



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
<http://www.blm.gov>
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Mr. Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
Ariel Rios Building
120 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Red Devil Mine Site, Alaska

Dear Mr. Stanislaus:

I want to thank Administrator Jackson, Mr. Sussman, Assistant Administrator Giles, and you for your time and the constructive dialogue at our meeting this past Wednesday concerning the investigation and cleanup of the Red Devil Mine. I also want to propose what I believe could be a mutually agreeable resolution of the issues that we discussed at that meeting.

As I have expressed to you in previous correspondence and phone calls, the Bureau of Land Management (BLM) and the Environmental Protection Agency (EPA) agree on the fundamental objectives to be accomplished at the Red Devil Mine: namely, that the investigation and cleanup comply fully with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); that all requirements applicable to community involvement, tribal consultation, State participation, and EPA oversight are fulfilled; and that the site is cleaned up in a comprehensive and fully protective manner. Given the extent to which the BLM and EPA agree on how the investigation and cleanup should be conducted, I remain hopeful the agencies can enter into an agreement that would allow this work to proceed expeditiously.

The BLM continues to believe that the Red Devil Mine is a mixed ownership site, and thus eligible for collaborative decision-making under the 2007 Statement of Principles agreed to by EPA, BLM, and the U.S. Forest Service. As you know, during the relevant period of activity, BLM had virtually no authority to regulate the private parties' conduct. The happenstance fact that the site is abandoned without a viable PRP from which to seek contribution should not deprive BLM of the benefits of the collaborative approach that would otherwise be available to federal land managing agencies under the 2007 Statement of Principles.

Although we do not agree that stipulated penalties are necessary, in the interest of moving forward the BLM will accept a provision to pay stipulated penalties for missing major milestone deadlines provided that any payment of a penalty could only be made out of an appropriation specifically authorized for that purpose, and that BLM's obligations with respect to such penalties would be discharged by requesting such an appropriation. Additionally, we request

that any agreement we reach contain a provision allowing EPA, in its discretion, to waive any penalties that accrue.

With regard to dispute resolution, the BLM continues to believe that, with the exception of the ultimate remedy selection decision, disputes should be resolved through a process that achieves concurrence. As sister federal agencies working together to clean up contamination caused in the past by private activities conducted on public land that the BLM is responsible for managing, the two agencies should be willing to acknowledge and respect their respective roles and authorities. A dispute resolution process that vests unilateral decision-making authority in one agency fails to do so. In the event of a dispute over final remedy selection at this site, however, the BLM will agree that the EPA Administrator has final decision-making authority.

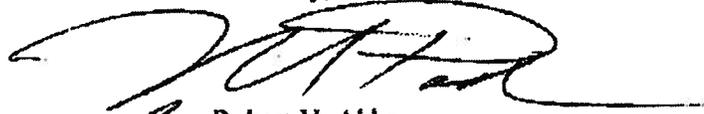
I also wanted to respond to Administrator Jackson's proposal that the investigation of the site be conducted through an Engineering Evaluation/Cost Analysis (EE/CA) rather than the current plan to conduct a Remedial Investigation/Feasibility Study (RI/FS). We appreciate the Administrator's efforts to move the site investigation forward in the most expeditious manner possible. In many cases, conducting an EE/CA and selecting a non-time-critical removal action is the most expeditious path forward. At the Red Devil site, however, the BLM has for several months been moving forward with plans to address the site through the RI/FS process. To change from a remedial process to a removal process at this stage could result in unnecessary delays. Given the sense of urgency the agencies share with regard to moving forward at the site, the BLM feels strongly that unnecessary delays should be avoided and I expect EPA agrees.

In that vein, I want to alert you that EPA Region 10 has raised an objection to BLM retaining the services of the contractor previously used by EPA to assess the site for listing on the NPL. As I understand it, Region 10 has identified what it perceives to be a conflict of interest that would prevent this contractor from performing the RI/FS at the Red Devil site. Given that both EPA and the BLM share the same goal of achieving a comprehensive, expeditious remediation of this site, I feel strongly that the agencies should take maximum advantage of the efficiencies, the savings in time, and the contractor's site-specific expertise that can be achieved through using this contractor. My understanding is that Region 10 has conditioned BLM's use of this contractor on BLM's agreement not to challenge any proposal to list the site on the NPL. In the event the agencies can reach an agreement that will enable the investigation and clean up to proceed, and thereby avoid NPL-listing, the issue of challenging a proposal to list the site would become moot. Accordingly, I would expect EPA to agree to waive any perceived conflicts to allow the BLM to use this contractor to perform the RI/FS.

With respect to the type of agreement that the agencies should employ to memorialize the agencies' roles and responsibilities at the site, the BLM believes that such an agreement should acknowledge and reflect three essential principles: that the agencies share CERCLA authority at the site, which has been delegated by the President; that the site investigation and cleanup is being conducted in the context of such authority as opposed to an enforcement context; and that the agencies are working together rather than at odds with one another. Whether this agreement is called a memorandum of understanding, an agreement on consent, or something else, matters less than that it be based on these principles.

Finally, I would propose that the BLM, EPA, and U.S. Forest Service, together with the Department of Justice, convene a senior level work group to reevaluate how the federal agencies can best work together to address the clean up of abandoned mine lands on federal property. Each of the federal agencies and the public at large will benefit from improvements to the process by which we work together as partners to address these issues.

Sincerely,



Robert V. Abbey
Director

cc: David Hayes
Sylvia Baca
Tom Lonnie
Willie Taylor
Rachel Jacobson