



Secretary David Martin
New Mexico Environment Department
1190 St. Francis Drive
Suite N4050
Santa Fe, New Mexico 87505

VIA ELECTRONIC MAIL and
CERTIFIED MAIL, RETURN RECEIPT
REQUESTED

Re: Hydro Resources, Inc., DP-558

June 27, 2011

Dear Secretary Martin:

Based on documents obtained from a recent Inspection of Public Records Act (“IRPA”) request, it has come to my attention that high-ranking employees of the New Mexico Environment Department have been improperly influencing regulatory decisions of the Groundwater Quality Bureau, contrary to the mandates of the Water Quality Act and its implementing regulations. These improprieties have taken place in the context of the above discharge permit application.

HRI submitted an application to the New Mexico Environment Department (“NMED”) Groundwater Bureau on April 1, 2011, seeking renewal of DP-558. NMED notified the public that it received HRI’s application on May 13, 2011. DP-558 was originally approved by the Environmental Improvement Division on November 2, 1989, and last renewed by NMED in 1996. DP-558 allows Hydro Resources, Inc. (“HRI”) to conduct *in situ* leach (“ISL”) uranium mining at the southeast ¼ section of Section 8, Township 16 N, Range 16 W, in the community of Church Rock (“Section 8”).

By letter dated March 23, 2011, Groundwater Bureau Chief, William Olson, notified HRI that its renewal application was timely “within the meaning of 20.6.2.3016.F NMAC”. A copy of that letter is attached hereto as Attachment 1. Mr. Olson properly instructed HRI that NMED must approve the renewal of DP-558 before HRI could begin mining at Section 8. *Id.* On April 6, 2011, however, Mr. Olson received an email from HRI’s representative complaining that HRI should be able to begin mining at Section 8 with its current discharge permit. A copy of that email is attached as Attachment 2.

On May 26, 2011, while Mr. Olson was on vacation, Deputy Secretary Solomon summoned George Shuman, an NMED technical staffer, to his office. During this meeting, Mr. Solomon instructed Mr. Shuman to re-issue the letter without the “problematic sentence” because the restriction on HRI being able to mine prior to receiving approval of its renewal

application was “hindering Hydro Resource’s ability to obtain financing for the mine development project”. Mr. Shuman re-issued the letter at Mr. Solomon’s direction on May 27, 2011. A copy of that letter is attached as Attachment 3. Mr. Shuman summarized his meeting with Mr. Solomon in an email to Mr. Olson. A copy of that email is attached as Attachment 4. Moreover, Mr. Solomon’s involvement in re-issuing the letter is evidenced by another email between him and Mr. Shuman. A copy of that email is attached as Attachment 5. This sequence of events apparently took place without Mr. Olson’s knowledge or consent. *See*, Mr. Olson’s memo to file, attached as Attachment 6.

While Mr. Olson’s statement that DP-558 is in “timely renewal” is factually inaccurate and legally insupportable, he properly instructed HRI that it could not begin mining at Section 8 until NMED had approved its renewal application. According to the Water Quality Act regulations, NMED may issue a discharge permit renewal for the term of five years after the discharge has begun - in the case of new discharges - but in no event may issue a discharge permit for longer than seven years. § 20.6.2.3109.H.4 NMAC. In this case, HRI initially received DP-558 on November 2, 1989. HRI timely filed for a renewal in 1996 and its renewal application was approved on August 16, 1996. *See*, HRI’s DP-558 Application, Vol.1, p. 5. However, neither HRI’s discharge permit application nor NMED’s records contain any indication that HRI applied for or received renewals in 2003 or 2010. Indeed, in the same IPRA response that revealed that Deputy Secretary Solomon was improperly interfering in the regulatory process, the NMED produced a timeline (attached hereto as Attachment 7) indicating that HRI had failed to respond in 2002 to notice that DP-558 was about to expire and failed to renew its discharge permit at that time.

