

Rio Algom Mining Corp.

40-8084

December 8, 1993

Certified Mail
Return Receipt Requested P 176 737 774

Mr. Ramon Hall, Director
Uranium Recovery Field Office
U. S. Nuclear Regulatory Commission
Region IV
Box 25325
Denver, Colorado 80225

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Re: Reply To A Notice of Violation
Letter Dated November 26, 1993
License SUA-1119, Docket No. 40-8084

Dear Mr. Hall:

Rio Algom Mining Corp. has concluded its review of the Notice of Violation letter from NRC dated November 26, 1993. This violation was the result from a review of our facility's source material license.

Rio Algom submits the following responses in regards to the Notice of Violation stated within the report. As noted in our response, Rio Algom firmly believes that it had complied with the requirements of license condition 45(J) and does not believe the Notice of Violation is appropriate. Although Rio Algom believes the violation is inappropriate and requests that it be withdrawn, we believe our responses will adequately address NRC's concerns regarding this issue. If you need further information please contact me at (405) 842-1773.

Sincerely,
Bill Ferdinand
Bill Ferdinand, Manager
Radiation Safety, Licensing &
Regulatory Compliance

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xc: F. Fossey - Lisbon
M. Freeman - Oklahoma City
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DESIGNATED ORIGINAL

Certified By *Mary E. Hood*

RIO ALGOM MINING CORP.
Responses To NRC Inspection Violation
Letter Dated November 26, 1993

I. Notice of Violation

License Condition No. 45(J) requires, in part, that the licensee "submit a settlement monitoring program for the review and approval for both the upper and lower evaporation ponds. No water may be discharged in the lower evaporation pond until the approved settlement monitoring program is in place."

Contrary to these requirements, the licensee failed to submit a settlement monitoring program prior to discharging water into the newly constructed lower evaporation pond.

Rio Algom's Responses To Notice of Violation

I. The Reason For the Violation, If Admitted

Rio Algom believed it had complied with license condition No. 45(J) prior to discharging into the lower tailings evaporation cell. License condition 45(J) requires Rio Algom to "submit a settlement monitoring program for the review and approval for both the upper and lower evaporation ponds." A proposed settlement monitoring plan for the tailings impoundments (tailings ponds) which included the evaporation cell locations had been submitted by Rio Algom to NRC on June 16, 1989, in a report entitled "Reclamation Cover Design and Analysis of Tailings At The Lisbon Uranium Mill". Within Section 4.0 of this report, specifically Section 4.2.7 "Settlement Monitoring Program", it discusses in detail the settlement monitoring program as proposed by Rio Algom, including the locations of the monitoring stations.

Rio Algom also believed it had obtained NRC's approval regarding the implementation of the proposed settlement monitoring program in a meeting with NRC personnel in their Denver office on February 12, 1990. During this meeting, Rio Algom understood permission was granted by NRC Staff for Mr. Bob Pattison (Rio Algom's Lisbon Manager) to implement the proposed settlement monitoring program.

This verbal approval by NRC was later confirmed by Mr. Bill Ferdinand (Rio Algom) in a telephone conversation with Ms. Dawn Jacoby on May 7, 1992. The telephone conversation initiated by Mr. Ferdinand, was to clarify statements within NRC's Lisbon facility inspection report dated May 5, 1992, specifically, the comment in the report regarding the settlement monument program.

On page 5 of the May 5, 1992, NRC inspection report it states:

"No settlement monuments were observed in either pond. The licensee indicated that although they had requested review and received approval for the number and location of monuments during a meeting in the URFO office on February 14, 1990, the monuments had not yet been installed."

Mr. Ferdinand, who began his assignment as Regulatory Affairs Manager for Rio Algom on April 1, 1990, was not involved in the February 12 meeting and had no documentation that such an approval had been granted by NRC. Thus, prior to installing the monuments to assure NRC had indeed granted such permission, he specifically requested clarification regarding NRC's approval on the settlement monitoring system. Ms. Jacoby verified that NRC had previously granted Rio Algom permission to install the settlement monuments at the Lisbon facility during a meeting with Rio Algom personnel on February 12, 1990. Ms. Jacoby again stated that Rio Algom had approval to install the monuments on the tailings impoundments.

This information was documented in a Rio Algom internal memo from Mr. Bill Ferdinand to Mr. Marvin Freeman (Rio Algom, Vice President) requesting that the

facility commence the installation of the settlement monuments as NRC had verbally confirmed that it had previously granted approval to install the settlement monuments. A copy of this internal correspondence is contained in Enclosure 1.

As a note, a copy of this internal memo was previously forwarded to NRC via facsimile on November 16, 1993, after a telephone conversation with Ms. Jacoby regarding this same subject. For convenience, another copy of this correspondence is contained in Enclosure 2.

