



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

MAY 03 2010

In Reply: AIR-5
Refer To: Docket No. R9-10-08

Mr. Ron F. Hochstein
President
Denison Mines Corp.
Atrium on Bay
595 Bay Street, Suite 402
Toronto, ON
Canada
M5G 2C2

Re: Denison Mines Corp.
Arizona 1 Mine

Dear Mr. Hochstein:

Enclosed for your information is a Finding of Violation ("FOV") issued by the United States Environmental Protection Agency ("EPA") to Denison Mines Corp. ("Denison"), concerning the operation of the Arizona 1 Mine, a uranium mine located approximately 35 miles from Fredonia, Arizona ("the Facility"). The Arizona 1 Mine is located within the jurisdiction of the Arizona Department of Environmental Quality ("ADEQ").

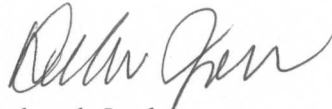
The FOV alleges that Denison has violated Section 112 of the Clean Air Act and EPA's implementing regulations, the National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 C.F.R. Part 61, Subpart A, General Provisions, and 40 C.F.R. Part 61, Subpart B, "National Emission Standards for Radon Emissions from Underground Uranium Mines." Specifically, the FOV alleges that Denison has failed to apply for and obtain an approval to construct/modify prior to ventilating the Arizona 1 Mine; failed to provide notifications regarding startup of the mine; and failed to obtain EPA approval for an alternative test method to determine compliance with the emission standard set forth in 40 C.F.R. §61.22.

If Denison wishes to discuss the FOV, you may request a conference with EPA. The conference would afford Denison an opportunity to present information bearing on

the findings of violation, the nature of the violations, any efforts you have taken to achieve compliance, and the steps you propose to take to achieve compliance.

Please contact Kara Christenson, Office of Regional Counsel, at (415) 972-3881, to request a conference. Such request should be made as soon as possible, but in any event no later than 10 working days after receipt of this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deborah Jordan".

Deborah Jordan
Director, Air Division

Enclosure

cc: Ira Domsy, ADEQ
David Frydenlynd, Esq., Denison Mines Corp.
Bradley Glass, Esq., Gallagher and Kennedy

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter of:)	Docket No. R9-10-08
)	
Denison Mines Corp.)	Finding and Notice of Violation
Arizona 1 Mine)	
)	
Proceeding Under Section 113(a),)	
<u>Clean Air Act, As Amended</u>)	

This Finding and Notice of Violation ("FOV") is issued to Denison Mines Corp. ("Denison") for violations of the Clean Air Act ("CAA" or "Act"), as amended, 42 U.S.C. §§ 7401-7671q, at its uranium mining operation located approximately 35 miles from Fredonia, Arizona. This FOV is issued under the authority and at the discretion of the Director of the Air Division for EPA, Region IX.¹

GENERAL STATUTORY AND REGULATORY BACKGROUND

1. Congress has enacted section 112 of the Act to require EPA to regulate sources of hazardous air pollutants ("HAPs") and to establish National Emission Standards for Hazardous Air Pollutants ("NESHAP"). 42 U.S.C. §7412.
2. To implement and enforce the NESHAP program, EPA promulgated 40 C.F.R. Part 61, Subpart A, General Provisions. Subpart A contains the following relevant provisions:
 - a) Section 61.05, "Prohibited Activities," including subsection 61.05(a), which prohibits the

¹ Section 113(a)(1) requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify a person in violation of a state implementation plan. This FOV alleges violations of sections 112 of the Act; therefore, it is not a statutory prerequisite to enforcement. We are issuing this FOV to provide the source with notice of EPA's findings.

owner or operator of a regulated source from constructing or modifying a regulated source without first obtaining written approval from EPA. *See*, 38 Fed. Reg. 8826 (April 6, 1973); 50 Fed. Reg. 46291 (Nov. 7, 1985).