Because HRI did not apply for renewal of DP-558 in 2003 or 2010 as required by § 20.6.2.3109.H.4 NMAC, it does not have a valid discharge permit. Under WQCC regulations, therefore, HRI may not begin mining at Section 8, per Mr. Olson’s instructions. Mr. Solomon’s directive to rescind Mr. Olson’s March 23 letter to accommodate HRI’s financial concerns was not only improper under § 3109.H.4, but also subverts the NMED’s regulatory process and the purposes of the Water Quality Act. More important, it also raises significant concerns about the Department’s ability to fairly arbitrate HRI’s discharge permit application and base any decision on the technical merits rather than HRI’s financial needs.

On behalf of Eastern Navajo Diné Against Uranium Mining (“ENDAUM”), I hereby demand that 1) NMED issue a notice to HRI that DP-558 is not in timely renewal pursuant to § 20.6.2.3109.H.4 NMAC and 2) prohibit HRI from conducting any ISL mining or ISL related activities at Section 8 until NMED has made a determination about its discharge permit application. If NMED does not notify HRI that it has not timely renewed DP-558 and therefore may not begin mining operations by 5 p.m., July 5, 2001, ENDAUM will pursue all legal remedies available to it.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Eric Jantz
Staff Attorney

cc: Patrick Rankin
Office of the General Counsel
U.S. Environmental Protection Agency, Region VI

Bill Olson
Groundwater Bureau Chief

Charles DeSaillen
NMED Office of the General Council

David A. Taylor
Navajo Nation Department of Justice



SUSANA MARTINEZ
GOVERNOR

JOHN A. SANCHEZ
LIEUTENANT GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Ground Water Quality Bureau
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DAVE MARTIN
SECRETARY

RAJ SOLOMON, P.E.
DEPUTY SECRETARY

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

March 23, 2011

Mr. Mark S. Pelizza, Senior Vice President for Health, Safety, Environment, and Public Affairs
Hydro Resources, Inc.
405 State Highway 121 Bypass
Building A, Suite 110
Lewisville, TX 75067

RE: Response to your letter dated March 2, 2010 (*sic*) regarding status of DP-558

Dear Mr. Pelizza:

Your above-referenced letter requests clarification of the current status of DP-558 with regard to the New Mexico Environment Department's ("NMED") letter to you dated July 29, 2010. Specifically, your letter requests a statement that Hydro Resources, Inc. ("HRI") submitted a timely renewal application as was previously concluded in an August 16, 1996 letter from NMED.

NMED records indicate that DP-558 was last issued in 1989 and that HRI submitted a renewal application for DP-558 on July 1, 1996. NMED has determined that the renewal application was timely within the meaning of 20.6.2.3106.F NMAC because the application was submitted within 120 days prior to the date of expiration and HRI was not in violation of DP-558 on the date of expiration. This conclusion remains unchanged from NMED's August 16, 1996 letter.

Further work on DP-558 renewal will await NMED's receipt of HRI's updated renewal application and supporting material as has been discussed during previous meetings with NMED personnel. HRI must receive a renewal of DP-558 from NMED before mining can commence.

Please do not hesitate to contact me at (505) 827-2919 or Mary Ann Menetrey, Manager of the Mining Environmental Compliance Section at (505) 827-2944 if you should have any questions.

Sincerely,

cc. William C. Olson
Chief, Ground Water Quality Bureau

Copies:

David Martin, NMED Secretary
Raj Solomon, NMED Deputy Secretary
David L. Mayerson, Permit Lead
Mary Ann Menetrey, MECS Manager

WCO/dlm

Attachment 1

Olson, Bill, NMENV

From: Bob Gallagher [bobgallagher93@yahoo.com]
Sent: Wednesday, April 06, 2011 12:59 PM
To: Olson, Bill, NMENV
Cc: Mark Pelizza
Subject: Letter Dated March 25, 2011

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Bill,

We are in receipt of your letter dated March 23, 2011 regarding the status of DP-558. In the last sentence in the next to the last paragraph you state, "**HRI must receive a renewal of DP-558 from NMED before mining can commence.**" As we talked about on the phone, it is the position of URI that this sentence is in direct contradiction with NMED Regulation 20.6.2.3106 F. This section clearly states that our permit "**shall not expire until the application for renewal has been approved or disapproved. A discharge permit continued under this provision remains fully effective and enforceable.**"

On behalf of my client URI, we respectfully request a clarification from NMED in reference to above mentioned sentence. It is our desire to see the sentence eliminated, which would be in compliance with the existing regulations, or to receive a complete clarification of NMED position concerning this subject matter.

