



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 1 2009

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

Robert V. Abbey
Director, Bureau of Land Management
U.S. Department of the Interior
Washington, DC 20240

Re: Proposal to List Red Devil Mine, Alaska, on the National Priority List
(Reference #: 1703 (280))

Dear Mr. Abbey:

Thank you for your letters of September 1, 2009, and September 8, 2009, and our related meetings concerning EPA's consideration of the Red Devil Mine, Alaska, for inclusion on the National Priorities List (NPL) under Section 105(a)(8)(B) of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

I am encouraged by Bureau of Land Management's (BLM) commitment to move forward as quickly as possible to conduct a quality remedial investigation and feasibility study (RI/FS) at Red Devil Mine consistent with the National Contingency Plan (NCP), and I appreciate your proposed remedial process schedule. While these are positive steps, the hazards posed at Red Devil Mine meet the eligibility threshold for placing a site on the National Priorities List (NPL), and much more clean up work needs to be done. Listing sites on the NPL is a proven and effective approach at both federal and non-federal sites for assuring stakeholder and community involvement, satisfying regulatory requirements, and advancing site characterization and cleanup.

There are alternatives to listing sites on the NPL, however, and EPA is willing to postpone consideration of Red Devil Mine for inclusion on the NPL in order to further explore an alternative approach, as suggested by BLM. Listing the site on the NPL remains an option, should BLM, EPA, and the State of Alaska fail to reach timely agreement on an enforceable alternative to listing that meets CERCLA requirements.

To determine the viability of an alternative to NPL listing, it is important that an understanding be reached upfront on the key elements that are essential for an alternative approach. Generally, EPA expects any alternative approach to provide the same degree of public involvement, enforceability, state and federal regulatory oversight, public health and environmental protectiveness, and pace of clean up that would be expected by listing the site on the NPL. Listed below are five key elements that are essential for an alternative approach drawn from EPA's existing guidance on Superfund alternative sites (enclosure) and the "model federal

facility agreement” that EPA uses for federal facilities. We believe these five elements, in conjunction with standard legal and implementation provisions, are essential for a clean up at Red Devil Mine that satisfies CERCLA and regulatory requirements.

Essential Elements of an Alternative Agreement for Red Devil Mine:

- (1) Public participation and community involvement consistent with the National Contingency Plan (NCP);
- (2) Provision for meaningful participation by local Tribes, including appropriate opportunities for government to government consultation consistent with Executive Order 13175;
- (3) EPA concurrence on remedy selection, in consultation with the state, as well as concurrence on workplans, reports and other decision documents;
- (4) Milestones with stipulated penalties that are enforceable by regulators and the affected public;
- (5) Acceptance of a formal dispute resolution process in which all parties accept the EPA Administrator’s final decision.

For next steps, EPA is available to meet immediately with BLM, at your request, to discuss any questions or concerns you may have with the five essential elements listed above. After these initial discussions, we offer the following schedule:

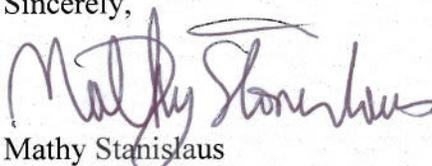
October 16, 2009: BLM’s written response stating BLM’s commitment to negotiating an agreement embodying the five essential elements and the start of detailed negotiations involving BLM, EPA Region 10, and the State of Alaska;

Mid-December, 2009: Joint status briefing for senior EPA, BLM and State officials to resolve outstanding issues as needed, and assess progress toward reaching agreement by February 1, 2010;

February 1, 2010: Agreement on a detailed, alternative approach.

I appreciate your attention to issues at Red Devil Mine, and I am hopeful that we can find an environmentally protective solution acceptable to all parties. Please contact me if I can be of further assistance, or your staff may contact John E. Reeder, Director, Federal Facilities Restoration and Reuse Office (703-603-9089).

Sincerely,



Mathy Stanislaus
Assistant Administrator

Enclosure

cc: David Hayes, Deputy Secretary, DOI
Wilma Lewis, Assistant Secretary for Land and Mineral Management, DOI
Willie Taylor, Director, Office of Environmental Policy and Compliance, DOI

Pam Haze, Deputy Assistant Secretary, Policy Management and Budget, DOI
Ed Roberson, Assistant Director, Renewable Resources and Planning, DOI
Robert Sussman, Senior Policy Counsel, EPA
Cynthia Giles, Assistant Administrator for Enforcement and Compliance
Assurance, EPA
Michelle Pirzadeh, Acting Regional Administrator, EPA Region 10
Barry Breen, Principal Deputy Assistant Administrator for Solid Waste and
Emergency Response, EPA
John E. Reeder, Director, Federal Facilities Restoration and Reuse Office, EPA
Larry Hartig, Commissioner, ADEC