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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Presiding Officer
Thomas D. Murphy, Special Assistant
Dr. Robin Brett, Special Assistant

In the Matter of

Hydro Resources, Inc.
PO Box 15910
Rio Rancho, New Mexico 87174

Docket No. 40-8968-ML

ASLBP No. 95-706-01-ML

October 30, 2001

MEMORANDUM

To assist the parties in preparing for the proceeding scheduled for November 8, 2001, the parties should be ready to respond to the following questions:

Questions for All Parties

1. Mr. Ford's Feb 20, 1998 Affidavit (¶42), in discussing the Staff's evaluation of the Mobil Study in the FEIS (4-40), states that "the staff recognizes that for uranium and radium, greater than 12 and 16 pore volumes, respectively, was [sic] needed to achieve relevant Federal standards." He continues by indicating that at 9.7 pore volumes UR was at .54 mg/l, which was nearly at the NRC Standard of .44 mg/l. How does the new EPA primary drinking water standard of .03 mg/l (65 Fed Reg. 76708) affect these proceedings?

2. 10 CFR Part 40, App. A, Criterion 9 indicates that the surety must be maintained at all times so that an appropriate portion of surety liability is available until final compliance with the reclamation plan is determined. It then states "this will yield a surety that is at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal."

   A. How does reliance on LC 9.5, which requires the surety to be updated annually, comply with Criterion 9's requirement that an appropriate portion of the surety must be maintained at all times to ensure that all areas disturbed before the next licensing renewal will be restored?

   B. Should Criterion 9 be interpreted to mean that at the onset of the project, an appropriate amount of surety must be established that will cover the reclamation of all the land disturbed during the 5 year period between license renewals?

C. Will surety adjustments based upon the annual updates require a license amendment?

Questions for the Staff

1. Were the ground water restoration standards used by the Mobil study the same standards that are to be applied to HRI (i.e. baseline and EPA)?

2. What is the status of the NRC Staff's reevaluation of the secondary groundwater standard for uranium that was requested by the Commission in CLI-00-12 (52 NRC 1, 6 n.4 (2000))?

3. Section 10.4.4 of the COP Rev. 2.0, sets forth the key elements of HRI's restoration demonstration. Element "e" of the demonstration plan states that "Restoration will continue until the ground water is restored to levels consistent with baseline."

   A. In that context, what does "consistent" mean?

   B. In terms of a percentage of achieving baseline what does the word "consistent" mean?

   C. If the restoration project does not return the ground water to baseline, does the Staff's acceptance of something less require the Licensee to seek a license amendment?

4. What was the cost of the Mobil Section 9 demonstration project?

5. In the NRC Staff's Feb. 16, 2001 letter requesting additional information from HRI concerning its RAP for Section 8, question 3 clearly requests that HRI confirm that the proposed well plugging methodology is acceptable to the New Mexico State Engineer. HRI's response cites language in the NM Regs that requires the NM State Engineer to supervise all well plugging. Please explain how this confirms that the proposed method is acceptable to the NM State Engineer?

6. In CLI-00-08, the Commission summarized the reasoning behind its decision requiring submission of HRI's Financial Assurance Plan for Staff approval prior to the license's issuance in stating that "not only is our interpretation sensible from the perspective of sound regulatory policy, but it also ensures a meaningful hearing opportunity on all substantive issues material to the agency's licensing decision."

   It has been argued by the Intervenors that reliance on LC 9.5's surety updates in answering the Intervenors' challenges to the RAP denies the Intervenors the opportunity for a "meaningful hearing" on these matters. Please explain how reliance on LC 9.5 is consistent with the Commissions decision that stresses the importance of ensuring a meaningful hearing opportunity on all substantive issues material to the agency's licensing decision?

7. Did NRC approve a license for the Mobil Demonstration Project?
8.

Questions for HRI

1. In section 10.4.4 of the COP Rev. 2.0, HRI sets forth the key elements of its restoration demonstration. Element "e" of the demonstration plan states that "Restoration will continue until the ground water is restored to levels consistent with baseline."

   A. In that context what does "consistent" mean?

B. In terms of a percentage of achieving baseline what does the word “consistent” mean?

C. If the restoration project does not return the ground water to baseline, does the Staff’s acceptance of something less require the Licensee to seek a license amendment?

2. What was the cost of the Mobil Section 9 demonstration project?

3. Is the current status of the EPA aquifer exemption for Section 8 still in dispute?

4. How often will routine maintenance be performed at the Section 8 site? In your past experience, how often has non-routine maintenance been required on a project site and how long was the average downtime?

5. Paragraph 3 (page 6) of Mr. VanHorne’s Affidavit displays budget expenditures for 3 different South Texas Restoration Activities. What was the operating efficiency for each of those operations?

6. In CLI-00-08, the Commission summarized the reasoning behind its decision requiring submission of HRI’s Financial Assurance Plan for Staff approval prior to the license’s issuance in stating that “not only is our interpretation sensible from the perspective of sound regulatory policy, but it also ensures a meaningful hearing opportunity on all substantive issues material to the agency’s licensing decision.”

It has been argued by the Intervenors that reliance on LC 9.5's surety updates in answering the Intervenors’ challenges to the RAP denies the Intervenors the opportunity for a “meaningful hearing” on these matters. Please explain how reliance on LC 9.5 is consistent with the Commissions decision that stresses the importance of ensuring a meaningful hearing opportunity on all substantive issues material to the agency’s licensing decision?

Questions for the Intervenors

1. Page 2 of the Intervenor’s Response asserts that HRI omits many components that are fundamental elements of approved financial assurance and groundwater restoration plans of current ISL operations. Specifically what components has HRI left out of its RAP?

A. What are the other approved ISL RAPs that contain these components?

B. By whom were these other RAPs approved?

C. Are costs for contractor administration and annual inflation adjustments the components the intervenors were referring to? Why do inflation goals need to be added now as opposed to later as contemplated by LC 9.5 and Criterion 9?

2. The May 24th Intervenor Reply claims that Staff reliance on annual surety updates to allow HRI to correct initial, underestimated cost estimates violates 10 CFR Part 40, App. A Criterion 9. Please explain this position.

3. In your experts’ past experience, how often has non-routine maintenance been required on a project site and how long was the average downtime?

4. In LBP-99-13, the Presiding Officer upheld the NRC Staff’s determination that 9 Pore Volumes was sufficient for the surety estimate. A letter submitted as support for HRI’s

brief on that matter, which was presumably relied upon by the presiding officer in making his decision, states that the proposed 9 pore volumes was based upon flare factors of 1.5 and 1.3.

Please explain why you believe flare factor has not been previously litigated?

5. Ford's Affidavit (paragraph 23) criticizes Dr. Abitz's Fernald site comparison for failing to provide crucial information concerning:
   1. pore volume calculation methodology
   2. aquifer descriptions
   3. extent of contamination
   4. contamination history
   5. contamination source term
   6. data on the number of wells at Fernald and location of those wells
   7. pumping efficiencies
   8. contractor administration costs

   Please provide this information.

It is so ORDERED.

By the Presiding Officer[1]

/RA/

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Thomas S. Moore
ADMINISTRATIVE JUDGE

Rockville, Maryland
October 30, 2001

[1] Copies of this Order were sent this date by Internet e-mail or facsimile transmission, if available, to all participants or counsel for participants.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
HYDRO RESOURCES, INC.	)	Docket No. 40-8968-ML
	)	
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM DATED 10/30/01 have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 30th day of October 2001