To that extent, Mark Pelizza will be in the state next week and Mark and myself would look forward to sitting down with you and further discussing the subject matter. If you are available Tuesday March 12th, we would be delighted to come to Santa Fe to visit with you, or we could make other arrangements too fit your schedule.

Thanks.

Attachment 2



NEW MEXICO
ENVIRONMENT DEPARTMENT



Ground Water Quality Bureau

SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lieutenant Governor

Harold Runnels Building
1190 St. Francis Drive
P.O. Box 5469, Santa Fe, NM 87502-5469
Phone (505) 827-2918 Fax (505) 827-2965
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DAVE MARTIN
Secretary
RAJ SOLOMON, P.E.
Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

~~March 23, 2011~~

(Revised and reissued May 27, 2011)

Mr. Mark S. Pelizza, Senior Vice President for Health, Safety, Environment, and Public Affairs
Hydro Resources, Inc.
405 State Highway 121 Bypass
Building A, Suite 110
Lewisville, TX 75067

RE: Response to your letter dated March 2, 2010 (sic) regarding status of DP-558

Dear Mr. Pelizza:

Your above-referenced letter requests clarification of the current status of DP-558 with regard to the New Mexico Environment Department's ("NMED") letter to you dated July 29, 2010. Specifically, your letter requests a statement that Hydro Resources, Inc. ("HRI") submitted a timely renewal application as was previously concluded in an August 16, 1996 letter from NMED.

NMED records indicate that DP-558 was last issued in 1989 and that HRI submitted a renewal application for DP-558 on July 1, 1996. NMED has determined that the renewal application was timely within the meaning of 20.6.2.3106.F NMAC because the application was submitted within 120 days prior to the date of expiration and HRI was not in violation of DP-558 on the date of expiration. This conclusion remains unchanged from NMED's August 16, 1996 letter.

NMED is in receipt of HRI's updated renewal application and is currently conducting technical review of the application.

Please do not hesitate to contact me at (505) 827-2919 or Mary Ann Menetrey, Manager of the Mining Environmental Compliance Section at (505) 827-2944 if you should have any questions.

Sincerely,

William C. Olson
Chief, Ground Water Quality Bureau

Copies: David Martin, NMED Secretary
Raj Solomon, NMED Deputy Secretary
David L. Mayerson, Permit Lead
Mary Ann Menetrey, MECS Manager

WCO/dlm,gs

Attachment 3

Olson, Bill, NMENV

From: Schuman, George, NMENV
Sent: Wednesday, June 01, 2011 3:59 PM
To: Olson, Bill, NMENV
Subject: Revision and reissuance of HRI letter

Bill:

As you requested, following is a summary of actions regarding the reissuance of a March 23, 2011 letter to Hydro Resources:

On the morning of Thursday May 26, I received a voice mail message and a subsequent phone call from Anna Serrano (Secretary's Office) informing me that Deputy Secretary Raj Solomon requested to meet with me. I met with the Deputy Secretary that morning in his temporary office space on the third floor of the Runnels Building. We discussed a March 23, 2011 letter from the GWQB to Hydro Resources regarding DP-558. We discussed language in the letter stating that Hydro Resources must receive a renewal of the Discharge Permit before mining could commence under DP-558. The Deputy Secretary also inquired about letter language indicating that Hydro Resources had submitted a timely application for renewal of DP-558 and was not in violation of the permit on the date of expiration, as the statement regarding the need to obtain a renewal permit prior to commencement of mining seemed to conflict with the language of 20.6.2.3106.F which allows for the continuation of permits under such circumstances.