Although confirmed, the final installation of the settlement monuments had to be delayed by Rio Algom due to; (1) the continuing reclamation work on the lower tailings impoundment which would interfere with monument placement and; (2) because of the pending review of Rio Algom's revised reclamation plan which was submitted to NRC on March 4, 1992.

With the issuance of amendment No. 43 on March 23, 1993, which approved Rio Algom's construction of the lower tailings evaporation cell, NRC added license conditions 45(I), 45(J) and 45 (K) to the license. In response to condition 45(J), namely, the requirement *"to submit a settlement monitoring plan for NRC's review and approval"*, Rio Algom understood this to refer to the settlement monitoring program for the tailings impoundments and submitted on April 1, 1993, in conjunction with its responses to NRC's reclamation questions regarding the Company's submittal dated March 4, 1992, a reiterated settlement monitoring program in Section IV, "Settlement".

Based on these submittals and verbal approvals, it was Rio Algom's belief that it had satisfied NRC's requirements of condition 45(J).

This belief was further anchored by license condition 54(D). This condition, as part of the Lisbon's groundwater Corrective Action Plan (CAP), required the facility to recommence the combined pumping rate of 100 gpm by June 30, 1993. Rio Algom made a total of six submittals to NRC concerning the lower tailings evaporation cell and

had many discussions with NRC on the issue and throughout the discussions, the issue of submitting another settlement monitor plan was never raised. Again Rio Algom did not expect this issue to be raised as the Company had already previously forwarded proposed settlement monitoring programs to NRC on June 16, 1989, March 4, 1992, and April 1, 1993. Throughout the review process and the discussions with NRC on the approval of the lower tailings evaporation cell, the repeated stated objective of NRC and Rio Algom was to complete and place the lower tailings evaporation cell in operation as soon as practical.

We had no reason to believe license condition 45(J) required an additional tailings settlement monitoring program to be submitted separately from those already submitted to NRC as the effect of such a requirement would have been to delay use of the evaporation cell. In addition, this action would have forced the Lisbon facility to violate its license no matter what course of action it took as the facility would have been forced to violate either the flow rate requirement in condition 54(D) or the present settlement monitoring issue in condition 45(J). This is because the June 30, 1993, flow rate requirement could not been achieved and sustained without the use of the newly constructed lower evaporation cell.

Rio Algom was not aware of NRC's interpretation of license condition 45(J) until it was brought forth during our discussions on November 24, 1993. In this telephone conversation, NRC indicated the violation was being issued not because of the settlement monitoring plans for the tailings impoundments, but rather because a specific settlement monitoring plan for only the evaporation ponds had not been submitted. This was the first time Rio Algom was informed that this was the intent of the license condition 45(J).

As previously stated, it was Rio Algom's belief the settlement monitoring plan referenced in condition 45(J) was for the tailings impoundments not just for the evaporation cells. This belief is bedded in the fact that in each of Rio Algom's submittals to NRC regarding the application to construct the facility on the lower tailings impoundment, the construction is referred to as "lower tailings evaporation cell". The evaporation cell was not referred as the "lower tailings pond" or the "lower tailings evaporation pond" (See

submittals dated 2/3/92, 2/24/92, 3/16/92, 4/16/92, 7/31/93, 12/15/92, 1/14/93, 11/15/93).

The terms "tailings pond" or "tailings evaporation pond" had always been used with the connotation of referring to the tailings impoundments, not the evaporation cells. The terms "tailings pond" and "tailings evaporation pond" were used as being synonymous with the ponded water on the tailings impoundments during their operation.

This synonymous reference is even supported by NRC license conditions as the term "tailings pond" was used to denote tailings impoundment. For example, prior to the deletion of many of the tailings impoundment conditions as a result of the "Possession Only" license, NRC stated in condition 37:

"The licensee is authorized to release barrels which do not meet the decontaminated limits specified in Condition No. 18 of this license to a facility authorized to possess the barrels under a specific source material license issued by the State of Utah. All waste material resulting from decontamination of the barrels shall be returned to the Lisbon Mill for disposal in the tailings ponds"
[Emphasis Added]

Other examples include conditions No. 48 and 49. These states respectively:

"The licensee shall submit a set of construction specifications to the NRC, Uranium Recovery Field Office, for review and approval prior to placement of embankment fill for the final stage of the two-staged raise of the lower tailings pond embankment. The" [Emphasis Added]

"The licensee shall notify NRC, Uranium Recovery Field Office, at least three weeks prior to the following construction features of the two-staged lift of the lower tailings pond embankment" [Emphasis Added]

Even NRC's Engineering Review for the upper and lower evaporation cells which Rio Algom only received on November 18, 1993, is unclear in referencing the type of

settlement monitoring program NRC wanted Rio Algom to submit. The report states on page 11:

"In addition, the licensee should be required to submit a settlement monitoring program for review and approval. The monitoring program will provide assurance that the evaporation ponds are operating safely over the proposed lifetime of the structures, and that differential settlement are not adversely affecting the structural stability."

