

February 29, 2008

EA-08-054

Mr. Mark Lafferty
Deputy Project Owner
Molycorp Washington Project
Chevron Environmental Management Co.
6001 Bollinger Canyon Road
Room K 2100
San Ramon, CA 94582-2324

SUBJECT: APPARENT VIOLATION OF EMPLOYEE PROTECTION REQUIREMENTS
(OFFICE OF INVESTIGATIONS REPORT NO. 1-2006-054) AND POTENTIAL
CHILLING EFFECT (OSHA Case No. 3-6600-06017)

Dear Mr. Lafferty:

This letter refers to (1) an investigation conducted by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) relating to your Molycorp Washington Project facility in Washington, Pennsylvania and (2) the Occupational Safety and Health Administration's (OSHA) February 1, 2008 findings relating to the same. The purpose of the NRC OI investigation was to determine whether a radiation safety employee (RSE) was the subject of employment discrimination in violation of 10 CFR 40.7, "Employee protection." The NRC's investigation, dated July 19, 2007, substantiated 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. The enclosed NRC Report of Investigation (ROI) No.1-2006-054 provides an overview of the evidence gathered during the NRC's investigation.

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.

Based on the NRC staff's review of the NRC OI investigation, an apparent violation of 10 CFR 40.7 was identified and is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy can be found on the NRC's Web site at www.nrc.gov. The apparent violation involves an RSE whose employment was terminated on July 24, 2006, shortly after raising the above referenced concerns. The NRC OI investigation revealed that the raising of those concerns contributed to the Malcolm Pirnie

(a Chevron Environmental Management Co. (CEM) contractor at the site) Management's decision to cause the termination of the RSE's employment at the site.

Since the NRC has not made a final determination in this matter, no Notice of Violation is being issued at this time. In addition, please be advised that the number and characterization of the apparent violation(s) may change as a result of further NRC review.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond to the apparent violation and the potential chilling effect issue within 30 days of the date of this letter, (2) request to participate in a closed predecisional enforcement conference (PEC), or (3) request to participate in an alternative dispute resolution (ADR) session. These options are discussed in the paragraphs that follow. Please contact Mr. Shahram Ghasemian, Acting Branch Chief, Concerns Resolution, Office of Enforcement, at (301) 415-3591 or via e-mail at sxq4@nrc.gov, within 14 days of the date of this letter to notify the NRC of your intended response.

If you choose to provide a written response, it should be clearly marked as a "Response to An Apparent Violation; EA-08-054" and should include for the apparent violation: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. Moreover, to address the NRC's concern regarding the potential chilling effect as a result of the OSHA report, your response must also include actions you have already taken, or plan to take, to assure that the OSHA report is not having a chilling effect on the willingness of employees to raise safety and compliance concerns. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a predecisional enforcement conference (PEC).

The purpose of the PEC would be to obtain information to assist the NRC in making an enforcement decision. This may include information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned. The conference would provide an opportunity for you to give your perspective on these matters and any other information that you believe the NRC should take into consideration in making an enforcement decision. You would also be required to provide us information about actions you have already taken, or plan to take, to assure that the OSHA report is not having a chilling effect on the willingness of employees to raise safety and compliance concerns. A PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. For such a PEC, we would also request that management representatives of Malcolm Pirnie accompany you to the PEC.

The NRC's Enforcement Policy permits the individual who was the subject of the alleged employment discrimination to participate in the conference. Accordingly, the RSE would be invited to attend the PEC. The RSE may participate by observing the conference and, following your presentation, may, if desired, present his/her views on why he (she) believes the discrimination occurred and comment on your or your contractor's presentation. You would then be afforded an opportunity to respond and the NRC may ask some clarifying questions. Under no circumstances would the NRC staff permit you, your contractor or the RSE to cross-examine or question each other.

Instead of a PEC, Chevron Environmental Management Co. may request ADR with the NRC. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ is mediation. In mediation, a neutral mediator with no decision-making authority helps parties clarify issues, explore settlement options, and evaluate how best to advance their respective interests. The mediator's responsibility is to assist the parties in reaching an agreement. However, the mediator has no authority to impose a resolution upon the parties. Mediation is a confidential and voluntary process. If the parties to the ADR process (the NRC and CEM) agree to use ADR, they select a mutually agreeable neutral mediator and share equally the cost of the mediator's services. Additional information concerning the NRC's ADR program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution at Cornell University (ICR) has agreed to facilitate the NRC's program as an intake neutral. Intake neutrals perform several functions, including: assisting parties in determining ADR potential for their case, advising parties regarding the ADR process, aiding the parties in selecting an appropriate mediator, explaining the extent of confidentiality, and providing other logistic assistance as necessary. Please contact ICR at (877) 733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. During the ADR session, you would also be required to provide us information regarding actions you have already taken, or plan to take, to assure that the OSHA report is not having a chilling effect on the willingness of employees to raise safety and compliance concerns.

Enclosed is a redacted copy of OI Report Number 1-2006-054. The OI report provides an overview of the evidence gathered during this investigation. Portions of the OI report have been redacted, but the substantive issues related to this case remain. The OI report is only being provided to you at this time. After a full review of the circumstances, the NRC may conclude that no enforcement action is warranted. Therefore, we request that you not make the OI report available to the general public. If a PEC is held, the other PEC participants will be sent a copy of the redacted OI report.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, without the enclosures, and your response (if you choose to provide one) will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,

Cynthia A. Carpenter, Director
Office of Enforcement

Docket No. 04008778
License No. SMB-1393

Enclosures:

1. Redacted Copy of the Office of Investigations Report No. 1-2006-054
(**EXEMPT FROM PUBLIC DISCLOSURE**)
2. NUREG/BR-0317 Post-Investigation ADR Program

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

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(EXEMPT FROM PUBLIC DISCLOSURE)

2. NUREG/BR-0317 Post-Investigation ADR Program

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DATE	02/ 21 /08	02/ 27 /08	02/ 21 /08	02/ 26 /08	02/ 28/08

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M. Lafferty

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Enclosure 1

Redacted Copy of the Office of Investigations Report No. 1-2006-054

Enclosure 2

NUREG/BR-0317 Post-Investigation ADR Program