The Deputy Secretary indicated that the sentence pertaining to the need to obtain a renewal permit for DP-558 prior to commencement of mining was hindering Hydro Resource's ability to obtain financing for their mine development project and directed me to reissue the March 23 letter absent the problematic sentence, or to propose alternative language to the problematic sentence. Upon discussion with Mary Ann Menetrey and David Mayerson, I removed the problematic sentence and added language stating that NMED was in receipt of Hydro Resource's updated renewal application and was currently conducting technical review of the updated application. I forwarded the revised letter to the Deputy Secretary during the afternoon of May 26 via email and received an email response directing me to issue the letter. I signed the letter on behalf of Bill Olson and issued the revised letter on May 27.

George

Attachment 4

Olson, Bill, NMENV

From: Schuman, George, NMENV
Sent: Wednesday, June 01, 2011 4:01 PM
To: Olson, Bill, NMENV
Subject: FW: Revised HRI letter

From: Solomon, Raj, NMENV
Sent: Thursday, May 26, 2011 5:42 PM
To: Schuman, George, NMENV
Subject: RE: Revised HRI letter

The letter looks good. Please sign and email me a pdf version of the signed copy.

Raj Solomon, P.E.
Deputy Cabinet Secretary
New Mexico Environment Department
1190 St. Francis Dr.
Santa Fe, NM 87502
Phone: (505) 827-2855
Fax: (505) 827-2836

From: Schuman, George, NMENV
Sent: Thursday, May 26, 2011 4:08 PM
To: Solomon, Raj, NMENV
Subject: Revised HRI letter

Raj,

Here is the revised letter. I need to catch the 4:15 train, but will be back at 6:30 tomorrow morning.

George

Attachment 5



SUSANA MARTINEZ
GOVERNOR

JOHN A. SANCHEZ
LIEUTENANT GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
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DAVE MARTIN
SECRETARY

RAJ SOLOMON, P.E.
DEPUTY SECRETARY

MEMORANDUM

TO: Hydro Resources Inc. (HRI) Discharge Permit File DP-558

FROM: William C. Olson, Bureau Chief, Ground Water Quality Bureau (GWQB)

DATE: June 2, 2011

SUBJECT: NMED MAY 27, 2011 LETTER TO HRI

This memorandum is intended to clarify correspondence in the permitting record for the HRI discharge permit DP-558 file.

On May 27, 2011, while I was on vacation, a revised and reissued letter was sent to HRI under my signature and signed on my behalf without my knowledge, review or approval. This letter revised and removed language in a New Mexico Environment Department (NMED) March 23, 2011 letter, authored by myself in my capacity as the Bureau Chief of the GWQB, to HRI regarding the timely renewal status of HRI's discharge permit for DP-558.

I was involved in the preparation, review and approval of the original March 23, 2011 letter and authorized the March 23, 2011 letter to be signed on my behalf. However, I did not authorize, review or approve of the revised and reissued NMED letter of May 27, 2011, nor did I authorize a letter to be signed on my behalf revising the language of my March 23, 2011 letter. For the record of HRI discharge permit DP-558, the May 27, 2011 NMED letter to HRI was issued without the knowledge of the GWQB Bureau Chief and is not an action of the GWQB Bureau Chief.

Mayerson, David, NMENV

From: Schoeppner; Jerry, NMENV
Sent: Monday, March 14, 2011 09:57
To: Mayerson, David, NMENV
Subject: FW: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

Categories: cleared

FYI

Jerry

From: Schoeppner, Jerry, NMENV
Sent: Monday, June 28, 2010 8:20 AM
To: Olson, Bill, NMENV
Cc: Leavitt, Marcy, NMENV; Cottrell, Sarah, NMENV; Menetrey, Mary Ann, NMENV; Hughes, Tracy, NMENV; Bardino, Marissa, NMENV
Subject: RE: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

DP-558 was apparently renewed in June, 1998. According to the renewal notification letter NMED sent HRI on September 27, 2002, DP-558 was renewed on June 1, 1998. However, the actual renewal letter and DP is not in the file.

Jerry

From: Olson, Bill, NMENV
Sent: Friday, June 25, 2010 8:54 AM
To: Schoeppner, Jerry, NMENV
Cc: Leavitt, Marcy, NMENV; Cottrell, Sarah, NMENV; Menetrey, Mary Ann, NMENV; Hughes, Tracy, NMENV; Bardino, Marissa, NMENV
Subject: RE: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

Was the DP actually renewed in 1996? Is that the basis for saying it would expire in 2002?

