

## Joosten, Sandy

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**From:** Jonathan Block <jblock@nmelc.org>  
**Sent:** Friday, June 28, 2013 6:04 PM  
**To:** CHAIRMAN Resource; perciasepe.bob@epa.gov; curry.ron@epa.gov; coleman.sam@epa.gov; kyle\_chapman@boxer.senate.gov; dan\_alpert@heinrich.senate.gov; katie\_richardson@heinrich.senate.gov; jeanette\_lyman@tomudall.senate.gov; calvert\_curley@tomudall.senate.gov; nathan\_mccray@epw.senate.gov; andrew.jones@mail.house.gov; todd.willens@mail.house.gov; ken.martinez@nmlegis.gov; clemente.sanchez@nmlegis.gov  
**Subject:** CORRECTED Letter to NRC Chairman Allison Macfarlane re oversight of Homestake-Barrick Gold superfund site, Milan, NM  
**Attachments:** JBLOCK BVDA MASE Letter to NRC Chairman Macfarlane-corrected copy.pdf; "Certification"

There were some typos in the copy of the letter you received. These are fixed in the attached using the Adobe "type" function to make inserts.

Thank you.

Jon Block

On 6/28/2013 3:12 PM, Jonathan Block wrote:  
> Letter referenced above attached hereto in PDF  
>

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Jon Block  
Staff Attorney  
New Mexico Environmental Law Center  
1405 Luisa Street, Ste. 5  
Santa Fe, NM 87505  
(505) 989-9022



June 28, 2013

Commission Chairman Allison Macfarlane  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001  
via email to: [chairman@nrc.gov](mailto:chairman@nrc.gov)

RE: Hearing opportunity noticed in the Federal Register on this date  
for the Homestake-Barrick Gold ["HMC"] uranium mill superfund site,  
NRC License No. SUA- 1471, Milan, New Mexico

Dear Commission Chairman Macfarlane:

I am writing to you on behalf of my clients, Bluewater Valley Downstream Alliance ("BVDA") and the Multicultural Alliance for a Safe Environment ("MASE"). Both organizations are extremely concerned about the current situation involving notice in the Federal Register today of the hearing opportunity on the decommissioning plan for the Homestake-Barrick Gold uranium mill superfund site in Milan, New Mexico.

The NRC has not yet responded to comments on the 2012 revised Corrective Action Plan ("CAP") for the site which my clients, the EPA, Region VI, the New Mexico State Environment Department, Skeo Solutions, Uranium Watch, and the Information Network for Responsible Mining filed at the end of last October. While responses to those comments--and any NRC Staff follow-up on the extent to which the new CAP addresses the NRC Staff Requests for Information (RAIs)--has not been forthcoming. So, although a license amendment approving the CAP is pending, the NRC Staff has <sup>not</sup> responded to comments or reviewed the revised CAP to see if the RAIs were addressed therein.

On May 23, 2013, Mr. Larry Camper, Director of the Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs for the NRC, wrote to Mr. Carl Edlund, Superfund Division, EPA Region VI.<sup>1</sup> The NRC respond<sup>ed</sup> in the letter to a continuing disagreement with the EPA over whose standards will apply to clean-up of the site and how clean-up will take place.

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<sup>1</sup> Available at: <http://pbadupws.nrc.gov/docs/ML1229/ML12290A044.pdf>

In it, Mr. Camper states, in pertinent part, "If EPA becomes the lead federal regulatory, NRC will put the HMC license in abeyance until EPA is satisfied that all requirements for the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) have been met, and the site is removed from the N[ational]Priorities]L[ist]." *Id.* at 2 (emphasis added). That, too, has yet to be resolved. Until it has been resolved, what is the public to make of the NRC pushing forward with the license amendment approval of the decommissioning plan for the site without an approved CAP in place? At the same time, the NRC is telling the EPA and the public that the NRC is prepared to put its licensing actions in abeyance while EPA completes site remediation under its standards. Despite any offer of a hearing opportunity, the public is not being provided a meaningful opportunity to participate in the decision-making process concerning this CERCLA site amidst these simultaneous mixed messages and out-of-sequence approval processes.

