



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
<http://www.blm.gov>
APR 13 2010



In Reply Refer To:
1703 (280)

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 Mine Site, Alaska

Dear Mr. Stanislaus:

At your request, we are writing in response to your letter of February 23, 2010 concerning the Red Devil Mine (Site). The Bureau of Land Management (BLM) appreciates the time you and others from the Environmental Protection Agency (EPA) have taken to engage with the BLM and the Department of the Interior over the past several months concerning the Site. We believe these discussions have improved the parties' understanding of their respective concerns and objectives with regard to the Site.

The BLM and EPA agree that the Site poses serious threats - including to Alaska Native communities - that must be addressed immediately. Be assured that the BLM takes very seriously its responsibility to clean up abandoned mines on public lands, especially when Alaska Native communities that rely on subsistence resources are exposed to health risks.

We also agree with EPA that the Site should be addressed using the authorities provided by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). To that end, I am happy to report that EPA Region 10 has cleared the way for the contractor retained by the BLM to perform the remedial investigation and feasibility study (RI/FS) for the Site. With this hurdle out of the way, the BLM intends to move forward immediately using its delegated CERCLA Section 104 authorities to initiate and complete the RI/FS in a manner that fully complies with the requirements of CERCLA and the National Contingency Plan (NCP).

Specifically, the BLM will characterize the nature and extent of Site contamination pursuant to Section 104 of CERCLA in accordance with 40 CFR § 300.430 (a)-(d) of the NCP and all applicable guidance. Evaluation of remedial alternatives will be done in accordance with 40 CFR § 300.430 (e) of the NCP and all applicable guidance. Moreover, the BLM is committed to ensuring that participation by local Tribes will be achieved through government-to-government consultation as specified by applicable statutes and Executive Orders. Additional community

involvement and public participation will be achieved in accordance with Section 117 of CERCLA and the community involvement requirements established by the NCP.

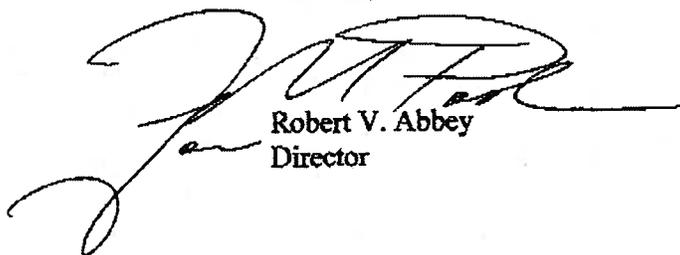
The BLM is actively working with the Alaska Department of Environmental Conservation (ADEC) in the RI/FS and intends to go well beyond what is required by CERCLA and Subpart F of the NCP to ensure substantial and meaningful State involvement. In addition, the BLM seeks the full and active participation of EPA in reviewing and commenting on all work plans, reports, and other deliverables developed during the performance of the RI/FS. The Alaska State Director has assured me that the BLM Alaska State Office will ensure that EPA Region 10 staff and ADEC staff are informed of and invited to participate fully in Site status meetings, Site visits, and other activities involving the performance of the RI/FS so that the views and expertise of EPA and the State are fully incorporated in the process.

The BLM understands and appreciates the strong interests of EPA and ADEC in addressing risks posed by the Site as expeditiously as possible and, in particular, in protecting the health and welfare of the subsistence fishing communities in the area. Toward that end, the BLM welcomes and invites the active participation of EPA and the State in ensuring that the RI/FS fully characterizes Site conditions and risks, and evaluates a full range of remedial alternatives to protect public health, welfare, and the environment.

We understand that EPA feels strongly that it must enter into an enforceable agreement with BLM before it can engage substantively on the investigation and remediation of this site. Accordingly, we have modified the attached MOU (which we proposed several months ago) to include a provision for stipulated penalties and to make clear that the EPA Administrator has final authority for remedy selection. We hope we can quickly reach agreement and focus our collective resources on site remediation.

To demonstrate the BLM's commitment to fully engaging EPA and the ADEC in the process, I would like to schedule a meeting in Alaska before summer with ADEC Commissioner Hartig and EPA Region 10 Regional Administrator McLerran to discuss in further detail how our three agencies can work together to address the challenges presented by the Red Devil Mine Site. During my visit, I will also arrange to meet with representatives of the affected Alaska Native communities to ensure that we are addressing stakeholder concerns.

