



State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

Department of
Environmental Quality

Amanda Smith
Executive Director

DIVISION OF RADIATION CONTROL
Rusty Lundberg
Director

August 25, 2011

CERTIFIED MAIL
(Return Receipt Requested)

David C. Frydenlund
Vice President, Regulatory Affairs and Counsel
Denison Mines (USA) Corp.
1050 17th Street, Suite 950
Denver, CO 80265

Subject: Nitrate Investigation Revised Phase 2-5 Work Plan Rev. 2.0 dated August 18, 2011: **DRC Findings and Transmittal of a “Draft” Stipulated Consent Agreement Docket No. UGW09-03-A for Nitrate Corrective Action Plan**

Dear Mr. Frydenlund:

The Utah Division of Radiation Control (DRC) has reviewed the cover letter and specific sections of the White Mesa Mill Nitrate Investigation Revised Phases 2 through 5 Work Plan Rev. 2.0 dated August 18, 2011 (8/18/11 DUSA Work Plan). Specifically DRC has reviewed sections and tables pertinent to the study schedules, decision processes, and resolution of previous DRC concerns.

The intention of this review was to determine if the current timelines and content of the 8/18/11 DUSA Work Plan fully address and resolve all of the Executive Secretary’s comments regarding three previous DUSA submissions, namely:

1. The June 3, 2011 Phase 2 through 5 Work Plan Rev. 0 (DRC comments transmitted to DUSA on June 23, 2011);
2. The July 5, 2011 Phase 2 Detailed Work Plan (DRC comments transmitted to DUSA on July 7, 2011), and;
3. The August 4, 2011 Phase 2 through 5 Work Plan Rev. 1 (DRC comments submitted to DUSA on August 11, 2011).

Tolling Agreement Requirements

As you are aware, the current Tolling Agreement (Rev. 2) which was executed on June 30, 2011 (6/30/11 TA), page 6, items (e) and (f), requires DUSA to resolve all Co-Executive Secretary comments related to the above listed Work Plans before August 30, 2011 (6/30/11 TA, Item 9). To date, this has not been accomplished.

Additionally, the 6/30/11 TA, page 5; paragraph 4 required a level of detail in the Work Plan to be comparable to the level of detail included for the Phase 1 study in Attachment 1 of that TA. Note that this level of detailed required clarification of specific field activities and timelines for that phase of study and was the result of dialog and resolution of issues related to the study phase. In other words, the development of Attachment 1 was a means to mutually resolve any open DRC issues prior to moving forward. Part of the pre-requisites to the development of Attachment 1 included details on; 1. Specific sampling locations, 2. Sample collection procedures, and 3. Procedures for sample analysis quality assurance and data validation (QAP's).

As you are also aware, the intention of the original TA Rev. 0, (executed on December 20, 2010), was to defer monetary penalties which would accrue under the terms of the Stipulated Consent Agreement (SCA), Docket No. UGW09-03, and allow DUSA to develop plans and details for additional, agreed upon study, which could then be included in a revised SCA. Per correspondence, meetings and discussions, the replacement SCA would include time schedules under which all field activities associated with the study would be completed during 2011, and that a revised "Contamination Investigation Report" would be submitted to DRC by June, 2012.

Since then, the TA has been revised twice to allow DUSA to finalize the details of additional contaminant investigation, including a phased approach and schedule, to the satisfaction of the Co-Executive Secretary. As you are aware, the current TA Revision 2 will expire on August 31, 2011. The tolling period now comprises over 8 months.

Per review of the 8/18/11 DUSA Work Plan, the Executive Secretary has determined it evident that a finalized Plan and Schedule, that meets our satisfaction, and which would allow the preparation of a replacement SCA, is not possible at this time.. It is also apparent from the 8/18/11 DUSA Work Plan that even if the TA was extended (a third time) for a period of 30 days, it is unlikely that the multiple open issues in the work plan would be resolved in time to allow the parties to construct a replacement SCA before its expiration.

Unresolved and Lacking Details in the 8/18/11 Work Plan

In the June 23, 2011 DRC comments, comment 6, DRC specifically requested that a draft report for Phase 1 sample results be submitted to DRC prior to, or concurrent with Revision 1.0 of the Phase 2-5 work plan so that the Phase 1 data could be used to justify the Phase 3 sampling locations (bedrock cores). In the August 4, 2011 Work Plan, DUSA responded that they had not received “much” of the data from the “Phase 2” source sampling (sic). This DUSA statement/response is confusing and doesn’t resolve the 6/23/11 DRC comment. The 6/23/11 DRC request was consistent with the tolling agreement requirements & expectations.

A similar request, which provided an option to resolve the lacking data was made in the August 11, 2011 DRC comments, comments 6 and 7. DRC requested that either: 1. The data and justifications from the Phase 1 sampling be submitted with the revised August 18, 2011 Work Plan to support determination of Phase 3 boring locations or, 2. Alternatively, that the Work Plan specify bedrock core drilling and sampling at all Phase 1B (onsite source) locations.

