



THE STATE
of ALASKA
GOVERNOR MICHAEL J. DUNLEAVY

Department of Environmental
Conservation

DIVISION OF SPILL PREVENTION AND RESPONSE
Contaminated Sites Program

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File No: 2442.38.001

March 15, 2024

Mr. Mike McCrum
Bureau of Land Management
222 West Seventh Avenue, #13
Anchorage, Alaska 99513-7504

Re: Comments on the *Final Record of Decision*
Red Devil Mine, Red Devil

Dear Mr. McCrum:

The Alaska Department of Environmental Conservation (DEC) has reviewed the *Final Record of Decision* (ROD), dated May 2022 and digitally signed by the Bureau of Land Management (BLM) on January 22, 2024. It is noted that the signature line date included on the document is "1/22/23"; however, this is believed to be in error as the year indicated on the digital signature date 2024. After reviewing the ROD, we determine that we concur with the overall approach and we believe that, if implemented properly, the remedy will be protective of human health and the environment; however, there are several areas that lack specificity which we would like to discuss.

In March 2022, DEC reviewed a draft of this document and worked with BLM to resolve most of those comments. The final ROD contains changes that we were not asked to review prior to the document being signed. Many of the revisions are editorial in nature and do not change the substantive intent of the document and therefore, we will not provide further comment on those. However, there are several changes that we believe are of significance. We have divided our comments about these more significant changes into two sections, specifically, issues about the process that need to be resolved and issues that we want to document to ensure that they will be addressed in the remedial action plan.

Issues for Resolution

1. Institutional Controls and Notice of Activity and Use Limitations (NAUL).

Section 9.2 Groundwater (GW) Alternatives, Alternative GW2: Institutional and Access Controls. In the final ROD, the first sentence in the description reads, "*Under Alternative GW2, warning signs would be installed along the perimeter at intervals of approximately 100 yards*", where the March 2022 version read, "*Under Alternative GW2, a Notice of Activity and Use Limitations would be established, and warning signs...*".

The establishment of a NAUL is required under the 2018 Uniform Environment Covenant Act (UECA), Alaska Statute (AS) 46.04.300-.390 to document limitations on land where the presence of contamination left in place means that the property is not available for unrestricted use. Removing this portion of the text means that this alternative is no longer in compliance with State of Alaska Applicable or Relevant and Appropriate Requirements (ARARs). It is noted that UECA is listed as “Applicable” in Appendix A, Table A-3, Action-Specific Applicable or Relevant and Appropriate Requirements.

Additional locations where the ROD was changed to remove all references a NAUL and how the remedy will comply with the UECA ARAR include:

- a. Section 9.3 Kuskokwim River Sediment (KR) Alternatives, Alternative KR2: Institutional Controls
- b. Section 9.3 Kuskokwim River Sediment (KR) Alternatives, Alternative KR3: Monitored Natural Attenuation
- c. Section 9.4 Sitewide Alternatives, Alternative SW2 – Institutional and Access Controls
- d. Section 9.4 Sitewide Alternatives, Alternative SW3 – Excavation of Tailings, Waste Rock, Soils, and Sediments; Solidification (Treatment); On-site Consolidation; and Capping
- e. Section 10.1.2 Compliance with ARARs
- f. Section 12.2 Description of the Selected Remedy, Fencing and Institutional Controls
- g. Section 13.2 Compliance with Applicable or Relevant and Appropriate Requirement

Since the Alaska Legislature passed UECA in 2018, DEC has been working with various federal agencies to resolve how to implement this ARAR on federal lands. After much collaborative discussion, DEC and the United States Department of Defense (DoD) developed a NAUL template that is acceptable to both parties. I have enclosed a copy of the DoD transmittal email and the NAUL template with this letter, for your review. We request that BLM work with us to resolve how institutional controls will be placed on this site so that they provide appropriate and useful information to the public and comply with State ARARs.

