



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

OCT 27 2010

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

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

Dear Mr. Abbey:

This letter is in response to our October 13, 2010, conversation regarding the Red Devil Mine (RDM) site in Alaska, as well as to your August 23, 2010, letter concerning cleanup of this site. I believe we have made progress in finding a path forward to address the serious contamination at RDM that is consistent with our respective CERCLA roles and responsibilities. The provisions below outline what can be a conceptual agreement on the minimum requirements for the Bureau of Land Management (BLM) to conduct a remedial investigation (RI) and feasibility study (FS) using its authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) through an enforceable agreement providing a framework for EPA oversight of BLM cleanup activities.

Role of Oversight in CERCLA Cleanups

Consistent with CERCLA, sites like RDM require EPA to provide oversight of both federal and private site cleanups. I believe the draft Federal Facility Agreement (FFA) I provided to you in my May 14, 2010, letter provides the necessary framework for our agreement.

Key Deliverables

I propose that the following "Primary documents" establish the key deliverables for any final agreement for RDM:

1. RI/FS and FFS Work Plans including Sampling and Analysis Plans and Quality Assurance Project Plan
2. Remedial Investigation Reports (including Risk Assessments for human health and the environment)
3. FS and FFS Reports
4. Proposed Plans
5. Records of Decision
6. The Site Management Plan and each annual amendment.

Dispute Resolution

Based on our most recent discussion, I propose the above mentioned deliverables be a primary focus of dispute resolution. EPA is committed to seek resolution on all issues in a collaborative manner, and the dispute process provides ample opportunity for parties at lower levels, in good faith, to reach agreement. EPA's standard oversight approach for the RDM site, which is similar to how EPA oversees privately and other federally performed cleanups, is essential to ensure protectiveness. EPA has the final resolution of disputes at private sites and EPA, similarly, has to have the final say at federally-owned sites. A significant difference in an EPA and Department of the Interior (DOI) agreement compared to an EPA private party agreement is that DOI would have access to the President's top environmental official - the EPA Administrator.

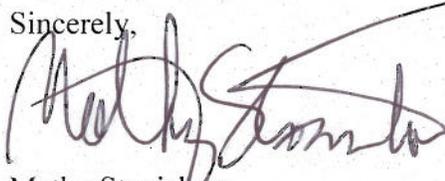
Stipulated Penalties

To address your concern about stipulated penalties, I propose that such penalties apply to the failure to submit a primary document, failure to submit such document by the approved schedules, or the failure to comply with a term or condition of the agreement. In the event that stipulated penalties become payable and if DOI/BLM believes that it would be required to seek Congressional approval and authorization to pay such stipulated penalties, we can add language to that effect.

Finally, all clean up actions under CERCLA include provisions for active participation from all interested parties, and should recognize the rights of our state and tribal partners. Such provisions are important, since it holds both EPA and other federal agencies accountable to the affected public, and should be included as a provision in our cleanup agreement.

I look forward to your response to my proposal and ask that you respond by November 22, 2010. I believe our respective agencies can move forward and craft a document that includes these provisions.

Sincerely,



Mathy Stanislaus
Assistant Administrator

cc: David Hayes, Deputy Secretary, DOI
Robert Perciasepe, Deputy Administrator, EPA
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, Assistance Director, Renewable Resources and Planning, DOI
Robert Sussman, Senior Policy Counsel, EPA
Dennis McLerran, EPA Region 10 Administrator

Barry Breen, Principal Deputy Assistant Administrator for Solid Waste and Emergency Response, EPA

Matt Bogoshian, Deputy Assistant Administrator for Enforcement and Compliance Assurance, EPA

Michelle Pirzadeh, EPA Region 10 Deputy Administrator

Dan Opalski, Director, EPA Region 10 Office of Environmental Cleanup

Reggie Cheatham, Acting Director, Federal Facilities Restoration and Reuse Office, EPA

David J. Kling, Director, Federal Facilities Enforcement Office, EPA

Larry Hartig, Commissioner, Alaska Department of Environmental Conservation