The EPA, meanwhile, just released a Final Draft Human Health Risk Assessment for the communities surrounding the superfund site. This assessment reveals that people living in the communities surrounding the superfund site have approximately 18 times higher risk of contracting cancer than the EPA's  $1 \times 10^{-4}$  threshold for "acceptable" risk from radionuclides in ambient air.<sup>2</sup> The members of the BVDA live in those communities. According to EPA Region 6 Final Draft Human Health Risk Assessment for the Homestake (Barrick Gold) Mining Co. Superfund Site (FDHRA) (June 2013), residents of the Five Subdivisions where BVDA members live south of the Homestake-Barrick Gold superfund site face excess cancer risks:

- ⑤ **18 times the highest generally acceptable risk (1 : 10,000) for radionuclides in ambient air**, primarily from radon-222
- ⑤ **2.4 times the highest generally acceptable risk for radionuclides in soil**, primarily from radium-226 and its decay products;
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<sup>2</sup> Available at: [http://www.epa.gov/region6/6sf/newmexico/homestake\\_mining/nm-homestake-mining-final-draft-hhra.pdf](http://www.epa.gov/region6/6sf/newmexico/homestake_mining/nm-homestake-mining-final-draft-hhra.pdf)

Imagine being a member of a community now recognized to be at a much elevated risk for cancer, where many people have survived cancer, died of cancer, lost loved ones to cancer--and lost the value of their homes and a lifetime of investment in their community and properties. Yet, the two agencies Congress created for the purpose of assuring public health and safety cannot decide whether to move the people or the radioactive waste in order to stop the pollution and death. The nightmare to which the people of this community have been subjected has gone on for a half century. It must end now.

At this time, therefore, it is neither necessary nor appropriate for the NRC Staff to put out the site decommissioning plan under a 60-day deadline for comments and hearing requests. For eight months, the NRC Staff has been unable to respond to comments on CAP for this site. For over a year, the NRC has been unable to complete its evaluation of the CAP for adequate assurance of public health and safety. The Notion that the NRC Staff can now suddenly respond to the comments, complete its evaluation of the CAP, review the decommissioning plan, respond to comments on it, and complete the final safety analysis of the plan along with responding to comments on it, is, to say the least, ludicrous. Given that fact, forcing the public in 60 days to make a decision as to whether the plan is defective, obtain an expert evaluation and support for admissible contentions at hearing, and file a legally acceptable request for a hearing in that time--and without benefit of the NRC Staff responses to comments and final review of the CAP--is equivalent to not providing a hearing opportunity. There are far too many unanswered questions from the not-yet-completed evaluation of the CAP that should, when answered, inform the basis of a decommissioning plan. Moreover, the EPA Final Draft Human Health Risk Assessment raises myriad unanswered questions that must also inform any decommissioning plan that will actually meet the statutory requirements that NRC and EPA provide adequate assurance of public health and safety.

The NRC had the original CAP in December 2006. Within a few months the Division issued a notice of hearing opportunity on the CAP--not in the Federal Register, but only on the NRC website. Naturally, on short, limited notice, few to none of the otherwise interested public was in a position to know of, analyze--or even understand the significance of--the CAP. Hence, no one responded with a hearing request. Other than sending the licensee a handful of RAIs to which it never directly responded, the NRC staff appeared to do nothing on the CAP for almost six years. In 2012, the licensee submitted a revised CAP nearly twice as large as the original--essentially a new CAP. At that time, and in the following months, local citizens repeatedly asked for a hearing opportunity on the massively revised CAP. The NRC Staff dismissively denied the requests.

Given the current situation--no finality on the CAP for the site, no answers to federal, state, organizational and public comments on the CAP, an EPA risk assessment showing 18 times higher risk of cancer to the persons who live in the communities around the site (an assessment EPA has yet to present to the affected communities with an opportunity to question the meaning of these findings), no Environmental Impact Study on this site ever conducted by the NRC or any other agency, the NRC telling the EPA it is willing to put its licensing processes in abeyance and let EPA oversee the site--there is clearly a need for some rational agency cooperation and action.

