



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
611 RYAN PLAZA DRIVE, SUITE 400  
ARLINGTON, TEXAS 76011-8064**

October 26, 2000

EA-00-244

Mr. Marvin Freeman, Vice-President,  
Radiation Safety, Regulatory Compliance and Licensing  
Rio Algom Mining Corporation  
6305 Waterford Blvd., Suite 325  
Oklahoma City, OK 73118

**SUBJECT: REPLY TO DISPUTED SEVERITY LEVEL (NRC INSPECTION  
REPORT 40-8964/00-02 AND NOTICE OF VIOLATION)**

Dear Mr. Freeman:

This refers to your letter of September 8, 2000, in response to our August 11, 2000, letter transmitting the subject inspection report and Notice of Violation. We have reviewed your reply and find it responsive to the concerns raised in our Notice of Violation. We will review the implementation of your corrective actions during a future inspection to determine that full compliance has been achieved and will be maintained.

Concerning your dispute of the severity level of the violation, we acknowledge your comments and subsequent efforts regarding this matter. We especially welcome the results of your investigation whereby you recalibrated the subject radiation counter in accordance with the approved procedure. Based on your recalibration and retest results, you demonstrated that the efficiency determination, and hence the performance of the counter were not significantly affected by the failure to adhere strictly to the calibration procedure. Consequently, you showed that worker safety was not compromised in this instance. On this basis, you contend that the issuance of the violation at Severity IV Level was too severe. After carefully reviewing your letter, the NRC has concluded that the significance of the violation was properly assessed at Severity Level IV. The bases of our conclusions are discussed below and are based on the NRC's "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, dated May 1, 2000.

Section IV(A)(2) of the Enforcement Policy discusses assessing the safety significance of a violation based on the potential safety consequences. The policy explains that in evaluating potential safety consequences, the NRC considers the realistic likelihood of affecting safety (i.e., the existence of credible scenarios with potentially significant actual consequences.) During the inspector's evaluation of the violation, it was determined that an improperly calibrated scintillation counter had potential safety consequences in that it was utilized for assessing personnel exposures to airborne radioactivity and for evaluating contamination of material and equipment being released offsite. There was a credible potential that survey results from the subject counter could have been incorrect and thus pose safety consequences. Therefore, based on the information available to the inspector, the violation was appropriately dispositioned.

Your investigation, which was not available for review during our inspection, revealed that the counter's calibration, while not conducted according to the approved procedure, likely had minimal effect on measurement accuracy. However, this was an after-the-fact determination which was not known at the time the counter was used for these measurements.

Thus, the subject violation was more than a minor concern because of the potential safety consequences of having an improperly calibrated instrument used for radiation measurements or surveys that are required by the license and 10 CFR Part 20. In addition, the violation involved a performance-based finding in which an approved procedure involving the calibration of a radiation measuring instrument was observed to be improperly implemented by your staff. Therefore, we have decided to sustain the severity level of the violation consistent with the NRC Enforcement Policy. We appreciate your prompt investigation into the causes of this violation.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Should you have any questions in regard to these issues or the NRC Enforcement Policy, we will be pleased to discuss them with you.

Sincerely,

*/RA/*

Thomas P. Gwynn  
Deputy Regional Administrator

Docket No.: 40-8964  
License No.: SUA-1548

Enclosure:  
NUREG-1600 dated May 1, 2000

cc w/copy of licensee letter dated 09/08/00:  
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bcc w/copy of licensee ltr dtd 09/08/00 to DCD (IE07):

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- BWSmith, NMSS/IMNS/MSIB (T-8F5)
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