Sincerely,



Robert V. Abbey
Director

Enclosure

cc: David Hayes, DOI
Wilma Lewis, DOI
Pam Haze, DOI

Draft April 14, 2010

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MEMORANDUM OF UNDERSTANDING

Between
the Bureau of Land Management and the
U.S. Environmental Protection Agency,
for Conduct of Response Actions
at the Red Devil Mine, Alaska

I. Purpose

A. The purpose of this Memorandum of Understanding (MOU) is to provide a framework for the Bureau of Land Management (BLM), and the U.S. Environmental Protection Agency, (EPA), to work together in the conduct of response actions at the Red Devil Mine in Alaska (Site). Such response actions will be conducted pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, and in accordance with the provisions of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, and applicable EPA and BLM guidance.

B. The Parties acknowledge their shared interest in and responsibility for protecting public health and the environment with regard to actual or potential risks posed by the release or threatened release of hazardous substances at or from the Site.

C. The Parties also acknowledge, as reflected recently in the Parties' "Statement of Principles for Collaborative Decision Making at Mixed Ownership Sites" (OSWER Directive 9200.06-1), that the Site can be addressed more effectively and efficiently if they collaborate and coordinate their respective responsibilities in the conduct of response activities. Implementation of this MOU will be primarily accomplished through the coordinated efforts of the BLM Alaska State Office and EPA Region 10.

II. Authorities

A. Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President has delegated his authorities to conduct response actions under CERCLA to several departments and agencies, including EPA and the Department of the Interior.

B. Pursuant to Executive Order 12580, §§ 2(e)(1) and 4(b)(1), the President has delegated to the Department of the Interior (DOI), with certain limitations, CERCLA response authority where a release of a hazardous substance is on, or the sole source of the release is from, land under the Department's jurisdiction, custody, or control. The Secretary of the Interior has re-delegated certain of his authorities delegated by Executive Order 12580 to the BLM Director with respect to property under BLM's jurisdiction, custody or control.

C. Pursuant to CERCLA sections 105 and 120, EPA is authorized, where circumstances warrant, to list sites on land owned by the United States on the National Priorities List (NPL), following the evaluation of such facilities as prescribed by section 105. EPA may, however, decide not to list or may defer listing of an otherwise eligible site and instead participate as an oversight entity in response actions conducted by another federal agency.

III. Background

A. The Site is an abandoned cinnabar mine located on land subject to BLM jurisdiction, custody, or control on the banks of the Kuskokwim River in Alaska. A map of the Site is attached and incorporated into this MOU as Attachment A. The Site operated from approximately 1931 until its closure in 1971. During the 1950s, the Site was a leading producer of mercury. This Site was operated by private mining interests under the Mining Law of 1872 and prior to enactment of the Federal Land Policy and Management Act of 1976 (FLPMA).

Pursuant to the Mining Law, mining claimants have broad rights to enter and locate mining claims on public lands, control surface use and activities, and exclude other parties. Until the passage of FLPMA, federal land managers had no practical regulatory authority over surface uses, including mining. The property on which the Site is located is a priority selection for conveyance, pursuant to the Alaska Native Claims Settlement Act, to the Kuskokwim Corporation (surface estate) and the Calista Corporation (subsurface estate).

B. Beginning in 1979, BLM determined that a release or threat of a release of hazardous substances had occurred at the Site and initiated an investigation to evaluate such releases.

C. On February 12, 1988, EPA added the Site to the Federal Agency Hazardous Waste Compliance Docket. (53 Fed. Reg. 4280).

D. Beginning in 1989 and continuing to date, BLM has undertaken response actions, pursuant to and as defined by CERCLA, to address risks and potential risks to public health and the environment presented by Site conditions. Among other actions, BLM has completed several removal actions to address soil containing elevated levels of mercury. BLM also has designed and installed several on-Site repositories for remediation wastes and conducted, and is continuing to conduct, groundwater monitoring. To date, BLM has spent over \$4 million at the Site to address risks to human health and the environment.

