site		

CONFIRMATORY ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)

I

Chevron Environmental Management Company (CEMC or Licensee) is the holder of License No. SMB-1393 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 40. The license authorizes the decommissioning of the Washington, PA Decommissioning Project in accordance with conditions specified therein. The facility is located in Washington, Pennsylvania.

This confirmatory order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on June 5, 2008.

II

On July 19, 2007, the NRC's Office of Investigations (OI) issued its investigative report regarding whether a radiation safety employee (RSE) was the subject of employment discrimination in violation of 10 CFR 40.7, "Employee protection." In OI Report No. 1-2006-054, OI concluded that a RSE was discriminated against, in part, for raising concerns regarding the transportation of potentially contaminated soil samples over public roads and the monitoring of potentially radioactive airborne dust caused by the construction work activities at the site. By letter dated February 29, 2008, the NRC

identified to the Licensee an apparent violation of 10 C.F.R. 40.7, and offered CEMC the opportunity to provide a written response, attend a pre-decisional enforcement conference, or to request alternative dispute resolution (ADR) in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and CEMC and, if possible, assist the NRC and CEMC in reaching an agreement. CEMC chose to participate in ADR.

III

On June 5, 2008, the NRC and CEMC met in an ADR session in Washington D.C. mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. This confirmatory order is issued pursuant to the agreement reached during the ADR process. The elements of the agreement consisted of the following:

1. By no later than thirty (30) calendar days after the issuance of the confirmatory order, a member of CEMC's senior management responsible for the Washington site will, in writing, communicate CEMC's policy, and the expectations of management, to the Washington site workforce regarding their rights to raise concerns without fear of retaliation.
2. By no later than thirty (30) calendar days after the issuance of this confirmatory order, CEMC shall distribute a questionnaire to all employees at the Washington site to assess, in part, whether employees understand their rights to raise concerns and solicit their willingness to raise nuclear safety concerns, if any.
3. By no later than thirty (30) days after the issuance of this confirmatory order, CEMC agrees to implement a new requirement of its contractors (including subcontractors) at the Washington site whereby the contractors would be

required to affirm to CEMC, in writing, at the time that any significant job action is being taken against a Washington site employee, that such action is not being implemented in retaliation for the employee raising safety-related concerns or in retaliation for filing a safety-related complaint either internally or externally, and to affirm that the job action was taken in compliance with 10 C.F.R. 40.7, "Employee Protection."

4. By no later than thirty (30) calendar days after the issuance of this confirmatory order, CEMC agrees to enter into a written agreement with its contractors performing work at the Washington site that requires compliance with 10 C.F.R. 40.7, "Employee Protection."
5. By no later than sixty (60) calendar days after the issuance of this confirmatory order, CEMC agrees to provide training conducted by its counsel to all Washington site supervisory employees relating to 10 C.F.R. 40.7, "Employee Protection" and how to foster a safety conscious work environment.
6. By no later than seventy five (75) calendars days after the issuance of this confirmatory order, CEMC shall hold one or more meetings with employees at the Washington site to emphasize the company's policy and management's expectation that employees can raise any nuclear safety concerns without fear of retaliation.

On July 2, 2008, CEMC consented to issuing this confirmatory order with the commitments, as described in Section V below. CEMC further agreed that this confirmatory order is to be effective upon issuance and it has waived its right to a hearing.

IV

Since CEMC has agreed to take additional actions to address NRC concerns, as set forth in Item III above, and NRC has concluded that its concerns can be resolved through issuance of this confirmatory order and thereby has agreed not to pursue any further enforcement action for this issue and will not count this matter as previous enforcement for the purposes of assessing potential future enforcement action civil penalty assessments in accordance with Section VI.C of the Enforcement Policy.

I find that the Licensee's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this confirmatory order. Based on the above and the Licensee's consent, this confirmatory order is immediately effective upon issuance. By no later than thirty (30) calendar days after the completion of the requirements in Section V, CEMC is required to notify the NRC in writing and summarizing its actions.

V

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. SMB-1393 IS MODIFIED AS FOLLOWS:

1. By no later than thirty (30) calendar days after the issuance of this confirmatory order, a member of CEMC's senior management responsible for the Washington site will, in writing, communicate CEMC's policy, and the expectations of management, to the Washington site workforce regarding their rights to raise concerns without fear of retaliation.
2. By no later than thirty (30) calendar days after the issuance of this confirmatory order, CEMC shall distribute a questionnaire to all employees at the Washington site to assess, in part, whether employees understand their rights to raise concerns and solicit their willingness to raise nuclear safety concerns, if any.
3. By no later than thirty (30) days after the issuance of this confirmatory order, CEMC agrees to implement a new requirement of its contractors (including subcontractors) at the Washington site whereby the contractors would be required to affirm to CEMC, in writing, at the time that any significant job action is being taken against a Washington site employee, that such action is not being implemented in retaliation for the employee raising safety-related concerns or in retaliation for filing a safety-related complaint either internally or externally, and to affirm that the job action was taken in compliance with 10 C.F.R. 40.7, "Employee Protection."
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5. By no later than sixty (60) calendar days after the issuance of this confirmatory order, CEMC agrees to provide training conducted by its counsel to all Washington site supervisory employees relating to 10 C.F.R. 40.7, "Employee Protection" and how to foster a safety conscious work environment.
6. By no later than seventy five (75) calendars days after the issuance of this confirmatory order, CEMC shall hold one or more meetings with employees at the Washington site to emphasize the company's policy and management's expectation that employees can raise any nuclear safety concerns without fear of retaliation.

VI

Any person adversely affected by this confirmatory order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 Fed. Reg. 49, 139 (Aug. 8, 2007). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary

by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the “Contact Us” link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 C.F.R. 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a person (other than the Licensee) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 C.F.R. 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this confirmatory order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Cynthia A. Carpenter, Director
Office of Enforcement

Dated this 8th day of July, 2008

Enclosure 2
(ML[81890409])