A good first step would be putting the decommissioning plan approval process on hold until there is a resolution of the significant concerns relating to public health as safety that the EPA Human Health Risk Assessment raised. Another reasonable step would be postponing any further NRC licensing action until the NRC Staff respond to comments on the CAP and complete the evaluation process for the CAP. The fact remains that there cannot be an adequate decommissioning plan for the site until some fundamental decisions are made about whether to remove the people or the pollution--either option being within the financial wherewithal of the licensee Homestake-Barrick Gold. While these issues are resolved, whatever the NRC Staff accepted as a site decommissioning plan will, doubtless, be substantially transformed over the next year (or six?) during which the NRC Staff reviews the document.

BVDA and MASE ask you to please take this matter up with the Office of General Counsel, the Commission, the (Acting) Administrator of the U.S. EPA, and the Administrator of EPA Region VI. BVDA and MASE believe that the intentions of the CERCLA law governing this site, the Atomic Energy Act, NRC Regulations under the Act, and the EPA regulations which apply to CERCLA sites--all require taking steps to assure informed public involvement in the CERCLA process. On top of the CERCLA and agency regulatory requirements under it, given that this site has had and continues to have adverse impacts upon environmental justice communities, an even higher standard of care should apply to dealing with a public that has experienced cumulative impacts from the mining and milling of uranium that have yet to be effectively addressed. People of these adversely affected communities deserve an opportunity for meaningful public participation in<sup>the</sup> decision-making process. They also deserve to have the NRC and EPA act together--as charged by Congress--to assure public health and safety. The decisions that need to be made now can have a further adverse impact upon their lives and property, where the physical effects of uranium mining has already had such impacts through loss of life, health, and the enjoyment of one's family and property as well as the loss of the value of that property.

Addressing the need for such meaningful participation cannot possibly take place when the public is forced to simultaneously field the number of contradictory and conflicting issues, decisions and huge documents described above. The issues are ones that your agency and EPA need to deal with before there is a decommissioning plan for this site. The public is entitled to a meaningful opportunity to participate and, if desired, request a public hearing on the decommissioning plan or any other NRC license amendment for the site. In order to exercise those rights, however, there must be, at a minimum, beyond mere notice, clarity and rational sequencing in agency action. Clarity and rational sequencing of administrative process are the foundation for a meaningful opportunity to be heard. Under the current situation, where the license amendment for the CAP is still pending while the license amendment for approving the decommissioning plan is now running on a parallel track, there is neither clarity nor rational sequencing to the license amendment process--nor, significantly, in the oversight process under CERCLA for the Homestake-Barrick Gold uranium mill superfund site.

BVDA and MASE urge you to speak with the EPA Administrator, the EPA Director for Region VI, and the Superfund Division Director for Region VI to reach a decision regarding which agency should be taking the lead at this time. MASE and BVDA respectfully submit that the NRC has not succeeded in assuring public health and safety--the EPA Human Health Risk Assessment makes that quite apparent. It is time to provide EPA with an opportunity to eliminate the human health risks that have sickened and killed many local residents living in the vicinity of the superfund site. It is time to set up a schedule for completing the CAP process, answer public concerns about the recent EPA risk assessment, and evaluate the options for moving the people or the pile away from the pollution. Perhaps, once all of those things have been resolved it will be time to consider a proper decommissioning plan for the Homestake-Barrick Gold superfund site.

Thank you for your investigation and action on this matter.

Sincerely,



Jon Block, Attorney  
Bluewater Valley Downstream Alliance  
Multicultural Alliance for a Safe Environment

cc: Bob Perciasepe, Acting and Deputy Administrator  
United States Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W.  
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cc: Ron Curry, EPA Administrator, Region VI  
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Samuel Coleman, Director, Superfund Division, EPA, Region VI  
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[todd.willens@mail.house.gov](mailto:todd.willens@mail.house.gov)

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ken.martinez@nmlegis.gov  
State Representative Clemente Sanchez  
612 Inwood Avenue  
Grants, NM 87020  
clemente.sanchez@nmlegis.gov

## Joosten, Sandy

---

**From:** Laura Watchempino <5000wave@gmail.com>  
**Sent:** Friday, June 28, 2013 5:23 PM  
**To:** Jonathan Block  
**Cc:** CHAIRMAN Resource; perciasepe.bob@epa.gov; curry.ron@epa.gov; coleman.sam@epa.gov; kyle\_chapman@boxer.senate.gov; dan\_alpert@heinrich.senate.gov; katie\_richardson@heinrich.senate; jeanette\_lyman@tomudall.senate.gov; calvert\_curley@tomudall.senate.gov; nathan\_mccray@epw.senate.gov; andrew.jones@mail.house.gov; todd.williams@mail.house.gov; mlo1@7cities.net; clemente.sanchez@nmlegis.gov; Nadine Padilla; Candace Head-Dylla; Jonnie Head; MASE; members  
**Subject:** Re: [MASE] Letter to NRC Chairman Allison Macfarlane re oversight of Homestake-Barrick Gold superfund site, Milan, NM

