

EDO Principal Correspondence Control

FROM: DUE: 08/07/02 EDO CONTROL: G20020405
DOC DT: 06/26/02
FINAL REPLY:

Sarah M. Fields
Moab, Utah

TO:

Lohaus, STP

FOR SIGNATURE OF : ** GRN ** CRC NO:

Lohaus, STP

DESC: ROUTING:

2.206 -- Molycorp/International Uranium (USA) Corp
White Mesa Uranium Mill

Travers
Paperiello
Kane
Norry
Craig
Burns
Virgilio, NMSS
Merschhoff, RIV
Cyr, OGC
Goldberg, OGC
Subbaratnam, NRR

DATE: 07/03/02

ASSIGNED TO: CONTACT:
STP Lohaus

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate response with NMSS and OGC.

Template: EDO-001

E-RIDS: EDO-01

June 26, 2002

02 JUL -5 PM 3:07

STP

Paul Lohaus, Director
Office of Tribal and State Programs
Mail Stop O-3 C10
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555-0001

REQUEST FOR IMMEDIATE ACTION

Dear Mr. Lohaus:

This request pertains to an intent to transfer approximately 17, 000 tons of source material from the Molycorp, Inc., Mountain Pass, California, facility to the International Uranium (USA) Corporation (IUSA) White Mesa Uranium Mill near Blanding, Utah (Docket No. 40-8681). The subject material is lead sludge containing licensable amounts of thorium-232 and uranium-238, which is currently located in three processing-waste containment ponds at Mountain Pass. The material stored in ponds P-24, P-11, and P-8 was generated from 1967 to 1984.

IUSA has received an amendment to their license to receive and process the Molycorp lead sludge wastes for the uranium content. IUSA estimates that the average uranium content is 0.15%. IUSA's amendment to License No. SUA-1358 is currently the subject of a proceeding before the Atomic Safety and Licensing Board Panel (Docket No. 40-8681-MLA-11).

The ponded material has never been licensed by the State of California, Department of Health Services, Radiologic Health Branch (RHB). Apparently, for the past couple of years the RHB has been reviewing an application from Molycorp for a license for their whole facility at Mountain Pass. Radioactive lanthanide material from Molycorp's York, Pennsylvania, facility (Docket No. 40-8794) containing up to 0.25 percent source material, has been shipped to Mountain Pass for processing.

The Atomic Energy Act of 1954, as amended, and 10 C.F.R. Part 40 makes clear that the transfer of source material that is not exempt from regulation under the AEA cannot occur unless authorized by a source material license. 10 C.R.R. § 40.3, "License requirements," states:

A person subject to the regulations in this part may not receive title to, own, receive, possess, use, transfer, provide for long-term care, deliver or dispose of byproduct material or residual radioactive material as defined in this part or any source material after removal from its place of deposit in nature, unless authorized in a specific or general license issued by the Commission under the regulations in this part.

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Molycorp intends to violate this regulation by transferring source material, subject to the regulations of Part 40, without authorization in a specific source material license issued by the State of California, as a Nuclear Regulatory Commission (NRC) Agreement State. Moreover, the decommissioning and decontamination of the ponds is not occurring under an approved RHB decommissioning plan, pursuant the requirements of Part 40. Therefore, the public has never had the opportunity to evaluate the decommissioning plan that had been developed according to the requirements of the Atomic Energy Act of 1954, as amended, and compatible State of California regulations.

The Molycorp ponded sludge contains characteristic hazardous waste, pursuant the Resource Conservation and Recovery Act (RCRA), therefore it is also a low-level mixed waste.

Additionally, there are other Part 40 regulations that should be complied with. 10 C.R.R. § 40.51, "Transfer of source or byproduct material states in pertinent part:

(a) No licensee shall transfer source or byproduct material except as authorized pursuant to this section.

* * *

(c) Before transferring source or byproduct material to a specific licensee of the Commission or an Agreement State or to a general licensee who is required to register with the Commission or with an Agreement State prior to receipt of the source or byproduct material, the licensee transferring the material shall verify that the transferee's license authorizes receipt of the type, form, and quantity of source or byproduct material to be transferred.

* * *

Not only is Molycorp required to have a license to transfer the source material content of the ponded lead sludge, but the type, form, and quantity of the source material must be identified in the license. Then Molycorp and the RHB must make a determination whether IUSA has a license to receive the same type, form, and quantity of source material that is identified in the Molycorp license. This determination should be made prior to the transfer of the Molycorp ponded waste, not after. It has been the intent of Congress since the inception of the Atomic Energy Act of 1954 that licensable quantities of source material (i.e., material containing uranium and/or thorium of 0.05% by weight) not be transferred unless authorized under a source material license.

The RHB is aware that Molycorp is not authorized under a specific source material license to transfer the ponded lead sludge. I have brought this matter to the attention of the RHB, but they have not been responsive to my concerns.