E. The Parties agree that additional response actions are needed to further investigate the release or threat of release of hazardous substances at or from the Site. BLM ~~is currently has~~ contracted planning to conduct a remedial investigation/feasibility study (RI/FS) at the Site with field work to occur during 2010-2011 to characterize the nature and extent of Site contamination and evaluate remedial alternatives to address Site risks. Following completion of the RI/FS, the Parties agree that remedial action will be selected, designed, and implemented.

F. The Parties have agreed that BLM will exercise its delegated CERCLA authorities, pursuant to Executive Order 12580, to conduct such response actions.

G. EPA has determined that the Site is eligible for listing on the NPL pursuant to CERCLA section 105. EPA also has determined, however, contingent on BLM fulfilling its responsibilities under this MOU, that it will not list the Site on the NPL, and will instead participate in and oversee BLM's response actions as prescribed by this MOU. BLM acknowledges and supports EPA's involvement and assistance in working with BLM, as joint stewards, to protect public health and the environment at the Site.

IV. Work to be Performed

A. BLM will conduct, pursuant to the attached schedule which is incorporated into this MOU as Attachment B, an RI/FS to characterize fully the nature and extent of Site contamination and evaluate Site remedial alternatives. Following completion of the RI/FS, BLM will conduct, pursuant to a schedule to be negotiated by the Parties, remedial action selected for the Site. The schedule shall be updated periodically by BLM, in consultation with EPA, to reflect progress at the Site and current projections.

B. During the conduct of all response actions pursuant to this MOU, BLM shall exercise lead agency responsibilities, as defined by the NCP, to plan and implement such actions. EPA shall participate as the oversight agency and shall collaborate with BLM to ensure that Site response actions are completed in a timely manner. BLM's response activities, together with EPA's oversight activities, shall be conducted in accordance with the applicable provisions of the NCP. As described more fully in Section V of this MOU, the Parties shall work together to

complete the RI/FS in accordance with the attached schedule and the applicable provisions of the NCP including, without limitation, 40 C.F.R. § 300.430.

C. This MOU is neither a fiscal nor funds obligation document. The Parties recognize that each must operate within the requirements of the federal budget process and legal restrictions concerning obligations of funds. No provision of this MOU shall be construed to require the Parties to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341. Nevertheless, BLM agrees to work with EPA in good faith to identify potential gaps between cleanup needs and funding availability and to seek funding necessary to meet the schedules negotiated by the Parties. BLM agrees, in addition, to prepare an annual budget projecting anticipated costs for work to be performed in the upcoming year pursuant to this MOU and provide such budget to EPA for its review.

D. BLM shall provide to EPA access to the Site at reasonable times and upon reasonable notice for purposes consistent with the provisions of this MOU. EPA shall have the right to inspect records, logs, contracts and other documents relevant to implementation of this Agreement and also to conduct tests, with prior notice to BLM, to assess Site conditions or to verify data or other information.

V. Coordination and Cooperation

A. BLM and EPA have designated the following persons to be responsible for day-to-day coordination and decisions regarding response action conducted at the Site. BLM and EPA will notify the other agency as soon as possible regarding any change in these personnel.

The BLM ~~Interim~~ Remedial Project Manager (RPM) is ~~Larry Beck, Anchorage Field Office (907-267-1226, email: Larry_Beck@ak.blm.gov)~~ Paul Krabacher (907-271-3266;

email: Paul Krabacher@blm.gov). As of April 8, 2010, BLM is in the process of selecting a permanent remedial project manager for this site. When such manager is named, BLM will provide EPA with contact information for that permanent project manager.

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The EPA Project Coordinator (PC) is [INSERT CONTACT INFORMATION].

B. The BLM RPM and the EPA PC shall coordinate with each other during BLM's planning and implementation of response actions at the Site. This coordination will include reasonable prior notice of, and an opportunity to participate in, any scheduled meetings relating to response activities at the Site with contractors and appropriate Federal and State agencies, Federally-recognized tribes, and other entities, ~~the State of Alaska, other federal, State, and Tribal Natural Resource Trustees, or other parties.~~

C. BLM and EPA shall provide to each other all documents relating to response action at the Site. Such documents shall include, but are not limited to, project proposals, work plans, sampling and analysis plans, and quality assurance project plans. The BLM RPM and EPA PC shall also provide each other copies of documents needed to fulfill the purpose of this MOU. The BLM RPM and EPA PC shall mutually determine which documents relating to the Site are to be copied and provided to the other agency, either directly by the agencies or by third parties.

