



Homestake Mining Company of California

P.O. Box 98
Grants, NM 87020

Tel +1 505 287 4456
Fax +1 505 287 4457

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Mark Lombard
Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Ms. Ashley Roberts
Deputy Director, Division of Decommissioning
Uranium Recovery and Waste Programs
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2735

**RE: Homestake Mining Company of California – Grants Reclamation Project
Status of the Confirmatory Order EA-16-114 and Request for Termination of
Escalated Enforcement**

Dear Sir/Madam:

The purpose of this letter is to follow up on the November 2, 2022, public meeting between representatives of the U.S. Nuclear Regulatory Commission (NRC) and the Homestake Mining Company of California (HMC) regarding the status of Confirmatory Order (CO) EA-16-11, issued March 28, 2017 and to formally request that escalated enforcement at the site be terminated. The CO was issued following successful Alternative Dispute Resolution (ADR) mediation regarding five apparent violations of NRC requirements.

HMC appreciates the time that you and other staff took to meet with us to discuss ongoing actions under the CO. We wish to take this opportunity to propose a path forward. It is our view, as discussed during the November 2, 2022 meeting, that all of the conditions of the CO should be either confirmed as having been satisfied or made conditions of Operating License No. SUA-1471.

During the November 2, 2022, public meeting, NRC asked HMC what it meant by referring to the Grants Reclamation Project (GRP) as being under escalated enforcement. Our view is based on how the NRC categorizes HMC. As described on the NRC's website page addressing enforcement, ADR is available for "escalated nonwillful (traditional) enforcement cases." In addition, the NRC lists the CO issued to HMC on its website, "Escalated Enforcement Actions Issued to Materials Licensees." It is thus clear that the NRC considers this a case involving escalated enforcement.

Escalated enforcement status carries with it a stigma, as well as results in increased inspection activities by NRC, both of which impose an unnecessary regulatory burden.

This is especially the case given the actions already completed in response to the CO. Increased inspections tax the limited resources of both HMC and NRC and pose an unreasonable expense for HMC. The expenses arise not only from increased HMC staff time to support inspections, but also from direct fees charged by the NRC for its inspections. Extra inspections are unwarranted based on the NRC staff findings to date, which have confirmed HMC satisfaction of not only the five apparent violations, but the majority of the conditions imposed by the CO.

To eliminate this unnecessary burden, HMC requests that the NRC relieve HMC from escalated enforcement. While NRC has stated that the CO will always exist as documentation of the resolution of the ADR process, NRC must have mechanisms available to either close the CO or verify and document that the requirements of the CO have been satisfied, either of which would accomplish this objective. NRC guidance does not explicitly address the exit process for a confirmatory order, unlike for a confirmatory action letter. NRC internal procedures do, however, contemplate confirming that the requirements of a CO have been satisfied and ultimate closure.

Section 1.2.2 of the NRC Enforcement Manual, ADR Roles and Responsibilities, states that Program Offices, in this case the Office of Nuclear Material Safety and Safeguards (NMSS), are “Responsible for developing and maintaining procedures for follow-up and **closure of ADR confirmatory orders** falling within their area of responsibility.” [emphasis added]. As such, we expect that NMSS has in place procedures that it would follow to close out the CO. From the Enforcement Manual, closure is a reasonable expectation once the licensee satisfied conditions of the order.

The NRC Enforcement Manual also acknowledges that it is appropriate to close elements of orders. Section 2.7.8, Relaxation, Withdrawal, or Rescission of Orders, specifies that the designated official of the agency may “...relax, withdraw, or rescind conditions of the order.”

This topic is further addressed in NRC Inspection Procedure IP 92703 (“Followup of Confirmatory Action Letters or Orders”), which describes the steps necessary to “...verify that a licensee or individual has met the requirements of an Order.” This procedure notes that NRC inspections should address if operations are being conducted in accordance with the order or “...that the requirements have been incorporated into the license.”

During the public meeting, NRC agreed to consider actions necessary to reach closure on the CO and the path forward for HMC. To ensure that this matter is addressed in a timely fashion, HMC requests that NRC schedule a public meeting within 30 days to discuss the status of its actions and NRC inspection conclusions regarding the CO conditions. We would request that at the meeting, NRC should address the status of each of the open conditions of the CO. A current NRC CO Status Table is attached for the following condition discussion.

HMC proposes that the conditions in Confirmatory Order EA-16-114 should be dispensed as follows.

