



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
Washington, D.C. 20240  
<http://www.blm.gov>



NOV 22 2010

Mr. Mathy Stanislaus  
Assistant Administrator  
Office of Solid Waste and Emergency Response  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: Red Devil Abandoned Mine Land Site, Alaska

Dear Mr. Stanislaus:

This letter responds to your letter of October 27, 2010, regarding the Red Devil Abandoned Mine Land (AML) Site ("Site"). We appreciate the continued willingness of you and your staff to discuss the ongoing progress in the remedial investigation and other activities at the Site and to explore with the Bureau of Land Management (BLM) and the Office of Management and Budget (OMB) how we can collectively and cooperatively ensure that this progress will continue until the Site is fully remediated.

As you know, by Executive Order and as explicitly provided in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), the BLM is designated as the "lead agency" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for purposes of responding to the release of hazardous substances on property under the jurisdiction, custody, or control of the BLM. As the CERCLA lead agency, the BLM has full authority "to plan and implement response actions under the NCP."<sup>1</sup> As I have indicated in previous correspondence to you on this matter, the BLM is committed to exercising this authority in full compliance with the requirements of CERCLA and the NCP and, most importantly, in full collaboration with the State of Alaska, Native American communities, and the U.S. Environmental Protection Agency (EPA).

As I and my colleagues explained during our meeting with you and others at OMB on October 8th, the Department of the Interior (DOI) takes the position that AML sites need not be characterized as "Federal Facilities" for purposes of defining the BLM's role in implementing a CERCLA investigation and cleanup. As a general matter, hazardous substances released on AML sites were generated by third parties operating under the 1872 Mining Law. Prior to the enactment of the Federal Land Policy and Management Act of 1976, during which time mining at the Red Devil AML Site took place, the BLM had no authority to control, restrict, or regulate

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<sup>1</sup> 40 CFR Section 300.5

mining-related activities, including activities that resulted in the release of hazardous substances to the environment. Characterizing such AML sites as Federal Facilities under CERCLA would constitute a dramatic change of Federal policy with respect to abandoned mines on public lands with unnecessary and adverse consequences to the interests of the United States.

At non-AML sites potentially responsible parties (PRPs) argue vigorously that the Federal land managing agency's role at the site is indistinguishable from that of a private PRP based on the simple fact of the United States' ownership of the land. Characterizing AML sites as "Federal Facilities" will serve to enhance the ability of PRPs to argue that a greater share of response costs should be borne by the United States at these sites. Such a result will undermine the fundamental policy objectives of CERCLA which are to strengthen Federal authority to clean up polluted sites and make polluters bear the full costs of the cleanup.

Additionally, characterizing the Red Devil AML Site as a Federal Facility is unnecessary to accomplish our mutual goal of effective remediation. Instead, the BLM and DOI have proposed and continue to support a collaborative approach with EPA and the Alaska Department of Environmental Conservation (ADEC). I am very pleased to report that, using this approach informally (which has included participation by ADEC and regional EPA staff), the BLM has made substantial progress in addressing the important needs of the Red Devil Site. Our efforts have included meaningful outreach to the Native villages and local communities and the general public. The following work has been accomplished at the Red Devil Site in the past year alone.

Accomplishments to date at the Red Devil Site under the BLM's oversight:

- Remedial Investigation (RI) Scoping Meeting with EPA and ADEC in April 2010.
- Petroleum Hydrocarbon Work Plan submitted by the BLM and approved by ADEC in June 2010.
- Community Involvement Plan submitted to ADEC and EPA in June 2010.
- On behalf of the BLM, Ecology and Environment (E&E) submitted the final Community Involvement Plan, Draft Work Plan, Quality Assurance Project Plan, and Health and Safety Plan for the RI in June. All parties (ADEC, BLM and EPA) worked together through August to finalize these plans. The BLM is currently working to address comments on the Plans.
- E&E conducted a limited sampling effort at Red Devil Mine from September 11 to September 25, 2010, following review and comment by EPA and ADEC on the sections of the RI Work Plan pertaining to surface sampling. The sampling was limited due to the need to reach consensus among the agencies on subsurface sampling and associated issues. The limited sampling effort included collection of surface soil, surface water, and sediment samples. The surface water and sediment samples were collected from multiple locations along Red Devil Creek and in the Kuskokwim River adjacent to the mine site. All of the samples collected in September will be incorporated into the planned RI.