Thanks, Jon. I think you meant to say the NRC has not responded to comments or reviewed the revised CAP at the end of the second paragraph? I think your meaning is clear even if its too late to make a change. I'm still reading, but wanted to point this out.

Laura

On Fri, Jun 28, 2013 at 2:12 PM, Jonathan Block <[jblock@nmelc.org](mailto:jblock@nmelc.org)> wrote:  
Letter referenced above attached hereto in PDF

--  
Jon Block  
Staff Attorney  
New Mexico Environmental Law Center  
1405 Luisa Street, Ste. 5  
Santa Fe, NM 87505  
[\(505\) 989-9022](tel:(505)989-9022)

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No virus found in this message.  
Checked by AVG - [www.avg.com](http://www.avg.com)  
Version: 2012.0.2242 / Virus Database: 3204/5947 - Release Date: 06/28/13

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Letter referenced above attached hereto in PDF

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Jon Block  
Staff Attorney  
New Mexico Environmental Law Center  
1405 Luisa Street, Ste. 5  
Santa Fe, NM 87505  
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June 28, 2013

Commission Chairman Allison Macfarlane  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001  
via email to: [chairman@nrc.gov](mailto:chairman@nrc.gov)

RE: Hearing opportunity noticed in the Federal Register on this date  
for the Homestake-Barrick Gold ["HMC"] uranium mill superfund site,  
NRC License No. SUA- 1471, Milan, New Mexico

Dear Commission Chairman Macfarlane:

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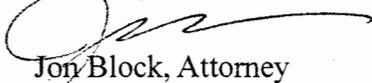
BVDA and MASE ask you to please take this matter up with the Office of General Counsel, the Commission, the (Acting) Administrator of the U.S. EPA, and the Administrator of EPA Region VI. BVDA and MASE believe that the intentions of the CERCLA law governing this site, the Atomic Energy Act, NRC Regulations under the Act, and the EPA regulations which apply to CERCLA sites--all require taking steps to assure informed public involvement in the CERCLA process. On top of the CERCLA and agency regulatory requirements under it, given that this site has had and continues to have adverse impacts upon environmental justice communities, an even higher standard of care should apply to dealing with a public that has experienced cumulative impacts from the mining and milling of uranium that have yet to be effectively addressed. People of these adversely affected communities deserve an opportunity for meaningful public participation in decision-making process. They also deserve to have the NRC and EPA act together--as charged by Congress--to assure public health and safety. The decisions that need to be made now can have a further adverse impact upon their lives and property, where the physical effects of uranium mining has already had such impacts through loss of life, health, and the enjoyment of one's family and property as well as the loss of the value of that property.

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BVDA and MASE urge you to speak with the EPA Administrator, the EPA Director for Region VI, and the Superfund Division Director for Region VI to reach a decision regarding which agency should be taking the lead at this time. MASE and BVDA respectfully submit that the NRC has not succeeded in assuring public health and safety--the EPA Human Health Risk Assessment makes that quite apparent. It is time to provide EPA with an opportunity to eliminate the human health risks that have sickened and killed many local residents living in the vicinity of the superfund site. It is time to set up a schedule for completing the CAP process, answer public concerns about the recent EPA risk assessment, and evaluate the options for moving the people or the pile away from the pollution. Perhaps, once all of those things have been resolved it will be time to consider a proper decommissioning plan for the Homestake-Barrick Gold superfund site.

Thank you for your investigation and action on this matter.

Sincerely,



Jon Block, Attorney

Bluewater Valley Downstream Alliance

Multicultural Alliance for a Safe Environment

cc: Bob Perciasepe, Acting and Deputy Administrator  
United States Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W.  
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cc: Ron Curry, EPA Administrator, Region VI  
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Samuel Coleman, Director, Superfund Division, EPA, Region VI  
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