- b) Section 61.07, which requires the owner or operator of a new or modified source to submit an application to EPA for approval of the construction of any new source or modification of any existing source. Section 61.07 further specifies that the application must be submitted before the construction or modification is planned to commence. *See*, 50 Fed. Reg. 46291 (Nov. 7, 1985).
 - c) Section 61.08, which requires EPA to grant or deny the application within 60 days of receipt of sufficient information to evaluate an application under §61.07. *See id.*
 - d) Section 61.09, which requires the owner or operator of an affected source to provide EPA with (i) notification of the anticipated date of initial startup not more than 60 days nor less than 30 days before that date; and (ii) notification of the actual date of startup within 15 days of that date. *Id.*
3. On December 15, 1989, EPA promulgated 40 C.F.R. Part 61, Subpart B, "National Emission Standards for Radon Emissions from Underground Uranium Mines." 54 Fed. Reg. 51654, 51694.
 4. Subpart B applies to owners and operators of active underground uranium mines that are designed to mine over 100,000 tons of ore during the life of the mine or 10,000 tons of ore annually (unless it can be demonstrated to EPA that the mine will not exceed total ore production of 100,000 tons during the life of the mine). 40 C.F.R. §61.20.
 5. Section 61.21(a) of Subpart B defines an "active" underground uranium mine as one that is "being ventilated to allow workers to enter the mine for any purpose." 40 C.F.R. §61.21(a).

6. Section 61.22 of Subpart B provides that emissions of radon-222 cannot cause any member of the public to receive in any year an effective dose equivalent of more than 10 millirem (“mrem”). 40 C.F.R. §61.22.
7. Section 61.23 of Subpart B provides that compliance with the standard in 40 C.F.R. §61.22 must be determined using EPA’s COMPLY-R computer model based upon inputs developed through testing conducted in accordance with 40 C.F.R. Part 61, Appendix B, Method 115. 40 C.F.R. §61.23(a).
8. EPA Method 115 specifies that the use of Method 114, Test Method A-7 may be used only with EPA’s prior approval. 40 C.F.R. Part 61, Appendix B, Method 115, §1.2.3.

GENERAL FINDINGS OF FACT

9. Denison Mines Corp. owns and operates the Arizona 1 Mine, which is located in north-central Arizona, approximately 35 miles south of Fredonia, Arizona.
10. In August 1988, Energy Fuels Nuclear, Inc, obtained an authorization from EPA entitled, “Approval to Construct/Modify an Underground Uranium Mine” (“1988 Approval”) pursuant to EPA’s authority under 40 C.F.R. Part 61 authorizing construction and operation of the Arizona 1 Mine.
11. The 1988 Approval contains the following provisions:
 - a) Permit Condition I., “Permit Expiration,” Par. A.: “This Approval to Construct/Modify will remain in effect as long as the Arizona 1 Mine is operated as an active underground uranium mine by the permittee d.b.a. Energy Fuels Nuclear, Inc. . . . [T]he Approval is not transferable to another owner or operator.”
 - b) Permit Condition I., “Permit Expiration,” Par. B.: “An ‘active mine’ means an underground uranium mine from which ore or waste material is currently removed by

conventional methods. If the mine becomes inactive, the Approval expires.”

12. The mine was inactive from the early 1990’s until late in 2009.
13. In June 2008, Denison submitted to EPA a letter regarding Denison’s intention to reactivate the mine (“June 2008 Letter”). The June 2008 Letter states that the Arizona 1 Mine was projected to produce 182,500 tons of uranium ore per year and is therefore subject to 40 C.F.R. Part 61, Subpart B. The June 2008 Letter also states that Denison intended to “reactivate the mine by rehabilitating the surface facilities and further developing the underground workings using the existing shaft.”
14. In September 2009, the Arizona Department of Environmental Quality (“ADEQ”) issued an air quality permit to the mine.
15. EPA has not delegated to ADEQ the authority to implement or enforce 40 C.F.R. Part 61, Subpart B.
16. In late 2009, Denison began ventilating the mine, causing the release of radon to the air.
17. In approximately December 2009, Denison began removing ore from the mine.
18. In March 2010, Denison submitted an annual report to EPA stating that Denison was using EPA Method 114, Test Method A-7 to determine compliance.

FINDINGS OF VIOLATION

Finding of Failure to Comply with Application Requirement

19. The 1988 Approval is no longer valid or in effect because of the long period of inactivity of the mine and because of the transfer of ownership.
20. ADEQ’s September 2009 permit is not a valid authorization as to the requirements of 40 C.F.R. 61.08 because ADEQ is not delegated to implement 40 C.F.R. Part 61, Subpart B and therefore cannot authorize or approve the construction or modification of sources regulated

under 40 C.F.R. Part 61, Subpart B.

