



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

November 21, 1996

Mr. Marvin Freeman, Vice President
Rio Algom Mining Corp.
6305 Waterford Blvd., Suite 325
Oklahoma City, Oklahoma 73118

SUBJECT: REQUEST TO POSTPONE INITIATION OF THE REQUIREMENTS OF TIMELINESS
IN DECOMMISSIONING PURSUANT TO 10 CFR 40.42(f)

Dear Mr. Freeman:

The U.S. Nuclear Regulatory Commission staff has completed its review of Rio Algom Mining Corporation's (RAMC's) request of September 11, 1996, concerning the Timeliness in Decommissioning requirements of 10 CFR Part 40, as applied to RAMC's Smith Ranch in-situ leach (ISL) facility. Pursuant to 10 CFR 40.42(f), RAMC requested a five-year postponement in the required initiation of the decommissioning process for the Smith Ranch facility. Under the provisions of 10 CFR 40.42(f), the NRC may grant a request to delay or postpone initiation of the decommissioning process if it determines that such relief is not detrimental to the public health and safety and is otherwise in the public interest.

Based on its review, the NRC staff considers the request for a five (5) year postponement to be acceptable. The bases for the NRC staff's decision are discussed below.

1. Public health and safety/maintenance of facility.

RAMC has been authorized for commercial-scale operations at the Smith Ranch facility under NRC Source Material License SUA-1548, since March 1992, although it has chosen not to pursue such operations due to the depressed market for uranium. From March 1992 to mid-1996, commercial plant construction was given a low priority by RAMC corporate management. Pilot facility operations since March 1992 have consisted of (1) minimal aquifer bleed to maintain hydraulic control on unrestored groundwater in the pilot wellfield, (2) periodic processing of the bleedstream solutions for uranium removal, and (3) intermittent uranium precipitation and packaging.

Based on NRC staff observations during annual inspections, the site and pilot facility equipment have been and continue to be maintained in operable condition. Radiological and monitoring requirements have been met as prescribed by the license, and reporting by the licensee has been timely. No detrimental impacts to the public health and safety or the environment have been identified.

2. Record of regulatory compliance.

The NRC has conducted four site inspections of the Smith Ranch facility, under its NRC commercial license, SUA-1548. RAMC has not been cited for any

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violations or deviations based on these inspections. A review of inspection records for the three years prior to March 1992, when RAMC operated the pilot facility at the site, determined that RAMC was not cited for a violation or deviation during this period either.

3. Surety in place.

As required under Criterion 9 of Appendix A to 10 CFR Part 40, decommissioning and reclamation costs for the site are covered by a surety instrument that is reviewed annually by the NRC. This annual review is a basis by which the NRC staff ensures that the licensee's surety is adequate. If the licensee submits a revised reclamation plan, at such time as it receives approval to resume operation and/or construct additional facilities at the site, the licensee will be required to increase its surety accordingly.

RAMC's most recent surety update for the Smith Ranch facility was approved by the NRC on November 1, 1996.

4. "...in the public interest."

The site is covered by an adequate surety (See 3, above); therefore, the public interest in continued health and safety is protected from a financial default that could preclude decommissioning of the site. In addition, existing statutes oblige the Secretary of Energy to have a "continuing responsibility" for the domestic uranium industry, "to encourage use of domestic uranium." See 42 U.S.C. §§ 2201b and 2296b-3. The NRC recognizes that the viability of the industry is a Federal concern, that there is a public interest in uranium supply, and that this factor may be meaningful where the licensee has actively maintained the facility in a condition to operate, evidencing an honest expectation to operate and support industry viability. Because each facility's status will be judged on its own merits, the number of facilities in such a condition is not relevant. Neither, as was mentioned in my letter of June 3, 1996, to Anthony J. Thompson (enclosed), is the price of uranium, nor the economic business decisions of the licensee.

5. Planned resumption of operations.

In a press release dated January 29, 1996, Rio Algom Limited, RAMC's parent company, announced its plans to proceed with commercial-scale operations at the Smith Ranch facility, with a planned startup in the third quarter of 1997. Rio Algom Limited expects to spend approximately \$43 million in construction of the central processing plant, ion exchange facilities, and wellfields. Construction activities in anticipation of the 1997 startup commenced in May 1996.

M. Freeman

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If you have any questions regarding this letter, you may contact the NRC Project Manager, Mr. Robert Carlson, at (301) 415-8165.

Sincerely,

JS

Joseph J. Holonich, Chief
Uranium Recovery Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Docket No. 40-8964
Source Material License SUA-1548
Case Closed: L51462

Enclosure: As stated

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555-0001

June 3, 1996

Anthony J. Thompson, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037-1128

SUBJECT: TIMELINESS IN DECOMMISSIONING RULE

Dear Mr. Thompson:

I am responding to your March 25, 1996, letter on behalf of the National Mining Association (NMA). I hope that, by clarifying the U.S. Nuclear Regulatory Commission's position on one matter, I can move us closer to resolution of what appears to be the only issue remaining between us.

In your letter you ask us to clarify what we mean by "otherwise in the public interest." You are particularly concerned that paragraph 3.b of my response to comment 2 in my February 16, 1996, letter to you may mean that the NRC intends to judge the best economic interests of licensees.

We have no such intention. Paragraph 3 was meant to make two chief points, both of which are ultimately tied to the agency's safety mission, and not to any desire by the NRC to exercise judgement about private economic interests. First, compliance with safety standards is necessary for a time extension, but not sufficient. Second, the time extension must also be "otherwise in the public interest," and while adequate surety, of the sort discussed in the attachment to my February letter, is an important part of being "otherwise in the public interest," it is not the whole. Our chief concern here remains, as always, health and safety. We want to know that there are good reasons for believing that it is in the public interest to allow an inactive facility to remain unde commissioned.

In reaching a determination about the public interest, the NRC does not intend to judge whether continuation of standby status is in the applicant's best economic interests. Those interests might, or might not, coincide with the public interest. A public interest argument might be based, for example, on Federal concern for the domestic uranium mining industry. Existing statutes oblige the Secretary of Energy to gather information on the uranium mining industry and to have a "continuing responsibility" for the domestic industry, "to encourage use of domestic uranium." See 42 U.S.C. §§ 2201b and 2296b-3. Although this responsibility is not the NRC's, the NRC recognizes that the viability of the industry is a Federal concern. Paragraph 3.b in the enclosure to my February letter permits an applicant to argue that the policies behind the cited provisions support the application for time extension.

There may be other, similar, arguments that could be made, e.g., a public interest argument based on possible future needs of the electric utility industry or on national defense. Some of these arguments may depend on

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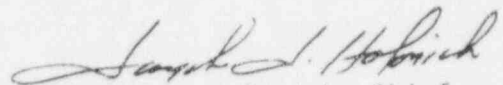
A. Thompson

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circumstances unique to a given applicant. Therefore, we have avoided attempting to define exhaustively "the public interest." The NRC's rule permits each applicant for a time extension to make the arguments most relevant to its circumstances.

I hope that this clarification removes NMA's remaining concern, and that this letter, together with your March 25, 1996, letter, my February 16, 1996, letter, and your August 25, 1995, letter, constitute a sufficient record to guide members of the NMA who want to file for time extensions. I would hope also that the same letters can serve as the basis for filing a motion for voluntary dismissal in the D.C. Circuit. I look forward to your response.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph J. Holonich".

Joseph J. Holonich, Chief
Uranium Recovery Branch
Division of Waste Management
Office of Nuclear Material
Safety and Safeguards