

Docket No. 040-08905
License No. SUA-1473



Rio Algom Mining LLC

December 7, 2006

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DNMS

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555

Re: **Reply to a Notice of Violation**
License SUA-1473
Docket No. 40-8905

Dear Sir or Madam,

Rio Algom Mining LLC is in receipt of the Nuclear Regulatory Commission's (NRC) November 17, 2006 letter describing the Notice of Violation issued as a result of an inspection conducted at the Ambrosia Lake facility on July 26-27, 2006. This letter provides Rio Algom's response to the inspection findings and disputes the categorization of this event as a violation.

As described within your letter, NRC concluded that the violation was issued as a result of Rio Algom's "failure to implement the bioassay program as stipulated by the license." Rio Algom believes that the bioassay program as established by the license was adhered to not only in addressing the suspect sample, but for all bioassay samples obtained at the site; and that the Radiation Safety Officer (RSO) addressed the anomalous result in accordance with the license.

Rio Algom's license requires the development and implementation of a bioassay program. As stated by NRC, Rio Algom has developed a procedure to address bioassay and includes sample collection and action levels protocols. These sections are provided (in italics) below.

Sample Collection

- a. *Employees should attempt to void into the sample bottle the morning he or she is scheduled to return to work after their regular scheduled days off. Collection should be between 48 and 96 hours*

- since leaving the site. This will depend on employee schedules.
- b. The employee will fill out the information form contained with the bioassay kit.
 - c. In the event the employee fails to submit a sample, a sample will be obtained as early as possible upon their return to work.
 - d. Samples will be collected and prepared by health physics department personnel for shipment to contract laboratory.

Action Limits – Employee Samples

Employee results will be reviewed by the RSO and appropriate actions shall be initiated based on the results. The Action table will be used as a guide.

ACTION TABLE FOR BIOASSAY RESULTS

Urine Concentration (ug/L)	Actions
Less than 15	No action required
15 to 35	<ol style="list-style-type: none"> 1. confirm results 2. identify cause 3. determine why air samples did not warn of unusual concentrations 4. determine if other employees exposed and obtain bioassays 5. consider work assignment changes 6. implement investigation findings
Greater than 35	<ol style="list-style-type: none"> 1. take actions described above 2. continue operations only if no exceedences over 35 ug/L will occur 3. normal work assignments until results confirmed. If result above limit, work restrictions applied.
Greater than 35 for 2 consecutive samples; 1 sample greater than 130 ug/L; or air sampling results in excess of a quarterly limit of intake	<ol style="list-style-type: none"> 1. take actions described above 2. test urine for albuminuria 3. immediate work restrictions applied if any sample over 130 ug/L until results are below 35 ug/L.

The language in the sample collection procedure allows the employee to void into the sample container prior to arriving at work (i.e., when employee gets ready for work, which is the most likely time when employee would urinate). Employees who inadvertently forget to submit their sample bottle upon return to work are reminded by the health physics technician to provide the sample. It is Rio Algom's intent, and Rio believes it is not NRCs request, to observe the individual voiding into the sample container in an effort to guarantee a 'valid' sample.

As part of the radiation safety training requirements, all employees and contractor employees receive instruction on the bioassay program including the importance of submitting only urine in the sample container. As evidenced with this event, other factors clearly enter the equation when individuals submit biological samples including possible concern over what the sample is being analyzed for and what implications this may have on continued employment. Rio Algom cannot predict nor control what factors any one individual will consider when submitting a bioassay sample. However, Rio Algom minimizes this potential through the training program, reminders during safety meetings, and personal discussions with employees.

Notwithstanding these uncertainties associated with sample submission, the bioassay procedure provides a process to address suspect results. In accordance with the procedure, the RSO is to confirm elevated bioassay results and investigate the reported result. The RSO did this. Based on interviews with the individual, his employer, the health physics technician assigned to prepare and ship the samples, evaluation of the job assignments, and air monitoring data, the RSO concluded that the result was not attributable to the employee's activities at the site. As such, Rio Algom contends that the bioassay program implemented at the site was followed.

During the inspection and subsequent follow-up discussions with NRC inspection staff, Rio Algom committed to implementing improvements to the existing bioassay program. Rio Algom does not consider these as "corrective actions" as portrayed in the NRC letter (implying a failure, noncompliance, etc.) as the site bioassay program was followed and the outcome of implementing the procedure provided a resolution to the situation. As a result, Rio Algom

Document Control Desk

December 7, 2006

Page 4 of 4

maintains that there was no failure of implementing the radiation protection program established at the site.

Rio Algom is very proud of the radiation protection program implemented at the Ambrosia Lake facility and has established a compliance history through the years that is one of the best in uranium recovery industry. This accomplishment is even more impressive considering that this record was achieved while reclaiming the largest uranium ore processing facility in the United States.

Given the circumstances surrounding the event and actions undertaken by the licensee to investigate the event, Rio Algom is having difficulty in understanding where the "failure to implement the bioassay program as stipulated by the license" occurred. Additionally, if there was an actual "failure," Rio Algom is even more puzzled on how this event can be elevated to a level of a violation.

Based on this, Rio Algom believes that no "failure to implement the bioassay program as stipulated by the license" occurred and requests NRC to rescind the violation.

If you have any questions regarding this request, please do not hesitate to call me at (505) 287-8851, extension 15.

Regards,

A handwritten signature in black ink, appearing to read 'Peter Luthiger', with a long horizontal flourish extending to the right.

Peter Luthiger
Manager, Radiation Safety
And Environmental Affairs

xc: Director (Office of Enforcement-NRC)
T. Fletcher
B. Lukes (NRC)
D. Spitzberg (NRC)
W. Von Till (NRC)
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