21. Denison was required to submit an application to EPA for an approval to construct/modify the Arizona 1 Mine prior to constructing/modifying the mine. 40 C.F.R. §61.07.
22. Denison violated 40 C.F.R. §61.07 by ventilating the mine and causing it to become “active” before it submitted an application to EPA for approval to construct/modify the Arizona 1 Mine. Further, Denison violated 40 C.F.R. §61.07 by removing ore from the mine before it submitted an application for approval to construct/modify the Arizona 1 Mine.

Finding of Failure to Comply with Requirement to Obtain Written Authorization

23. The 1988 Approval is no longer valid or in effect because of the long period of inactivity of the mine and because of the transfer of ownership.
24. ADEQ’s September 2009 permit is not a valid authorization as to the requirements of 40 C.F.R. §61.08 because ADEQ is not delegated to implement 40 C.F.R. Part 61, Subpart B and therefore cannot authorize construction or modification of sources regulated under 40 C.F.R. Part 61, Subpart B.
25. Denison was required to obtain written approval from EPA to construct/modify the Arizona 1 Mine prior to constructing / modifying the mine. 40 C.F.R. §61.05.
26. Denison violated 40 C.F.R. §61.05 by ventilating the mine and causing it to become “active” before it obtained written approval from EPA to construct/modify the Arizona 1 Mine. Further, Denison violated 40 C.F.R. §61.07 by removing ore from the mine before it obtained written approval to construct/modify the Arizona 1 Mine.

Finding of Failure to Provide Notification of Anticipated Date of Initial Startup

27. Denison started ventilating the mine and removing ore in late 2009.
28. Denison violated 40 C.F.R. §61.09(a)(1) because it re-started the mine without providing

EPA with timely notification of the anticipated date of initial startup.

Finding of Failure to Provide Notification of Actual Date of Initial Startup

29. Denison started ventilating the mine and removing ore in late 2009.

30. Denison violated 40 C.F.R. §61.09(a)(2) because it re-started the mine without providing EPA with timely notification of the actual date of initial startup.

Finding of Failure to Determine Compliance with Emission Standard

31. Denison has been using Method 114, Test Method A-7 to analyze radon-222 without obtaining EPA's prior approval.

32. Denison violated 40 C.F.R. §61.23 by using Method 114, Test Method A-7 to analyze radon-222 without obtaining EPA's prior approval, thereby failing to follow the procedures set forth in 40 C.F.R. Part 61, Subpart B, Method 115 to determine compliance with the emission standard set forth in 40 C.F.R. §61.22.

NOTICE OF VIOLATION

Notice is given to Denison Mines Corp. that the Administrator of the United States Environmental Protection Agency, by authority duly delegated to the undersigned, finds that Denison Mines Corp. is in violation of section 112 of the Act and its implementing regulations, as set forth in the Finding of Violation.

ENFORCEMENT

Section 113(a)(1) of the Act provides that when any person has violated any requirement or prohibition of an applicable implementation plan or permit, EPA may:

- issue an order requiring compliance with the requirements or prohibition of such implementation plan or permit, or
- issue an administrative penalty order pursuant to section 113(d) for civil

- administrative penalties of up to \$37,500 per day of violation, or bring a civil action pursuant to section 113(b) for injunctive relief and/or civil penalties of not more than \$37,500 per day for each violation.

Furthermore, if a person knowingly violates any requirement of section 112, 42 U.S.C. §7412, section 113(c) provides for criminal penalties or imprisonment, or both.

Under section 306(a) of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violations of the Act may result in the facility being declared ineligible for participation in any federal contract, grant, or loan.

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act states that the Administrator or the court, as appropriate, shall, in determining the amount of any penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113(e)(2) of the Act allows the Administrator or the court to assess a penalty for each day of violation. For the purposes of determining the number of days of violation, where the EPA makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of this NOV, the days of violation shall be

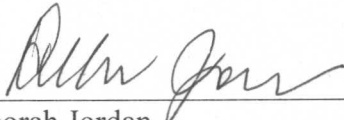
presumed to include the date of this NOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

Denison Mines Corp. may, upon request, confer with EPA. The conference will enable Denison Mines Corp. to present evidence bearing on the finding of violation, the nature of the violations, and any efforts it may have taken or proposes to take to achieve compliance. Denison Mines Corp. has the right to be represented by counsel. A request for a conference with EPA must be made within ten (10) working days of receipt of this FOV. The request for a conference or other inquiries concerning the FOV should be made in writing to:

Kara Christenson
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3881

4.30.10
Date



Deborah Jordan
Director, Air Division