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November 8, 1999

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40-8903

RE: Homestake Mining Company Proposed NPL Delisting

Dear Mr. Williams:

The New Mexico Environment Department (NMED) is responding to your letter dated September 7, 1999 requesting that NMED outline concerns regarding deletion of the Homestake Mining Company (HMC) site from the National Priorities List (NPL). This issue has been discussed numerous times over the past several years and has again gained attention because the Nuclear Regulatory Commission (NRC) is concerned that review of the pending alternate cleanup standards application from HMC may be complicated with EPA, NRC and NMED requiring three processes. NMED agrees that duplicative efforts are unnecessary and that suitable options can be explored.

1.0 Site Regulatory History

The history of the HMC site is briefly described as follows. In response to groundwater contamination discovered in residential water wells adjacent to the HMC, a Corrective Action Program (CAP) for groundwater restoration was initiated in 1978 under the authority of the State of New Mexico. At that time, the State of New Mexico was an "Agreement State" under the Atomic Energy Act of 1954, as amended, therefore NRC was not involved with the regulatory enforcement of the site. The EPA placed the HMC site on the NPL in September 1983 due to elevated selenium levels in groundwater and radon concerns in the subdivisions south of the HMC site. In June 1983, HMC signed a Consent Agreement with EPA to provide residents south of the mill tailings disposal area with an alternate water supply. The alternate water supply hookup was completed in April 1985. During this period of time, HMC was an operational facility and was, therefore, required to have a groundwater discharge permit, DP-200, pursuant to the New Mexico Water Quality Act, which covered the discharge of water to groundwater and the remediation of groundwater contamination. In June 1986, New Mexico ceased to be an "Agreement State" and regulatory authority of radiological constituents was transferred to the NRC. Shortly after NRC assumed regulatory authority of radiological constituents, EPA and NMED required HMC to conduct a remedial investigation/feasibility study (RI/FS) on the radon concentration in the residential subdivisions surrounding the mill site under

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CERCLA. Three operable units evolved for the HMC site, as described:

- The first unit, OU1, relates to the tailings seepage contamination of groundwater aquifers and is being addressed under NMED's DP-200 and DP-725, and NRC's groundwater CAP (license number SUA-1471);
- The OU2 relates to the long-term stabilization, surface reclamation, and site closure and is being addressed under NRC's 10 CFR Part 40 closure requirements;
- OU3 included radon concerns in the residential subdivisions; the ROD recommended no further action relating to off-site radon concentrations based on results of the RI/FS.

The results of the RI/FS prompted EPA to sign a NO ACTION Record of Decision (ROD) in September 1989 for the radon operable unit (OU3). The ROD also outlined that "remedial activities addressing the remaining tailings contaminated groundwater, source control and on-site reclamation activities had been, and would continue to be implemented by HMC under the direction of the NRC, pursuant to the facility's NRC license, and integrated with NMED's-approved groundwater discharge plans, DP-200 and DP-725. The ROD declared that agency responsibilities for the remedial action at the HMC site will be formally delineated in an agreement to be signed by EPA and NRC. This agreement became the current MOU signed December 14, 1993.

2.0 NMED Concerns for Delisting

NMED currently regulates non-radiological constituents at the HMC site through the DP-200 and DP-725. Primary constituents of concern under DP-200 include, but are not limited to, selenium, molybdenum, sulfate, nitrate, chloride, and total dissolved solids. NRC has regulatory authority for the radiological contaminants at the site. NRC also regulates selenium and molybdenum, as does NMED. NMED also has regulatory standards for radiological constituents in the state under the New Mexico Water Quality Control Commission (WQCC) regulations. The concerns that NMED has for supporting delisting the site from the NPL are as follows:

- Without CERCLA authority at the site, state enforcement authority of various applicable or relevant and appropriate requirements (ARARs) for the HMC site may not be clear (such as selenium, molybdenum, sulfate, and total dissolved solids);
- If the CERCLA process is removed from authority, NMED's input and concerns may not be addressed as there would no longer be a formal communication agreement and review policy in place;
- Without the CERCLA process, NMED will have no venue for enforceable authority of review of issues such as the upcoming HMC's application for alternate cleanup standards as it pertains to constituents overseen by the NRC.

3.0 Options to Address Concerns

NMED proposes the following options for reducing duplication, yet addressing our concerns:

- 1) Establishing a MOU between NMED and NRC that is similar to the current MOU between EPA and NRC, and then de-listing the HMC site. This will reduce the review process of HMC's pending

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alternate cleanup levels (ACL) application to just NRC's ACL process and NMED's alternate abatement standards process through the WQCC regulations, thus eliminating EPA's process. The MOU would also establish a formal venue for communication, outline roles and responsibilities of NRC and NMED, and provide a standard review procedure for both parties.

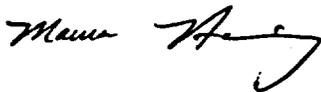
- 2) Maintain the site on the NPL, but minimize duplicative effort by establishing an agreement between EPA and NMED for review of the ACL application, similar to the process at the UNC Churchrock site. In this case HMC would be allowed to prepare one ACL application package to fulfill all agency requirements to minimize duplicative efforts, and EPA would designate NMED to review and approve/disapprove the application, thus minimizing unnecessary efforts.

4.0 Conclusions

NMED is willing to support delisting of the Homestake site because the site is a unique situation where existing State groundwater discharge plans are in place to address CERCLA ARARs for non-radiological constituents if, and when, NRC has determined the requirements of their license have been met. However, NMED believes NRC takes the State's concerns into greater account because the site is on the NPL, and NMED does not want to lose the mutual cooperation of authority at the site that is currently in place should EPA no longer be involved. A formal agreement discussed in option 1 above would satisfy this concern.

NMED recommends that EPA, NRC, and NMED conduct a joint site visit to the Homestake Mining Company to review the current remedial activities, discuss options to address concerns of delisting the site, and answer questions. Please call either myself at (505) 827-2922, or Birgit Landin of my staff at (505) 827-9669 to schedule a site visit.

Sincerely,



Maura Hanning
Program Manager - Superfund Oversight Section

cc: Dale Doremus, Pollution Prevention Section
Ken Hooks, Nuclear Regulatory Commission