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July 22, 2010

Tom McLaughlin, Project Manager  
Materials Decommissioning Branch  
Division of Waste Management and Environmental Protection  
Office of Federal and State Materials and Environmental Protection  
US Nuclear Regulatory Commission  
Washington, DC 20555-0001

**RE: Proposed Rio Algom Mining LLC's Reclamation Plan for Disposal of Byproduct  
Material/Ambrosia Lake, McKinley County**

Dear Mr. McLaughlin:

Your letter regarding the above named project was received in the New Mexico Environment Department (NMED) and was sent to various Bureaus for review and comment. Comments were provided by the Air Quality, Ground Water Quality, and Surface Water Quality Bureaus and are as follows.

**Air Quality Bureau**

The proposed alternate on-site disposal cell location for uranium mill tailings at the Rio Algom Uranium Mine located in the Ambrosia Lake mining district, is in McKinley County. McKinley County is currently considered to be in attainment with all New Mexico and National Ambient Air Quality Standards.

The Clean Air Act requires the Environmental Protection Agency (EPA) to regulate airborne emissions of hazardous air pollutants (HAPs) including radionuclides from a specific list of industrial sources referred to as 'source categories'. Each source category that emits radionuclides in significant quantities must meet technology requirements to control them and is required to meet specific regulatory limits. These standards are the National Emission Standards for Hazardous Air Pollutants for Radionuclides (Rad NESHAPs). NESHAPs are typically incorporated into New Mexico regulations by reference in periodic updates to New Mexico Administrative Code (NMAC). However, New Mexico has opted to maintain EPA's regulatory authority over radionuclides by explicitly excluding radionuclides from those NESHAPs incorporated by reference in New Mexico. For specific regulatory language, please refer to

20.2:78 NMAC, Emission Standards for Hazardous Air Pollutants, Subpart 10.B. Regulatory information for EPA can be found at: <http://www.epa.gov/rpdweb00/neshaps/index.html>.

**Ground Water Quality Bureau**  
The Ground Water Quality Bureau (GWQB) staff reviewed the draft EA as requested, focusing specifically on the potential effect to ground water resources in the area of the proposed project.

The Draft Environmental Assessment indicates that Rio Algom proposes to construct a disposal cell to be used for the disposal of various materials including construction debris from the demolition of the remaining building and milling structures on the site, contaminated soils generated during reclamation of the mill site, contaminated material from the Arroyo del Puerto alluvial channel, and sludge removed from Evaporation Ponds #4, #5 and #6. The placement of this material in a disposal cell within the Rio Algom mill site is an activity that NMED would typically regulate pursuant to a ground water discharge permit. NMED will send a letter notifying Rio Algom that a Notice of Intent to Discharge for the proposed activities must be submitted to NMED for review. NMED notes that the proposed cell location is in an area where uranium ore has historically been managed. NMED will copy the Nuclear Regulatory Commission on all correspondence regarding this matter. Any further questions regarding this should be directed to Larry Shore at (505) 827-2797.

#### **Surface Water Quality Bureau**

The U.S. Environmental Protection Agency (USEPA) requires National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP) coverage for storm water discharges from construction (including demolition) projects (common plans of development) that will result in the disturbance (or re-disturbance) of one or more acres, including expansions, of total land area. Although it is unclear that new construction activities are anticipated as part of this proposed project, if so, it may require appropriate NPDES permit coverage prior to beginning construction (see caveat below).

Among other things, this permit requires that a Storm Water Pollution Prevention Plan (SWPPP) be prepared for the site and that appropriate Best Management Practices (BMPs) be installed and maintained both during and after construction to prevent, to the extent practicable, pollutants (primarily sediment, oil & grease and construction materials from construction sites) in storm water runoff from entering waters of the U.S. This permit also requires that permanent stabilization measures (revegetation, paving, etc.), and permanent storm water management measures (storm water detention/retention structures, velocity dissipation devices, etc.) be implemented post construction to minimize, in the long term, pollutants in storm water runoff from entering these waters. In addition, permittees must ensure that there is no increase in sediment yield and flow velocity from the construction site (both during and after construction) compared to pre-construction, undisturbed conditions (see Subpart 10.D.1.b).

You should also be aware that EPA requires that all "operators" (see Appendix A) obtain NPDES permit coverage for construction projects. Generally, this means that at least two parties will require permit coverage. The owner/developer of this construction project who has operational control over project specifications (probably Rio Algom in this case), the general contractor(s) who has day-to-day operational control of those activities at the site, which are necessary to ensure compliance with the storm water pollution plan and other permit conditions, and possibly other "operators" will require appropriate NPDES permit coverage for this project.

The CGP was re-issued effective June 30, 2008. The CGP, Notice of Intent (NOI), Fact Sheet, and Federal Register notice can be downloaded at: <http://cfpub.epa.gov/npdes/stormwater/cgp.cfm>

In addition, operation of these types of facilities may require NPDES Storm Water Multi-sector General Permit (MSGP) coverage for facilities that engage in "industrial activities" as defined at 40 Code of Federal Regulations Part 122.26(b)(14). Because this project appears to meet this definition (specifically 40 CFR Part 122.26(b)(14)iii, Standard Industrial Classification code 1094 covered under MSGP Sector G - Mineral Mining and Dressing), it will require appropriate NPDES permit coverage prior to beginning operations. This permit also requires preparation of a SWPPP, and installation of appropriate storm water runoff control practices (per the SWPPP). For Sector G facilities, this permit additionally allows construction activities to be covered as long as these activities are addressed in the SWPPP.

An industrial SWPPP should include such things as:

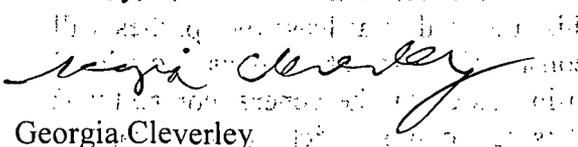
- **A description of potential pollutant sources** - includes such things as a site map; an identification of the types of pollutants that are likely to be present in storm water discharges, an inventory of the types of materials handled at the site that potentially may be exposed to precipitation, a list of significant spills and leaks of toxic or hazardous pollutants, sampling data, a narrative description of the potential pollutant sources from specific activities at the facility, and identification of specific potential pollutants; and
- **A description of appropriate measures and controls** - includes the type and location of existing and proposed non-structural and structural best management practices (BMPs) selected for each of the areas where industrial materials or activities are exposed to storm water. Non-structural and structural BMPs to be described and implemented include such things as good housekeeping, preventive maintenance, spill prevention and response procedures, periodic inspections, employee training, record-keeping, non-storm water evaluations and certifications, sediment and erosion control, as well as implementation/maintenance of traditional storm water management practices where appropriate, and a reclamation plan.

Rio Algom already has NPDES MSGP coverage (NMR05GC54) and has presumably implemented a SWPPP which addresses pollutants in storm water runoff, and drainage systems. However, the permittee should amend the existing Storm Water Pollution Prevention Plan to incorporate any additional activities and pollutant controls dictated by this proposed action.

The MSGP was re-issued effective September 29, 2008. The MSGP, Notice of Intent (NOI), Fact Sheet, and Federal Register notice can be downloaded at: <http://cfpub.epa.gov/npdes/stormwater/msgp.cfm>

I hope this information is helpful to you.

Sincerely,



Virginia Cleverley

Georgia Cleverley  
Environmental Impact Review Coordinator  
NMED File #3264