As indicated, the report simply states "a settlement monitoring program". It does not specify whether its for the entire impoundment or for only the evaporation cells.

In any event, Rio Algom believes that its previously submitted settlement monitoring plans complied with the language requirements of condition 45 (J) as these plans include the evaporation cell areas. The fact that the settlement monitoring program submitted by Rio Algom included the evaporation cell areas was noted and documented in NRC's Engineering Review. It states on page 10:

"Also of concern was the licensee's dependence on the proposed settlement monitoring program. It appears that four of the five monuments proposed for the lower tailings pond will be within the lower evaporation pond, and that at least three of the five monuments proposed in the upper tailings pond are within the upper evaporation pond." [Emphasis Added]

As indicated in the above discussions, Rio Algom believed it had complied with the full intent of the license condition 45(J) and since the terminology used was confusing, Rio Algom does not believe the issuance of a violation in this regard is appropriate. Further and in any event, Rio Algom believes that its settlement monitoring submittals addresses and includes the evaporation cells as demonstrated and referenced by NRC's own Engineering Analysis Report. Thus, Rio Algom believes this violation is inappropriate and should not have been issued by NRC.

2. The Corrective Steps Which Have Been Taken and The Results Achieved:

Although Rio Algom believes it complied with license condition 45(J) and the violation is inappropriate, to alleviate and address NRC's concerns, Rio Algom will forward to NRC by December 15, 1993, an amended settlement monitoring plan for the tailings impoundments including specific monitoring locations for the upper and lower tailings evaporation cells.

3. The Corrective Steps Which Will be Taken to Avoid Further Violations:

Rio Algom is presently preparing a submittal to amend the settlement monitoring program to address specific monitoring stations for the upper and lower evaporation cells.

As an additional step to minimize any confusion and avoid further such violations, Rio Algom requests that NRC forward a copy of the technical evaluation conducted by NRC staff to Rio Algom with the license amendment. Presently, these evaluations go only to the Docket File. As previously noted, Rio Algom received the Engineering Analysis for the evaporation cell on November 18, 1993, only after questions arose on the settlement monitoring issue. Future distributions of these documents may help Rio Algom prevent future misunderstandings.

4. The Date When Full Compliance Will Be Achieved:

As previously indicated, Rio Algom will submit shortly an amended settlement plan for the tailings impoundment including specific information regarding the upper and lower evaporation cells. Rio Algom will implement the provisions of the plan within 90 days of NRC's approval of the plan.

ENCLOSURE 1

RIO ALGOM MINING CORPORATION

MEMORANDUM

TO: Marvin Freeman

May 7, 1992

FROM: Bill Ferdinand *Bill Ferdinand*

SUBJECT: NRC Telephone Conversation

I discussed briefly with Ms. Dawn Jacobi today, the results of NRC's May 5, 1992, inspection report, especially the comment pertaining to the subsidence monuments.

She stated NRC had verbally granted Mr. Pattison permission during a meeting on February 12, 1990, to install the monuments. She stated that although NRC has not officially approved RAMC's June 1989 radon attenuation submittal, which included the installation of the subsidence monuments, she again stated her verbal approval to install the monuments.

With this verbal approval, we should commence installing the monument at locations which will be unaffected by our reclamation work.

xc: F. Fossey
B. Pattison
file

Bob Pattison 5/11/92
Develop a location plan for the monuments and the upper tailings pond. And the installation procedure. Send a copy to Bill F or me for review before we start installing. *M*
cc: *Bill F*
File

ENCLOSURE 2

Rio Algom Mining Corp.

Marvin D. Freeman
Vice President

November 16, 1993

Copy via Facsimile

Ms. Dawn Jacoby
Uranium Recovery Field Office
U. S. Nuclear Regulatory Commission
P.O. Box 25325
Denver, Colorado 80225-0325

Re: Lisbon Facility
License SUA-1119, Docket No. 40-8084
Settlement Monitoring

Dear Ms. Jacoby:

Please find attached a letter to Mr. Marvin Freeman that I wrote discussing our telephone conversation of May 7, 1992, regarding the settlement monitoring program. As you will recalled, verbal approval on Rio Algom's settlement monitoring program was granted on February 12, 1990 and also to me on May 7, 1992, during our telephone conversation. As such, Rio Algom believed that it had satisfied the requirements of condition 45 (J) and proceeded to use the lower tailings evaporation cell as a settlement monitoring program had been approved by NRC.

As I indicated to you yesterday telephone conversation, Rio Algom is presently preparing an amendment to the settlement monitoring program modifying the type survey monuments and their locations. This package will be forwarded to NRC shortly upon completion. If you have any questions in regards to this information, please contact me at (405) 842-1773.

Sincerely,



Bill Ferdinand, Manager
Radiation Safety, Licensing &
Regulatory Compliance

xc: F. Fossey w/attachments (Lisbon)
M. Freeman w/attachments (OKC)
file

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M

cc: ~~Bill F~~ File