- HMC proposes that all the conditions of the HMC Order that have been inspected and designated as “satisfied” in NRC inspection reports should be verified as closed. These conditions include 1, 3-4, and 8-15.
- HMC proposes that Condition 2 be designated as satisfied and closed. Condition 2 is not linked to Condition 6. It was intended to specifically address the corrective actions for the 5 apparent violations, each of which has been addressed.
- HMC proposes that Condition 5 be designated as satisfied and closed. Condition 5 is not linked to Condition 6. It specifically addresses procedures “...resulting from this Confirmatory Order,”¹ not any and all future procedures. There is no basis for assuming that this condition would extend in perpetuity to future procedures not yet even contemplated.
- HMC proposes that Condition 6 be addressed as satisfied and as specified in NRC’s IP 92703 as being incorporated into the license in acknowledgement of HMC’s submittal of a license amendment request (LAR) to modify Operating License No. SUA-1471 to replace the groundwater corrective action plan (GCAP) with alternate concentration limits (ACLs). The net effect would be to make the ACL, or a revised GCAP in the event NRC does not approve the ACL, a license condition.
- HMC proposes that Condition 7 be designated as satisfied and closed. Condition 7 was not intended to address training in perpetuity. Training was an issue at the GRP in 2017; however, HMC has adequately addressed the concern. Initial and ongoing training was conducted as inspected and confirmed by the NRC. Future refresher training is appropriately addressed under the provisions of the license.
- HMC proposes that Condition 16 be designated as satisfied and closed. Condition 16 requires HMC to address the status of conditions of the order, none of which should remain in place.

The only item that may warrant more detailed discussion is Condition 6. Staff stated during the November 2, 2022, meeting that NRC *approval* of a GCAP or ACL would be necessary to satisfy Condition 6. HMC does not agree with that interpretation. We believe that our proposed resolution of incorporating Condition 6 is well-founded for the following reasons:

The plain language of the CO condition states “HMC will submit a revised groundwater CAP to the NRC by the end of calendar year 2018...” This plain language makes clear that the CO required HMC to “submit” a GCAP, not receive a GCAP approval. That date was subsequently extended by the NRC to December 18, 2019, a deadline HMC met. NRC provided a request for supplemental information on June 18, 2020, which led to HMC’s revision and resubmittal of the GCAP on November 13, 2020. The 2020 GCAP demonstrated the infeasibility of restoring groundwater and proposed ACLs as the appropriate path to closure for the site. On April 30, 2021, NRC proposed to suspend its review of the revised GCAP and allow HMC to submit an ACL application. As such, Condition 6 has been satisfied.

¹ Homestake Mining Company of California – Confirmatory Letter EA-16-114, March 28, 2017, Condition 5., p. 13.

Nonetheless, HMC does not advocate that the condition simply should be closed; but, rather, consistent with NRC IP 92703, that the requirement be addressed as a license condition. This approach would provide the NRC with sufficient regulatory oversight to ensure that the groundwater remediation strategy is approved and implemented in accordance with its regulations. This is important given that the ACL review is likely to take years, longer than intended when NRC imposed GCAP submittal as a CO condition. Specifically, NRC agreed to work with HMC "...aggressively and in good faith, toward a goal of final approval of the groundwater CAP within a year from the date of submittal"² This precatory language confirms that NRC's approval was not a CO condition. This commitment notwithstanding, NRC has stated its review of the ACL LAR will not be completed in one year.

In a May 5, 2022 public meeting, NRC acknowledged that it doubted that it could complete the review of the ACL application in two years. The NRC staff offered this view as a part of its rationale for determining whether the application could be found acceptable for docketing for review, stating:

The NRC staff questions if an ACL application could be acceptable for review under the 2019 Nuclear Energy Innovation and Modernization Act (NEIMA) requirements, prior to all IC's being in place. NEIMA requires that the NRC staff review period, from acceptance to Safety Evaluation Report, be completed within two years.³

This statement suggests that staff is not yet able to complete the review in the time period contemplated in the CO. This position promises to prolong the escalated enforcement period even further with no reasonable basis to do so.

We would also note that NEIMA itself does not require that the NRC review be completed in two years. NEIMA required that the NRC develop "milestone schedules" that it would commit to meet. Nothing in NEIMA suggests it should be used as a pretext for delaying the docketing of an application for review. Quite to the contrary, Congress's intent in NEIMA was to reduce the time taken by NRC to conduct its reviews.

