

August 27, 2012

Mr. Billy M. Ray, Project Manager
Rio Algom Mining LLC
P.O. Box 218
Grants, NM 87020

SUBJECT: COMMENTS ON THE RIO ALGOM MINING LLC'S ANNUAL SURETY FOR ITS
AMBROSIA LAKE FACILITY

Dear Mr. Ray:

The U.S. Nuclear Regulatory Commission (NRC) has reviewed the annual surety for the Rio Algom Mining LLC (licensee) Ambrosia Lake facility which was submitted on June 30, 2012. The NRC has the following comments on the surety submittal:

- Revise or justify labor and equipment overhead (Appendix C, NUREG-1620);
- Revise long term surveillance and monitoring fee (10 CFR Part 40, Appendix A, Criterion 10 and Appendix C, NUREG-1620);
- Incorporate a 15 percent contingency factor into the total cost estimate (Appendix C, NUREG-1620); and,
- If the cost estimate increases, increase the coverage provided by the financial surety instrument (10 CFR Part 40, Appendix A, Criterion 9).

Appendix C to NUREG-1620 indicates that the detailed cost estimate includes the following:

“Overhead costs for labor and equipment and contractor profit may be calculated as separate items or loaded into hourly rates. If included in hourly rates, the unit costs must identify the percentages applied for each area.”

In the licensee's submission, the Financial Assurance Cost Allocation Summary table includes a line titled “Overhead at 10%,” which is applied and added to the cost estimate subtotal. The 10 percent amount seems inadequate for labor and equipment overhead. The common usage of the term “overhead” includes those costs that are not directly traceable to any particular product produced or project conducted by the firm. Overhead typically includes “period costs” such as, for example, insurance, utilities, rent, supplies, property taxes, and depreciation, as well as the costs of any wages, salaries, and benefits incurred as a result of the corporation's officers and support staff (e.g., accounting staff, legal staff, janitorial staff, security staff). These costs also are commonly considered “administrative” costs.

Unless overhead costs are fully included, the cost estimate does not account for the full cost of third-party labor. In this case, the cost estimate would be lower than what a third party would incur to decommission the site. To ensure that the cost estimate accurately reflects third-party labor costs associated with decommissioning, Rio Algom should revise or justify its decommissioning cost estimate as necessary to reflect all overhead costs.

The requirement to include a long-term surveillance and monitoring fee is outlined in 10 CFR Part 40, Appendix A, Criterion 10:

“A minimum charge of \$250,000 (1978 dollars) to cover the costs of long-term surveillance must be paid by each mill operator to the general treasury of the United States or to an appropriate State agency prior to the termination of a uranium or thorium mill license. The total charge will be adjusted annually prior to actual payment to recognize inflation. The inflation rate to be used is that indicated by the change in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics.”

The licensee’s cost estimate includes \$814,000 for the long-term surveillance and monitoring fee. The following methodology was used to adjust the long-term surveillance and monitoring fee which results in a higher fee:

$$\frac{(\text{May 2012 CPI-U Average} - \text{December 1978 CPI-U Average})}{(\text{December 1978 CPI-U Average})} = 2.39$$

$$\$250,000 \times [1 + (2.39)] = \$847,500$$

Therefore, Rio Algom needs to revise the long-term surveillance and monitoring fee included in the cost estimate to \$847,500.

Appendix C to NUREG-1620 recommends that:

“The licensee should add a contingency amount to the total cost estimate for the final site closure. The staff currently considers a 15 percent contingency to be an acceptable minimum amount.”

The licensee’s cost estimate includes a contingency factor of 15 percent of anticipated *indirect* decommissioning costs only (i.e., site management costs, overhead costs, long term surveillance and monitoring fee). The resulting contingency is \$367,869. This approach excludes the costs associated with direct decommissioning cost elements, such as tailings reclamation, ground water, mill decommissioning, and lined pond closure. If the licensee had calculated the contingency on the total cost estimate (\$13,951,732, which includes the adjusted long-term surveillance and monitoring fee, then the contingency would be \$2,092,760. Rio Algom should incorporate a contingency factor of 15 percent of the total decommissioning cost into the estimate.

10 CFR Part 40, Appendix A, Criterion 9 requires licensees to obtain financial assurance for the full cost of decommissioning their facilities. Although the financial surety instrument in the amount of \$16,000,000 provided by Rio Algom exceeds the full amount of the current decommissioning cost estimate (\$14,286,101), the issues discussed above suggest that the current cost estimate is too low. Specifically, after adjusting for the changes suggested in Recommendations 1 through 3, the new decommissioning cost estimate is at least \$16,044,492.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions, please contact Tom McLaughlin at 301-415-4025, or via email, to Thomas.McLaughlin@nrc.gov.

Sincerely,

/RA/

Paul Michalak, Branch Chief
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Licensing Directorate
Materials Decommissioning Branch
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Docket No.: 40-8905
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B. Ray

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If you have any questions, please contact Tom McLaughlin at 301-415-4025, or via email, to Thomas.McLaughlin@nrc.gov.

Sincerely,

/RA/

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