

July 25, 2013

Mr. Jon Block
New Mexico Environmental Law Center
1405 Luisa St., Suite 5
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SUBJECT: RESPONSE TO JUNE 28, 2013, LETTER FROM NEW MEXICO
ENVIRONMENTAL LAW CENTER TO CHAIRMAN MACFARLANE
(DOCKET: 04008903, LICENSE: SUA-1471)

This letter responds to your letter dated June 28, 2013, to Chairman Allison Macfarlane of the U.S. Nuclear Regulatory Commission (NRC) regarding the review process for the Decommissioning and Reclamation Plan Update 2013 (DRP) submitted by Homestake Mining Company of California (HMC) on April 4, 2013 (ADAMS No. ML131070607). Your letter states that your clients, Bluewater Valley Downstream Alliance (BVDA) and the Multicultural Alliance for a Safe Environment (MASE), believe that "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 the following reasons:

1. NRC has not yet responded to comments on the 2012 revised HMC Grants Reclamation Project Updated Corrective Action Program (CAP);
2. NRC and the U.S. Environmental Protection Agency (EPA) have not resolved their ongoing disagreement regarding regulatory responsibility at the HMC site; and
3. Review and approval of the DRP should be considered after resolution of public health and safety issues raised by the EPA's Final Draft Human Health Risk Assessment (HHRA).

The NRC's responses to your comments are as follows.

DRP Review Process

On April 4, 2013, HMC submitted the DRP for review and approval. Upon approval, the DRP will replace the previously approved reclamation plan referenced in License Condition (LC) 36 of NRC Materials License SUA-1471. The requirements for review and approval of license amendments are provided in Title 10 of the Code of Federal Regulations (10 CFR), Part 2, "Rules of Practice of Domestic Licensing Proceedings and Issuance of Orders."

Following receipt of "major" license amendment requests it is the Office of Federal and State Materials and Environmental Management Program's (FSME) standard practice to acknowledge receipt of the amendment request, conduct an administrative completeness review, make the incoming documents publicly available in ADAMS, and notice receipt of the amendment request

and an opportunity for hearing/intervention in the *Federal Register* or on the NRC's web site. In general, the staff does not control the timing of licensee submittals.

Therefore, in order to meet the requirements of 10 CFR Part 2, the staff: (1) informed HMC that it had received the DRP and that an administrative completeness review found the amendment request to be acceptable for technical review (ADAMS No. ML13129A173); (2) made the DRP publicly available in ADAMS at ML131070607; and (3) published in the *Federal Register* a notice of receipt, opportunity to request a hearing, and to petition for leave to intervene. In addition, the staff notified BVDA, MASE, EPA and the New Mexico Environment Department (NMED) via email that the *Federal Register* notice had been published, to ensure that interested parties were aware that the DRP had been received.

Updated CAP Review

As your letter notes, the NRC received the updated CAP in December 2006, as required by LC 35 of NRC License SUA-1471. The staff initiated its review of the CAP and transmitted a request for additional information (RAI) to HMC on February 4, 2010 (ML100320466). On March 15, 2012, HMC submitted Revision 2 of the updated CAP which addressed NRC's RAI and comments received by EPA and NMED (ADAMS No. ML120890113). Revision 2 of the Updated CAP has not yet been approved.

The NRC staff acknowledges that the ongoing review of the CAP has been lengthy. The extended review time is a result of several factors including, substantial revisions to the CAP to incorporate regulatory requirements of EPA and NMED and address public comments.

NRC, EPA, and NMED have shared regulatory responsibility and authority for decommissioning and reclamation activities at the HMC site. On October 19, 2011, the Executive Steering Committee (ESC), consisting of senior level managers from each agency, reaffirmed the need for a coordinated and consistent regulatory approach for remedial activities at the HMC site. As such, it was agreed that the CAP should identify all of the regulatory requirements that HMC must meet to have its NRC license terminated and the site removed from EPA's National Priorities List (NPL). On March 29, 2012, NRC requested that EPA and NMED review Revision 2 of the updated CAP and identify any outstanding regulatory requirements which should be included in the CAP to ensure that the final CAP is a comprehensive plan for terminating the license and removing the site from the NPL (ADAMS No. ML120870020). NMED identified its regulatory requirements on October 29, 2012 (ML12306A203). On October 30, 2012, EPA provided comments on the CAP (ML12305A186), but did not identify any outstanding regulatory requirements needed to fulfill its Comprehensive Environmental Response Compensation and Liability Act (CERCLA) requirements. To date, EPA has not identified its regulatory requirements as requested by the NRC. Since the ESC agreed that the CAP would contain the regulatory requirements for all three agencies, until EPA identifies the CERCLA requirements missing from the CAP, or notifies the NRC that the CAP satisfies all of its regulatory needs, NRC cannot move forward with its review and approval of the CAP.

The CAP review schedule has also been delayed at the request of BVDA. When Revision 2 of the updated CAP was received in March 2012, NRC requested that public comments be submitted by May 29, 2012. BVDA requested that the public comment period on the CAP be extended to August 31, 2012. NRC eventually extended the public comment period to October 31, 2012, to accommodate the public's request for additional time.

NRC received comments on Revision 2 of the Updated CAP from several organizations representing the public, EPA and NMED. NRC is planning to issue a single document containing written responses to each comment received on the CAP, and that process is time consuming. Although the CAP and DRP are interconnected, they are separate documents that must be individually reviewed and approved; therefore, the staff does not believe that review and approval of the technical details associated with the CAP are required for review and approval of the DRP.

Regulatory Responsibility for HMC Site Reclamation Activities

The staff agrees that the public deserves an opportunity to participate in the regulatory actions associated with HMC reclamation activities, which is why the staff provided notice of the DRP and an opportunity for the public to request a hearing on the application. Further, the staff believes that the public deserves effective and efficient Federal regulatory oversight of HMC reclamation activities.