- The U.S. Geological Survey (USGS) has completed two rounds of surface water sampling (June 20-25 and August 29-September 3, 2010) and one round of sediment sampling for metals in the Kuskokwim River and in eight tributaries whose locations straddle the Red Devil Mine site (August 29-September 3, 2010). The surface water and sediment data will provide a better understanding of the Red Devil Mine's contribution of metals in the regional aquatic environment. Most of the water (excluding mercury) and sediment data has been received by USGS. The mercury in water data is expected in February 2011.
- The BLM is conducting a fish/macroinvertebrate tissue-sampling project to establish background levels of mercury and other metals within the aquatic food web spectrum – from the low-level benthic macroinvertebrates to top level predatory fish species. The top-level predatory fish species are important subsistence resources for local villages. The Alaska Department of Fish and Game and USGS are coordinating field data collection. The report of the fish/macroinvertebrate study will include the surface water and sediment data collected by the USGS.
- The BLM completed the field components of the fish/macroinvertebrate tissue-sampling project scheduled for June and partially completed those scheduled for August 2010 (due to high water). The remainder of its August sampling was completed during the week of October 4, 2010. The BLM expects to have all of the August/October results by December, 2010. In addition, the BLM is pursuing an Interagency Agreement with United States Fish and Wildlife Service (USFWS) to enable USFWS scientists to assist with the analysis of the contaminants data.
- An abandoned Powder House, once used to store explosives, was discovered at the Red Devil Mine site in July 2010. The Powder House was used by private miners for underground mining operations. The BLM procured a contractor in August and investigated the structure for explosives and explosive degradation products during the last week of September 2010. The contractor found no explosives, and the building was demolished. A scientific laboratory is analyzing soil samples collected during the investigation. The BLM will initiate further response action if the laboratory detects explosive degradation compounds in concentrations exceeding identified safe levels.
- The BLM held Tribal consultations/CERCLA community involvement meetings during the spring of 2010 to announce that the BLM was beginning an RI at Red Devil Mine and to describe the scope of the project. Meetings were held at Akiak, Lime Village, Sleetmute, Akiachak, Stony River, Red Devil Village, Lower Kalskag, Georgetown, and Kwethluk and with the Kuskokwim Corporation and Calista Corporation. Meetings at the Crooked Creek and Tuluksak Communities were canceled due to weather and subsistence activity (the fish arrived). The BLM will reschedule meetings with the Crooked Creek and Tuluksak Communities in the next round of meetings after the initial RI results become available.
- The BLM conducts weekly collective working conference calls with EPA Region 10 and ADEC staff.

The following work is planned by the BLM for the coming months to complete the Remedial Investigation and Feasibility Study (RI/FS):

- Community Involvement Plan Addendum (CIP): The BLM has developed an addendum to the CIP to describe the process to facilitate Tribal and Public review of the RI Work Plan. This CIP addendum is currently under review by EPA and ADEC. The BLM expects comments from EPA and ADEC during November, 2010.
- Upon EPA and ADEC approval of the CIP addendum, a newsletter will announce that the RI Work Plan will be available for Tribal and public review by December, 2010.
- Limited Sampling Effort (LSE) Draft Report will be available for EPA and ADEC review in December, 2010.
- LSE Final Report will be available for EPA, ADEC, Tribal and public review in February, 2011.
- Draft Final RI Work Plan Report will be available for EPA, ADEC, Tribal, and public review in February, 2011.
- Final RI Work Plan will be available in April, 2011.
- Draft Fish Tissue Study will be available for EPA and ADEC review in May, 2011.
- RI Field Data Collection will be undertaken in June, 2011.
- Final Fish Tissue Study will be available for EPA, ADEC, Tribal and public review in August, 2011.
- Draft RI Report will be available for EPA and ADEC review in March, 2012.
- Final RI Report will be available for EPA, ADEC, Tribal and public review in May, 2012.
- Draft feasibility study (FS) Report will be available for EPA and ADEC review in July, 2012.
- Final FS Report will be available for EPA, ADEC, Tribal and public review in September, 2012.

Estimated Schedule for Action following the Remedial Investigation/Feasibility Study

The following is the current long term schedule for the steps following the RI/FS necessary to complete remedial action at the Red Devil Site. The estimated schedule should be considered approximate and is subject to adjustment, depending on the development and analysis of data and the analytical and evaluative work to be conducted as part of the CERCLA RI/FS process.

Proposed Plan (submitted for public review and comment)	2013
Record of Decision	2014
Remedial Action	2015-2020

In closing, the BLM stands ready to continue our work with EPA, ADEC, the Native villages, and the local communities in a collaborative manner that fully recognizes the agencies' roles and responsibilities and the right of the public to be informed and engaged. As I have said previously, the BLM believes that a viable collaborative relationship for the Red Devil AML Site should acknowledge and reflect certain principles: that the agencies share CERCLA authority delegated by the President; that the site investigation and cleanup is being conducted in the context of such authority; and that the agencies are working collaboratively, rather than in an adversarial manner. With these parameters in mind, we hope to work closely with EPA and ADEC as we move forward with the cleanup at the Red Devil AML Site.

Sincerely,



Robert V. Abbey  
Director

cc: David Hayes, Deputy Secretary, DOI  
 Robert Perciasepe, Deputy Administrator, EPA  
 Wilma Lewis, Assistant Secretary for Land and Mineral Management, DOI  
 Sally Ericsson, Program Associate Director, Natural Resource Programs  
 Office of Management and Budget  
 Pam Haze, Deputy Assistant Secretary, Policy, Management and Budget, DOI  
 Rachel Jacobson, Principal Deputy Solicitor, DOI  
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cc continued:

Larry Hartig, Commissioner, Alaska Department of Environmental Conservation

Bud Cribley, BLM Alaska State Director

Willie Taylor, Director, Office of Environmental Policy and Compliance, DOI

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