



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20133-0001

May 7, 1997

Mr. Marvin Freeman  
Quivira Mining Company  
6305 Waterford Boulevard  
Suite 325  
Oklahoma City, Oklahoma 73118

SUBJECT: REQUEST FOR DELAY IN INITIATION OF THE DECOMMISSIONING PROCESS,  
10 CFR 40.42(f)

Dear Mr. Freeman:

The U.S. Nuclear Regulatory Commission staff has completed its review of Quivira Mining Company's (QMC's) request dated August 9, 1996, concerning the Timeliness in Decommissioning requirements of 10 CFR Part 40, as applied to its Ambrosia Lake facility. Pursuant to 10 CFR 40.42(f), QMC requested a five-year postponement in the required initiation of the decommissioning process for the Ambrosia Lake mill. 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 QMC's request for a five (5) year postponement to be acceptable. Pursuant to 10 CFR 40.42(f), for the reasons given below, the staff determines that the relief requested is not detrimental to the public health and safety and is otherwise in the public interest.

1. Public health and safety/maintenance of facility.

The Ambrosia Lake mill began operation in 1958. Milling operations were suspended in 1986, and the mill has been on standby status since that date. Based on NRC staff observations during site visits and inspections, the site and facility equipment have been and continue to be maintained in good 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. NL17  
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2. Record of regulatory compliance.

Since 1986, QMC has been authorized to conduct activities at the Ambrosia Lake facility under NRC Source Material License SUA-1473. From June 1986 to the present, the facility has maintained a good inspection record, with only four Notices of Violation (NOV) of Severity Level IV having been issued, and none since 1992. The licensee promptly addressed, to the satisfaction of the NRC staff, the concerns raised by these notices.

## 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.

## 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 mining 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 mill in a condition to operate, evidencing an honest expectation to operate and support industry viability. Because each mill's status will be judged on its own merits, the number of mills 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.

QMC requests in its August 9, 1996, letter that the NRC approve delay of the decommissioning process for 5 years since it is QMC's intent to resume operation at the Ambrosia Lake mill should market conditions warrant.

If you have any questions regarding this letter, you may contact the NRC Project Manager for the Ambrosia Lake facility, Ken Hooks, at (301) 415-7777.

Sincerely,

(Original signed by)  
Joseph J. Holonich, Chief  
Uranium Recovery Branch  
Division of Waste Management  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 40-8905

Source Material License SUA-1473

Case Closed: L51441

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 undecommissioned.

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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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