As previously stated, NRC, EPA, and State of New Mexico have overlapping regulatory responsibility and authority for reclamation activities at the HMC site. The regulatory authority for each agency is as follows:

NRC

Under the Atomic Energy Act of 1954, as amended, and under the Uranium Mill Tailings Radiation Control Act of 1978, as amended (UMTRCA), NRC is responsible for regulating source material and certain byproduct material generated from uranium milling and decommissioning of the milling facility. NRC regulations implementing this statutory authority are found in 10 CFR Part 40. NRC regulates HMC's site closure and remedial activities in accordance with NRC Materials License SUA-1471.

EPA

EPA has regulatory authority for activities at the HMC site under CERCLA, as amended. Although EPA does not license uranium mills, under UMTRCA it is authorized to establish standards of general application for the protection of the public health, safety, and the environment. These generally applicable standards must be adopted by NRC and Agreement States, who oversee their implementation. The EPA regulations in 40 CFR Part 192, apply to the HMC site.

The National Contingency Plan (NCP) (40 CFR Part 300) is EPA's implementing regulations for CERCLA. Under the NCP, the HMC site was added to the NPL in 1983. Under CERCLA, EPA has divided site remediation activities into three distinct Operable Units (OU1, OU2, and OU3).

OU1- addresses restoration of groundwater that is contaminated by tailings.

OU2- addresses long term stabilization of the tailings, surface reclamation, and mill decommissioning.

OU3- addresses indoor and outdoor radon concentrations in areas adjacent to the mill.

In accordance with EPA's Record of Decision (ROD) for OU3 and the NRC/EPA Memorandum of Understanding (MOU), OU1 and OU2 are being addressed by NRC in accordance with 10 CFR Part 40, Appendix A.

State of New Mexico

The State was responsible as an "Agreement State" for licensing and regulation of uranium mills until June 1, 1986, at which time, NRC assumed this authority at the request of the Governor of New Mexico. Homestake, which had initially been licensed by the State, then became an NRC licensee. Currently, the State has authority at the HMC site through the issuance of Discharge Permits pursuant to the New Mexico Water Quality Act. The State issued two discharge permits for the HMC site, DP-200 and DP 725. These Discharge Permits allow the construction and operation of the evaporation ponds, and construction and operation of injection/collection/monitoring wells.

In an effort to reduce the unnecessary regulatory burden resulting from the overlapping Federal regulatory authority at the site, and to help ensure that remedial actions at the HMC site occur in a timely and effective manner, the NRC and EPA entered into a MOU in December 1993. The MOU establishes the roles, responsibilities for regulatory oversight of remedial actions at the HMC site. In accordance with the MOU:

- NRC is the lead regulatory agency for HMC site reclamation and closure activities;
- EPA assumes a monitoring role to assure compliance with CERCLA;
- EPA/NRC agree that 10 CFR Part 40, Appendix A contains the Federal environmental and public health requirements applicable or relevant and appropriate to the HMC site, because;
 - 10 CFR Part 40 Appendix A conforms with EPA 40 CFR part 192, Subpart D.
 - Conformance with 10 CFR Part 40, Appendix A, will generally assure conformance with CERCLA requirements.
- NRC will require HMC to meet the requirements of 10 CFR Part 40, Appendix A;
- EPA will notify NRC if remedial actions are deficient or unsatisfactory;
- NRC will notify HMC of deficient conditions; and
- If unsatisfactory or deficient actions are not corrected EPA will take enforcement action.

From its inception through 2007, the NRC and EPA were satisfactorily implementing the MOU. Since 2008, EPA has become actively involved in regulating the reclamation activities at the HMC site in a manner which NRC believes is inconsistent with the MOU. NRC and EPA plan to meet in August 2013 to establish an acceptable path forward for regulating the reclamation activities at the HMC site. However, ongoing discussions between NRC and EPA regarding implementation of the MOU do not relieve NRC of its obligation to act on HMC licensing action requests submitted in accordance with NRC Materials License SUA-1471. On April 4, 2013, HMC submitted an undated DRP for NRC review and approval. NRC is obligated to act on the HMC's request in as timely a manner as is possible. Therefore, NRC believes it is appropriate to notice receipt of the DRP and offer an opportunity for hearing.

EPA's Final Draft Human Health Risk Assessment

EPA published the Final Draft HHRA on June 18, 2013, for comment. Comments on the Final Draft HHRA are due by August 15, 2013. Until EPA issues the Final HHRA, all conclusions in the report should be considered preliminary. EPA has not provided a schedule for release of the Final HHRA. NRC does not believe it is appropriate to delay the DRP review and approval

process until EPA has published the Final HHRA, an act which could take months if not years to accomplish.

The staff understands your concerns about initiating a review of the DRP prior to completion of the CAP review and resolution of inconsistent Federal regulatory requirements. However, the staff disagrees that chronological sequencing of these actions is required for meaningful public involvement. The CAP and DRP are interconnected but separate documents which must be individually reviewed and approved. Although, the CAP is an integral part of the updated DRP, the documents serve a different function. The DRP summarizes the CAP but does not provide a significant amount of detail. The staff does not believe that review and approval of the technical details associated with the CAP are required for review and approval of the DRP.

If you have questions or comments on this letter please contact John Buckley at 301-415-6607, or by email at John.Buckley@nrc.gov.

Sincerely,

/RA by Aby Mohseni Acting for/

Larry W. Camper, Director
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

Docket No.: 40-8903
License No.: SUA-1471

cc: Homestake Service List

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Sincerely,

Larry W. Camper, Director
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 Office of Federal and State Materials
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Docket No.: 40-8903
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