# Rio Algom Mining Corp.



(28)

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Secretary of the Commission
Attn: Docketing and Service Branch
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Draft Proposed Rule on Radiological Criteria for Decommissioning

Dear Sir or Madam:

Rio Algom Mining Corp. and its wholly owned subsidiary, Quivira Mining Company, submits the following comments regarding NRC's draft Radiological Criteria for Decommissioning as noticed in the Federal Register on February 2, 1994 at Volume 59, No. 22, page 4868. In addition to these comments, Rio Algom and Quivira fully support the comments made in behalf of the mining community by the American Mining Congress.

Sincerely,

Bill Ferdinand

Bill Ferdinand, Manager
Radiation Safety, Licensing &
Regulatory Compliance

xc: file

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## RIO ALGOM MINING CORP. AND QUIVIRA MINING COMPANY

## COMMENTS ON THE DRAFT RADIOLOGICAL CRITERIA FOR DECOMMISSIONING OF NRC FACILITIES

These comments are submitted by Rio Algom Mining Corp. (Rio Algom) and Quivira Mining Company (Quivira) in response to the Nuclear Regulatory Commission's draft proposed rules for radiological criteria for decommissioning of NRC facilities. The draft is part of NRC's enhanced participatory rulemaking process on decommissioning criteria for residual radioactivity. The comments are general in nature due to the limited time frame allowed to obtain and review the draft proposed language, the limited availability of NUREG/CR-6156, and unavailability of the draft Generic Environmental Impact Statement (GEIS).

Rio Algom and its wholly owned subsidiary Quivira Mining Company, are source material licensees with uranium mining and milling interest in Ambrosia Lake, New Mexico; Lisbon Valley, Utah; and South Powder River Basin, Wyoming.

NRC states that the draft criteria should be established for decommissioning at NRC regulated facilities including uranium mills, because it would: (1) allow the NRC to more effectively assure protection of public health and the environment at decommissioned sites; (2) result in more efficient use of NRC and licensee resources; (3) lead to more consistent and uniform application across all types of licenses; (4) provide a more stable basis for decommissioning planning; and (5) eliminate protracted delays in decommissioning which results as licensees wait for generic regulatory criteria before proceeding with decommissioning of their facilities.

Rio Algom wishes to note that applicable criteria for decommissioning uranium mills are already in place within 10 CFR §40, Appendix A. Each of NRC's expressed purposes for proposing the generic decommissioning criteria have already been addressed in the Appendix A criteria. Additional regulations for source material licensees are unnecessary, burdensome and wasteful of both the Commission and licensee resources as they are already embodied within

10 CFR §40, Appendix A. Thus, we believe source material licensees should be exempted from the proposed draft regulations. Further, the new proposed regulations rather than implementing reclamation and decommissioning activities in an efficient and cost effective manner at source material facilities, would instead have the opposite affect.

NRC states that one of the reasons for proposing the generic decommissioning standards is to assure public health and environmental protection. This item has already been thoroughly examined by the Commission for decommissioning uranium mill facilities in its Final Generic Environmental Impact Statement On Uranium Milling (FGEIS).[1] In the executive summary of the FGEIS, NRC states "In formulating a position on how to deal with these problems to assure public health and safety and environmental protection, the staff has developed a full range of perspectives and facts." The Commission further states "Requirements regarding decommissioning and mill tailings disposal are stated primarily as performance criteria" [10 CFR §40, Appendix A].[2]

For source material licensees, most uranium processing mills are decommissioned and disposed within the tailings impoundment area as part of their approved tailings reclamation plan. At other facilities, due to site specific conditions, the mills are disposed in-place or near their existing location within the site to be ultimately deeded over to the State or the Department of Energy (DOE). In the new draft proposal, NRC would require these source material licensees to justify disposal of their mills within the tailings impoundments or in the on-site burial areas. Rio Algom believes this draft requirement for source material licensees is not consistent with several of NRC's stated purposes for developing the generic requirements. These include; (1) to assure a more effective use of NRC and licensee resources; and (2) to provide a more stable basis for decommissioning planning.

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[1] U.S. Nuclear Regulatory Commission, "Final Generic Environmental Impact Statement On Uranium Milling", NUREG-0706, September 1980.

[2] U.S. Nuclear Regulatory Commission, "Final Generic Environmental Impact Statement On Uranium Milling", NUREG-0706, September 1980, page 1.

As part of the justification process for on-site disposal, the draft proposes that the licensee establish and fully support a "Site Specific Advisory Board" (SSAB) whose purpose is to provide technical advice to the licensee on matters such as reduction of residual radioactivity, financial soundness reviews, and technical review of the reclamation and decommissioning plans. The draft mandates the SSAB to have at least ten (10) members of interested individuals, who may or may not have any technical background.

Rio Algom and Quivira do not believe that the making the licensee financially responsible for establishing and maintaining the support for the SSAB is an effective use of a licensee's resources. Further, on issues regarding technical matters, we believe it is incumbent upon the licensee to devise the best decommissioning plan which takes into consideration various factors including site geology, the environment, safety, and the costs to implement the decommissioning plan and it is NRC's responsibility to insure the plan will protect the public health and safety and to ensure reasonable financial surety. The proposal seems to be an abrogation of NRC's responsibilities to ensure that the plans are technically sound and financially supportable.

