



United States Department of the Interior



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Memorandum

To: John Reeder, Director
Federal Facilities Restoration and Reuse Office
U.S. Environmental Protection Agency

From: Thomas P. Lonnie
State Director


Acting State Director

Subject: Response to Environmental Protection Agency proposal to use the "Superfund Alternative" Approach to address contamination at the Red Devil Mine

This memorandum outlines the detailed response of the Bureau of Land Management (BLM) to the Environmental Protection Agency (EPA) proposal (dated October 1, 2009) to use EPA's guidance on Superfund Alternative Sites, in lieu of listing the Site on the National Priorities List (NPL), as the framework for completing the investigation and cleanup of contamination at the Red Devil Mine (Site) in Alaska.

The BLM and EPA agree that the Site will be addressed under the authorities established by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In addition, the BLM agrees with and supports the goals outlined in the EPA proposal. Those goals include the shared expectation that the investigation and cleanup of the Site will achieve:

- NPL-equivalent characterization of hazardous substances released at the Site;
- NPL-equivalent evaluation of remedial alternatives;
- NPL-equivalent identification and evaluation of applicable or relevant and appropriate requirements (ARARs);
- NPL-equivalent cleanup levels based on the results of the baseline human health risk assessment, ecological risk assessment, reasonably foreseeable future use assumptions, and attainment of ARARs;

- NPL-equivalent certification of completion and subsequent Five-Year Reviews;
- NPL-equivalent EPA oversight, review, comment, and concurrence on deliverables;
- NPL-equivalent State involvement;
- NPL-equivalent Tribal involvement; and
- NPL-equivalent community involvement.

The BLM believes all of these goals can be achieved using the Collaborative Decision-Making process, proposed by the BLM in Bob Abbey's letter to Assistant Administrator Stanislaus dated October 2, 2009, rather than using the Superfund Alternative process. Under the Collaborative Decision-Making process, established by the "Statement of Principles for Collaborative Decision-Making at Mixed Ownership Sites" (OSWER Directive 9200.06-1, hereafter the "Principles for Collaborative Decision-Making"), the investigation and cleanup of the Site can proceed in the following manner:

- Characterization of the nature and extent of hazardous substances will be conducted pursuant to Section 104 of CERCLA through a Remedial Investigation (RI) in accordance with 40 CFR § 300.430 (a)-(d) of the National Contingency Plan (NCP) and applicable guidance;
- Evaluation of remedial alternatives will be conducted through a CERCLA Feasibility Study (FS) in accordance with 40 CFR § 300.430 (e) of the NCP and applicable guidance;
- Development of ARARs, human and ecological risk assessments, remedial action objectives and final cleanup goals will be developed in accordance with Section 121 of CERCLA, the NCP, and applicable guidance;
- Selection of remedial action will be in accordance with Section 121 of CERCLA, 40 CFR § 300.430(f) of the NCP, and applicable guidance;
- Five-Year Reviews of any remedy that leaves hazardous substances on-Site will be conducted in accordance with Section 121(c) of CERCLA and applicable guidance;
- Substantial and meaningful State involvement in the initiation, development, and selection of remedial action will be achieved in accordance with Section 121(f) of CERCLA and 40 CFR Part 300, Subpart F of the NCP;
- Meaningful participation by local Tribes will be achieved through government-to-government consultation as specified by applicable statutes and Executive Orders;
- Public participation and community involvement will be achieved in accordance with Section 117 of CERCLA and NCP requirements and guidance; and

- Full EPA review, comment, and concurrence on work plans, reports, and decision documents including final remedy selection decisions will be achieved in accordance with the Principles for Collaborative Decision-Making.

The BLM believes that the Principles for Collaborative Decision-Making establish a process that is best suited to accomplish these goals. As you know, the Collaborative Decision-Making process was developed by EPA, the Department of the Interior, and the Department of Agriculture to increase the efficiency and effectiveness of CERCLA response actions at sites where EPA and a Federal Land Management Agency each have CERCLA responsibilities. The purpose articulated by the agencies in developing this process was to facilitate a collaborative approach to expedite assessments, investigations, and response actions at sites where the agencies shared CERCLA jurisdiction. In addition, working together to address the Site without listing it on the NPL (or characterizing it as a Superfund Alternative site) is consistent with many of the policy factors cited by the EPA in its "Policy on Listing Mixed Ownership Mine or Mill Sites Created as a Result of the General Mining Law of 1872 on the Federal Agency Hazardous Waste Compliance Docket." As you know, the EPA policy in this regard is that such sites generally should not be listed on the Docket. Listing a site on the Docket is a precondition to listing on the NPL.

Accordingly, the BLM believes it is neither necessary nor appropriate to adopt the enforcement provisions (e.g., stipulated penalties) typically found in a Section 122 Administrative Order or Consent Decree by which the federal government enforces CERCLA requirements against private parties. Similarly, we do not believe that an alternative approach to listing the Site as a Federal Facility should adopt the dispute resolution process typically required in a Section 120 Federal Facility Agreement.

Instead, the BLM believes that use of the Collaborative Decision-Making process is consistent with the fact that both agencies have responsibilities to protect public health, welfare, and the environment from Site risks. Use of this process also reflects an understanding that the BLM has land management responsibilities at the Site. In addition, the Principles for Collaborative Decision-Making expressly recognize that "where more than one agency has decision-making authority, the agencies recognize that no one agency should unilaterally make final determinations" but, instead, disagreements should be elevated until the disagreement is resolved. Unlike the Superfund Alternative process, the Collaborative Decision-Making process is geared toward forging consensus between sister federal agencies.

For these reasons, the BLM continues to propose that the agencies move forward to negotiate a Memorandum of Understanding based on the draft that BLM Director Abbey forwarded on October 2nd for EPA's consideration. I look forward to discussing this with you and your staff during our scheduled meeting tomorrow.