Continuing to formally treat the CO conditions as active, and in so doing imposing an escalated level of enforcement on HMC, is inconsistent with the NRC Principles of Good Regulation, in particular, clarity and efficiency. It is not efficient for the NRC to impose this unnecessary regulatory burden on a licensee that has addressed apparent violations, modified its work practices, and made significant changes to its workforce. These efforts have addressed the issues that were the subject of the ADR and the resultant CO.

Furthermore, it is not clear what purpose the NRC has in doing so. The CO has achieved its objective. HMC has instilled a nuclear safety culture and is now focused on conducting its activities with a proper focus on human health and safety and the environment.

² Confirmatory Order EA-16-114, p. 14.

³ Summary of May 5, 2022, Public Observational Meeting with Homestake Mining Company of California to Discuss a Proposed Alternate Concentration Limit License Application for the Grants Reclamation Project, Memorandum from Ron C. Linton to Bill von Till, May 27, 2022.

We appreciate the NRC's willingness to focus on the path forward to closure and look forward to meeting with you to discuss these issues. Thank you for your time and attention on this matter. If you have any questions, please contact me via e-mail at bbingham@homestakeminingcoca.com or via phone at 505.290.8019.

Respectfully,



Brad R. Bingham
Closure Manager
Homestake Mining Company, Grants, New Mexico
Office: 505.287.4456 x35 | Cell: 505.290.8019

BRB

ec: Document Control, NRC
R. Linton, NRC, Rockville Pike, Maryland
W. Frazier, DOE, Grand Junction, Colorado
M. Purcell, Region VI EPA, Dallas, Texas
A. Maurer, NMED, Santa Fe, New Mexico
M. McCarthy, Barrick, Salt Lake City, Utah
D. Lattin, Barrick, Elko, Nevada

Attachment

NRC Confirmatory Order – Status Update

Condition	Requirement	Status
1	Prepare Root Cause Analysis Protocol	Completed. Satisfied per NRC Inspection Report 040-08903/2017-002.
2	Prepare Root Cause Analysis of 5 apparent violations; Submit proposed corrective actions to NRC within 60 days of completion	Root cause analysis completed; NRC review complete per March 16, 2020 letter.
3	Complete assessment of HMC activities to determine whether all activities are authorized and are being conducted in compliance with NRC requirements	Self-assessment completed; NRC review complete per March 19, 2020 letter.
4.a-c, e	Independent third-party review of Condition 3 assessments	Completed.
4.d	Incorporate NRC audit results of third-party recommendations	Completed
5.1	Submit license amendment requests for changes to license	Completed. Communicated to NRC via September 18, 2020 letter.
5.2	Update procedures as necessary	Completed. “acceptable” per NRC Inspection Report 040-08903/2022-001 and concurrence.
6	Submit groundwater corrective action plan (GCAP)	GCAP submitted November 18, 2019 (ML19354B965), not accepted for technical review, RSIs provided. Resubmitted December 13, 2021 (ML20358A150 – 54), not accepted for technical review pending ACL application submittal per NRC April 30, 2021 letter. ACL application submitted August 9, 2022
7	Conduct initial and annual refresher training	Ongoing action, close when CO is terminated.
8	Adopt 2012 GCAP mass balance methodology and complete analysis of the re-injection system	Completed. Satisfied per NRC Correspondence dated October 17, 2022.
9	Adjust RO plant operations to better ensure compliance with the Ground Water Protection Standards (GWPS)	Completed. Satisfied per NRC Inspection Report 040-08903/2017-002.
10	Analyze impact of exceedances and incorporate NRC audit results	Completed. NRC audit completed per October 29, 2019 letter. HMC procedures evaluated in February 2021 inspection for potential satisfaction of Condition.
11	Modify License Condition 35C	Completed. Satisfied per NRC Inspection Report 040-08903/2017-002.
12	Update SP2 sampling procedures	Completed. Satisfied per NRC Inspection Report 040-08903/2017-002.
13	Revise License Condition 15 as directed	Completed. Satisfied per NRC Inspection Report 040-08903/2017-002.
14	Conduct land application assessment	Completed. Satisfied per NRC Correspondence dated April 29, 2021 (ML21124A358)
15	Propose corrective measures to ensure that land application measures (Condition 14) demonstrate that the radiological doses and non-radiological risks are below NRC-approved remedial action levels	Completed. Satisfied per NRC Correspondence dated April 29, 2021(ML21124A358)
16	Prepare and update integrated table that sets forth all actions taken pursuant to this Confirmatory Order	Ongoing action, close when CO is terminated. Semi-annual submittal