NRC states the whole purpose of creating the SSAB is to allow for substantive public participation in the reclamation and decommissioning process. Substantive public participation is already afforded through public notices, formal and informal public meetings and hearings. If the intent of the SSAB is to allow for public participation, then NRC needs to revise the regulations in 10 CFR §2 rather than confuse the decommission/reclamation criteria design and financial surety process.

It is our belief that creation of SSAB's for source material licensees closing their tailings impoundments will lead to extensive delays in the licensees achieving the reclamation/decommissioning milestones as agreed upon in the Memorandum of Understanding (MOU) between EPA/NRC concerning the on-going rescission process of EPA's Subpart T regulations. The duplicative Subpart T regulations were promulgated by EPA under Section 112

of the Clean Air Act to govern the closure of uranium mill tailings facilities which were already covered under NRC's 10 CFR §40, Appendix A criteria.

NRC indicates that the proposed draft would also eliminate protracted delays in decommissioning as licensees wait for generic regulatory criteria. Rio Algom and Quivira strongly disagree with this statement for source material licensees. Rather, as presently proposed, we believe the draft language would significantly increase the delays in the implementation and conductance of reclamation and decommissioning activities at source material facilities.

Presently, in each source material license, there is a condition which specifies the decommissioning and contamination release levels for various radionuclides. Source material licenses do not have protracted delays in decommissioning due to "waiting for generic regulatory criteria". Conversely, the delays associated with reclamation and decommissioning at source material facilities have not been the result of waiting for generic regulatory criteria, but due to delays from NRC's review and approval of reclamation and decommissioning plans. In some cases, the review and approval process has been upwards of five (5) years. The combination of the SSAB meetings and review, NRC reviews and approvals, the actual completion of the reclamation/decommission plan will make it impractical to meet NRC's proposed regulation that decommissioning be completed within 18 months.[3]

NRC states the draft rules would "lead to more consistent and uniform application across all types of licenses."[4] With this approach, combined with NRC's proposal the decommissioning to background levels, NRC essentially indicates that site specific circumstances are no longer primary considerations in respect to reclamation and decommissioning activities. We believe each site must be acknowledged for its own uniqueness and associated risks.

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[3] U.S. Nuclear Regulatory Commission, Federal Register, Volume 58, January 13, 1993, at 4099

[4] U.S. Nuclear Regulatory Commission, Proposed Federal Register Notice, January 26, 1994, page 27.

Applying a blanket standard across all types of facilities and the locations of these facilities ignores the reality of actual risks to the environment and the public. NRC has long recognized that each site is unique with different remediation necessities and associated pathway risks which must be identified.

The draft proposal however, appears to abandon this long held NRC belief that remediation at each site should be individualized by taking into account specific risk limits to the public for that site. Instead the language both within the draft proposed rule and preamble institutionalizes the generic standards to be applied to each and every site. NRC in order to examine the actual risks associated with the types of radionuclides present, the geologic and environmental surroundings, the individuals exposed and the pathways for exposures needs to maintain decommissioning on a site specific basis. We believe criteria based on the actual risks rather than applying a generic standard which may not be applicable, is appropriate so each site can be properly decommissioned in a manner which is efficient and cost effective.

Although NRC states in the preamble that it provides for site specific flexibility in applying the decommissioning criteria, these are not readily apparent in the proposed rule. Further, because the draft generic environmental impact statement being developed to support the draft has yet to be released for review, there is inadequate support for NRC's ascertain regarding the application of site specific flexibility.

In conclusion, the proposed rules by NRC seem to be based on politically expediency rather than on a technical basis. The draft rules fails to reasonably assure that costs are commensurate with the benefits derived. The draft proposal that the goal of decommissioning should reduce the residual radioactivity to background levels ignores the reality of the site specific conditions. Rio Algom and Quivira disagree with this approach and believe that each site should be decommissioned to protect the public and the environment based on actual risks while recognizing the benefits in relationship to the costs. Even in the draft preamble, NRC

agrees that it does not make public health or cost benefit sense to decommission a facility within the variation of natural background as it states:

> *"In addition, information obtained by the NRC staff from its GEIS studies indicate that the general trend for typical NRC licenses facilities is for remediation costs to rise rapidly when attempting to reduce doses from residual radioactivity in the vicinity of 3 mrem/y. However, when all risks to the public including those from transportation and waste disposal are considered there is not a commensurate reduction in risk."*[5] [emphasis added]

This is especially disturbing at most source material sites since they are located in areas where radionuclides are naturally elevated. Measurements to confirm compliance would be very difficult if not impossible to achieve. NRC needs to approach decommissioning criteria acknowledging that each site is uniquely different with different actual risks to the public. It is our belief that an appropriate limit for radiological criteria for decommissioning when combined with an ALARA program is a 100 mrem/yr with a 25 mrem/yr screening level for the most critical group.

NRC states that "this document is still under active consideration, and has not been reviewed or approved by the Commission."[6] Rio Algom and Quivira strongly believes that source material licensees should be exempted from these draft regulations as they are already covered within 10 CFR §40, Appendix A, and also urges the NRC to revised the draft to reflect actual risks and assure the decommissioning is commensurate with remediation costs.

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[5] U.S. Nuclear Regulatory Commission, Proposed Federal Register Notice, January 26, 1994, page 45.

[6] U.S. Nuclear Regulatory Commission, Proposed Federal Register Notice, January 26, 1994, Foreword.