The State of Nevada has requested that the NRC not permit the transfer of the ponded sludges until a risk analysis of the shipment of the Molycorp wastes be conducted, pursuant the provisions of the National Environmental Policy Act (NEPA).

Paul Lohaus
June 26, 2002

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They requested that "a set of alternative be developed to evaluate varying risks to human health and the environment associated with alternative shipping containers and highway routes including routes that avoid the Las Vegas Valley." See attached letter from Allen Biaggi, Administrator, Division of Environmental Protection, Department of Conservation and Natural Resources, State of Nevada.

Therefore, I request the Office of State Programs take immediate action, as authorized by the Atomic Energy Act, to protect the health and safety of the public and take regulatory responsibility for the Molycorp wastes out of the hands of the State of California Radiologic Health Branch. I request that the NRC put an immediate stop to the transfer of the Molycorp ponded sludges until 1) Molycorp is authorized under a specific source material license to transfer the material; 2) a determination is made under § 40.51, that IUSA is authorized to receive the same type, form, and quantity of source material as is licensed by Molycorp's source material license, 3) the concerns of the State of Nevada regarding the transfer of the Molycorp waste are addressed.

Sincerely,



Sarah M. Fields
P.O. Box 143
Moab, Utah 84532

Enclosure: As stated

cc: William D. Travers

Carl J. Paperiello

Watson Gin, CA HWMP

Edgar D. Bailey, CA RHB

Allen Biaggi, NV DEP w/o attachment

cc: (E-mail)

Josie Piccone

Melvin Leach

Linda McLean, NRC Region IV

Vivian H. Campbell, Region IV

William Maier, NRC Region IV

Frieda Y. Taylor, CA RHB

ALLEN BIAGGI, Administrator

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DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

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**DOCKETED
USNRC**

May 31, 2002

June 11, 2002 (2:12PM)

**OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF**

Administrative Judge Alan Rosenthal
Atomic Safety and Licensing Board Panel
Mail Stop T-3 F23
U. S. Nuclear Regulatory Commission
Washington DC 20555-0001

SERVED June 11, 2002

Re: Docket No. 40-8681-MLA-11

Dear Judge Rosenthal

In reference to the docket number listed above, it has come to our attention that the Nuclear Regulatory Commission (NRC) is contemplating a license amendment action that would result in the shipment of 17,000 tons of radioactive sludge from Molycorp's mine at Mountain Pass, California to the White Mesa Uranium Mill south of Blanding, Utah. Since these shipments would traverse southern Nevada, we contend the NRC must conduct a risk analysis to assess threats to human health and environment associated with a transportation accident involving these materials/wastes within the Las Vegas Valley.

Please note that Nevada Officials have worked to eliminate radioactive waste shipments in southern Nevada. We now have an informal agreement with the U.S. Department of Energy that prohibits radioactive waste shipments -- destined for disposal at the Nevada Test Site -- from traversing Hoover Dam and the Las Vegas Valley.

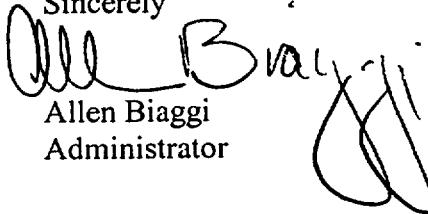
Although many government officials believe that transport of radioactive wastes and materials poses little risk to public health and safety, officials in Nevada contend that moving such hazardous materials through Las Vegas presents a significant risk that could adversely affect the State's tourist-based economy. The fact remains that Las Vegas is among the fastest growing metropolitan areas in the country, and when considering the unprecedented volume of tourists who visit the city each year (now estimated at forty million), a transportation accident involving radioactive materials/waste could cause significant "stigmatizing" impacts to the State's economy. The gaming, hotel, and

recreation sectors in Nevada remain the State's principle employer, generating millions of dollars in private and public revenues. Just one transportation accident involving a spill of radioactive materials/waste would have a devastating impact on this key sector of the State's economy.

Accordingly, we urge the Commission to ensure that a complete risk analysis be undertaken regarding a federal decision that would result in the shipment of radioactive sludge from Molycorp's mine at Mountain Pass, California to the White Mesa Uranium Mill near Blanding, Utah. Such an analysis, moreover, must be undertaken per the requirements of the National Environmental Policy Act (NEPA). Specifically, we contend that a set of alternatives be developed to evaluate varying risks to human health and the environment associated with alternative shipping containers and highway routes including routes that avoid the Las Vegas Valley.

Thank you for consideration of these comments.

Sincerely


Allen Biaggi
Administrator

cc: Governor Kenny Guinn
Vicky Oldenburg, Legal and Policy Analyst, Office of the Governor
Mike Pieper, Director, State Washington D.C. Office
Paul Liebendorfer, Chief, Bureau of Federal Facilities
Robert R. Loux, NWPO
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