The August 18, 2011 Denison response reported that the data would be submitted on September 16, 2011. DUSA also responded that the Phase 3 boring locations would not be determined until after DRC review of the data, statistics and mass balance calculations. Thus, per DRC review, it is evident that additional correspondence/meetings would be required and therefore a 30 day tolling agreement extension would likely not suffice to resolve the issue of Phase 3 boring locations. This DUSA response ignores the deadline requirements of the 6/30/11 TA and seems to assume that additional extensions of the TA expiration date will accommodate the DUSA schedule.

To avoid the delays in finalizing details for Phase 3, DUSA could have opted to drill bedrock cores at each of the Phase 1B (onsite source) location and could have included these locations in the 8/18/11 Work Plan as specifically provided in the August 11, 2011 DRC comments.

It also appears that the Intera site conceptual model (Part 2.0 of the 8/18/11 DUSA Work Plan) anticipates that most (>90%) of the Phase 1B locations will need bedrock evaluation of nitrate, chloride and ammonium when based on the criteria for bedrock coring, as summarized in Attachment 1 of the TA (sample results are above two times the background concentration), and as stated in the data needs in Part 2.3.3.1 “*Potential Nitrate/Chloride Source Locations*” of the 8/18/11 Work Plan. As a result, it appears that Intera has captured most of the Phase 1B locations for deep bedrock coring in Phase 3. Hence, there is no need for the delay the bedrock coring at these locations.

Per a July 11, 2011 e-mail from Jo Ann Tischler it was stated that Phase 2 sampling would begin on July 18, 2011. However, per review of the 8/18/11 DUSA Work Plan (Table 1 Schedule), DUSA states it will not begin Phase 2 Groundwater Sampling until October 6, 2011 and will not submit results until November 29, 2011. This is confusing. No explanation has been provided by DUSA why the Phase 2 sampling was not conducted in July. There is no reason for this delay, if done according to the previous schedule these results would have already been received by DUSA (which should have been shared with DRC) and the results should have been included in the decision process for the investigation as well as the DUSA evaluation of military and agricultural

land uses as a potential source of the contamination. As you recall, DRC provided conditional approval for the Phase 2 sampling on July 18, 2011 in order to accommodate the “accelerated” DUSA schedule to conduct water sampling at that time.

DRC noted that per the 8/18/11 DUSA Work Plan, Table 1 Schedule, the Phase 4 stable isotopes in water sampling will not begin until October 28, 2011. To date, DUSA has not provided a reason for this delay. Because the Phase 4 water sampling is from existing wells, which have been specified in Table 3 of the 8/18/11 Work Plan, this work could be completed much sooner.

DRC noted that the Phase 5 isotopic soil sampling is not planned until April 23, 2012. This is well outside of the agreement that all field work be completed during the 2011 calendar year. DRC .

The August 11, 2011 DRC comments, comment 11, requested that DUSA include the Quality Assurance Plans (QAP’s) for all phases of study. Note that although the tolling agreement allowed a later submittal of the QAP’s, it was noted and stated in the DRC August 11, 2011 comments, comment number 11, that the Phase 2-5 Work Plan could not be fully evaluated without prior submission of the QAP’s. To date, these QAPs have yet to be provided.

DUSA did not resolve this comment/issue other than stating that preparation of the QAP on short notice was unfeasible. DRC notes that per Table 1 of the 8/18/11 Work Plan, DUSA does not plan to submit the Phase 5 QAP until February 16, 2012. This submission date is approximately 5 ½ months after expiration of the Tolling Agreement and is therefore unreasonable.

Draft Replacement Stipulated Consent Agreement, Docket No. UGW-09-03-A (Corrective Action Plan)

Based on the above deficiencies in the 8/18/11 Work Plan, the development of a replacement SCA for continued contaminant investigation activities is not supported. Additionally, the Executive Secretary does not foresee that a 30-day extension of the TA expiration date will accommodate finalization of the Phase 2 through 5 Work Plan details, nor would a further extension allow timely preparation of a replacement SCA.

Additionally, based on DRC review of the “Preliminary Results” of Phases 1A, 1B, and 1C, submitted to the Executive Secretary, via e-mail from Jo Ann Tischler on August 1, 2011, it appears that it will be extremely difficult for DUSA to demonstrate that the White Mesa Mill Site has not caused at least part of the contamination found in the nitrate and chloride plume(s) beneath the Mill.

Based on these findings, and in order to provide an option to proactively resolve the CIR deficiencies, a “Draft” Stipulated Consent Agreement, Docket No. UGW09-03-A is attached for your consideration/signature. This agreement includes terms and conditions for DUSA development and implementation of a “corrective action plan,” to include characterization and remediation of the nitrate contamination plume.

David C. Frydenlund

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Understanding that these issues need to be resolved prior to the expiration of the 6/30/11 TA next week, we would like to arrange a meeting or conference call with you as early as possible next week. Please contact Loren Morton (801) 536-4262 or Tom Rushing (801) 536-0080 to arrange a time and other details for this discussion.

Sincerely,

UTAH WATER QUALITY BOARD

Rusty Lundberg
Co-Executive Secretary

RL:TR:tr

Enclosure: Draft Stipulated Consent Agreement, Docket No. UGW09-03 A

cc: Melissa Hubbell, Utah Attorney General's Office, Environment

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