Bill Olson
Bureau Chief
Ground Water Quality Bureau
NM Environment Department
P.O. Box 5469
Santa Fe, N.M. 87502
(505) 827-2919

From: Bardino, Marissa, NMENV
Sent: Thursday, June 24, 2010 2:47 PM
To: Schoeppner, Jerry, NMENV; Olson, Bill, NMENV
Cc: Leavitt, Marcy, NMENV; Cottrell, Sarah, NMENV; Menetrey, Mary Ann, NMENV; Hughes, Tracy, NMENV
Subject: RE: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

Thanks so much Jerry. I also talked to Mary Ann.

From: Schoeppner, Jerry, NMENV
Sent: Thursday, June 24, 2010 12:01 PM
To: Olson, Bill, NMENV; Bardino, Marissa, NMENV
Cc: Leavitt, Marcy, NMENV; Cottrell, Sarah, NMENV; Menetrey, Mary Ann, NMENV

Subject: RE: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

I've reviewed the file and this is what I found related to HRI's request for renewal of DP-558.

11/02/89	DP-558 issued, expiration date of 11/2/1996
09/28/92	HRI requests modification to add Section 17 to permit
10/07/94	Secretary signs Decision and Order approving modification, expiration date 11/2/1996
04/01/96	Letter from EID to HRI, notice that DP-558 will expire soon
07/01/96	HRI submits renewal and requests confirmation that it is timely
08/01/96	NMED letter to HRI, renewal was timely
09/27/02	Letter from EID to HRI, notice that DP-558 will expire soon

According to the file, HRI did not respond to the 9/27/02 notice apparently due to litigation, but it is unclear if the 9/27/02 letter was valid during on-going litigation. If the notice is valid, then it appears that the permit has expired.

Jerry

From: Olson, Bill, NMENV
Sent: Thursday, June 24, 2010 11:11 AM
To: Bardino, Marissa, NMENV
Cc: Leavitt, Marcy, NMENV; Cottrell, Sarah, NMENV; Schoeppner, Jerry, NMENV; Menetrey, Mary Ann, NMENV
Subject: RE: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

I don't know the full permit status. Technically the permit may be a valid existing permit if a renewal was filed 120 days in advance of the permit expiration. If not renewed, the permit expires and a new application is needed. However, the facility was never built so a renewal permit will include changes based upon our current knowledge of these types of operations. Mary Ann or Jerry will know more.

Bill Olson
Bureau Chief
Ground Water Quality Bureau
NM Environment Department
P.O. Box 5469
Santa Fe, N.M. 87502
(505) 827-2919

From: Bardino, Marissa, NMENV
Sent: Thursday, June 24, 2010 10:55 AM
To: Olson, Bill, NMENV
Cc: Leavitt, Marcy, NMENV; Cottrell, Sarah, NMENV; Schoeppner, Jerry, NMENV; Menetrey, Mary Ann, NMENV
Subject: RE: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

Thanks Bill. So can you tell me if the past renewal is not valid anymore and if it needs to be updated with a new application. That is basically what I need. Thanks.

From: Olson, Bill, NMENV
Sent: Thursday, June 24, 2010 10:52 AM
To: Bardino, Marissa, NMENV
Cc: Leavitt, Marcy, NMENV; Cottrell, Sarah, NMENV; Schoeppner, Jerry, NMENV; Menetrey, Mary Ann, NMENV
Subject: RE: Federal Appeals Court Gives Go Ahead to Uranium Mining in Churchrock

You can drop Dana and David from this topic as it is a discharge permitting issue under GWQB's Mining Environmental Compliance Section.

It is my understanding from Mary Ann that we have a DP renewal application on this from the past that was not acted on because of the litigation and that we have issues we need to address in any permit renewal. I don't recommend saying much specific about issues what we need to look at during DP renewal at this time except for generalities.

Mary Ann/Jerry – Can you please get with Marissa on more background.