Issues to Be Addressed in the Remedial Action Plan

1. Toxicity Characteristic Leachate Procedure (TCLP) analysis for arsenic.

Part 1, Declaration, Description of Remedy, bullet #3: This bullet currently reads, “*Treatment using solidification of tailings/waste rock excavated from the Main Processing Area and Monofill #2 that failed the TCLP test for arsenic;*”, where the March 2022 version read, “*...Monofill #2 that fail the TCLP test...*”.

The difference between using “failed” and “fail” is important as the complete extent of tailings that need to be solidified was not determined during the Remedial Investigation but will occur after the material is excavated during the remedial action. It is noted that there are several other locations within the ROD where the word “*fail*” rather than “*failed*” was used, including Section 4.0, Scope and Role of the Response Action, Section 9.4, Alternative SW3 – Excavation of Tailings, Waste Rock, Soils, and Sediments; Solidification (Treatment); On-site Consolidation; and Capping, and Section 12.2, Description of the Selected Remedy.

We request that BLM’s Remedial Action Plan include adequate sampling of the soil in this area during the remedial action to ensure proper identification of all of soil that needs to be solidified.

2. Background values in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Section 8.3 Remedial Goals and Proposed Cleanup Levels, Remedial Goals Selection, bullet #1: This bullet currently reads, *If chemical-specific ARAR concentrations and site-specific RBCLs were below background values, the background value was selected as the remedial goal because cleanup of contaminants below natural background levels is not authorized by CERCLA.*”, where the March 2022 version read, “...because cleanup of contaminants below the natural background levels is impractical.”.

The language in the signed ROD is inaccurate. Neither **Section 121, Cleanup Standards** of CERCLA nor **§300.430, Remedial investigation/feasibility study and selection of remedy** of the National Contingency Plan state that cleanup of contaminants below natural background levels is not authorized.

We bring this error to your attention and request that the statement that “the background value was selected as the remedial goal because cleanup of contaminants below natural background levels is not authorized by CERCLA”, is not repeated in the Remedial Action Plan. We are not requesting any changes to remedial goals or other work at the site as a result of this comment.

3. Elemental (free-phase) mercury at the Retort Building under Monofill #2.

Section 9.1, Description of Mine Site Alternatives, Mine Site Alternative 3: Excavation of Solid Materials and On-site Consolidation, Options C and D: The following sentence from the descriptions of these two sub-alternatives in the March 2022 version was removed from the signed ROD, “*If elemental mercury is found while deconstructing Monofill #2 it will be segregated and sent off-site for disposal.*”

Prior to the construction of Monofill #2, elemental (free-phase) mercury was found to be present at the front of the retort building to depth of 3.5 feet below ground surface, as documented in the *Retort Building Demolition and Limited Site Investigation Report*, dated March 2001. This visible mercury was not excavated and disposed of, but rather covered by Monofill #2 when it was constructed on top of that area. This contamination is of significance in its ability to mobilize and it should not be placed in the on-site repository.

We request that BLM include, in the Remedial Action Plan, a figure identifying this area of concern, steps for identifying soils containing free-phase mercury, appropriate soil handling practices, and plans for disposal at a facility permitted to accept this material.

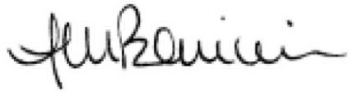
4. Additional Items Raised in 2022

In our letter on the draft ROD dated March 2, 2022, we outlined three additional issues of concern and requested that these be included or clarified in the ROD. These issues are: 1) petroleum-contaminated oil at the landspread treatment cell and at the ‘box spill’ area; 2) Monofills 1 and 2 solid waste segregation; and 3) mercury hazardous waste and free-phase mercury at the former retort building. None of these issues was included nor clarified in the signed ROD.

We request that these issues are addressed in the Remedial Action Plan.

Should you have any questions regarding this letter, please contact me at 766-3184, or annemarie.palmieri@alaska.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne Marie Palmieri". The signature is fluid and cursive, with the first name "Anne" being more prominent.

Anne Marie Palmieri
Environmental Program Manager

cc: Jenn Currie, Alaska Department of Law
Stephanie Buss, Alaska Department of Environmental Conservation
Bill O'Connell, Alaska Department of Environmental Conservation
Aaron Timian, Alaska Department of Natural Resources