D. During the planning and implementation of response actions at the Site, BLM and EPA shall reach mutual agreement on the following significant documents ("Deliverables"):

- (1) Project Management Work Plan;
- (2) Community Involvement Plan;
- (3) RI/FS Workplan;
- (4) Quality Assurance Project Plan, Field Sampling Plan, and Health and Safety Plan;
- (5) Baseline Risk Assessment, including human health and ecological risk assessments;
- (6) RI/FS Report;
- (7) Record of Decision (ROD) Schedule;
- (8) Proposed Plan;

- (9) ROD;
- (10) Remedial Design (RD) Schedule;
- (11) RD Work Plan;
- (12) Final RD;
- (13) Remedial Action (RA) Schedule;
- (14) RA Work Plan or Scope of Work
- (15) Certificates of Completion for Response Actions;
- (16) Operation and Maintenance (O&M) Plan; and
- (17) O&M Closeout Report.

F. For purposes of coordination on the deliverables set forth above, the BLM will provide EPA with a draft of each deliverable for review and comment. EPA will provide comments within 20 working days of its receipt of the deliverable. If EPA requires additional time, the EPA PC and BLM RPM will discuss the need for a reasonable amount of additional time. If the BLM RPM and the EPA PC cannot agree on additional time for review, the issue may be elevated for dispute resolution.

F. Upon receipt of EPA's comments on a draft deliverable, BLM will review the comments and incorporate or otherwise address each comment. The BLM RPM and EPA PC shall confer, in person, by phone, or by email, as often as necessary to address and resolve each comment or, if unable to reach resolution, identify issues for dispute resolution.

G. The Parties acknowledge the interest of the State of Alaska in conditions at the Site. The Parties agree that they will provide opportunities for substantial and meaningful involvement by the Alaska Department of Environmental Conservation in the activities undertaken pursuant to this MOU, in accordance with CERCLA section 121(f) and Subpart F of the NCP ("State Involvement in Hazardous Substance Response").

H. Legal issues will be coordinated between EPA's Office of Regional Counsel and DOI's Office of the Solicitor.

VI. Stipulated Penalties

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Where BLM and EPA have agreed that BLM will perform a task or produce a deliverable under this MOU by a particular date certain and where BLM has willfully or knowingly failed to perform such task or produce such deliverable by such agreed date. EPA may assess a stipulated penalty against BLM in the amount of \$[]; provided, however, that BLM's failure to perform was not caused by circumstances or persons beyond the control of BLM or by EPA's failure to perform a necessary act where such act constituted a condition precedent to BLM's performance of the task or the production of the deliverable. In the event that a stipulated penalty is assessed against BLM, payment of any such stipulated penalty shall only be made from an appropriation specifically requested by BLM of Congress for such purpose. Once a stipulated penalty has been assessed and BLM has requested an appropriation of Congress to address such penalty, BLM's obligation with respect to payment of such stipulated penalty shall be discharged. EPA may exercise discretion to waive the assessment of any stipulated penalty at any time.

VII. VI. Dispute Resolution

A. The Parties shall make all reasonable efforts to resolve disputes informally at the project level. The Parties acknowledge that consultation between the BLM RPM and the EPA PC should resolve most, if not all, technical issues between the two agencies.

B. If the BLM RPM and EPA PC do not resolve a dispute arising from response action at the Site, either the RPM or the PC may elevate the dispute for resolution.

C. To initiate dispute resolution, the disputing Party shall give to the other a written notice of the dispute. The notice shall include a detailed explanation of the issue(s) in dispute and the disputing Party's proposed resolution of the dispute. Upon the other Party's receipt of such notice, that Party shall have 15 working days to provide to the disputing Party a written answer. After such 15-day period has expired, the officials designated by the Parties to resolve the dispute ("Deciding Officials") shall make their best efforts to resolve the dispute within 15 working days. For purposes of this paragraph, the Deciding Official for BLM shall be Ted Murphy, Alaska Deputy State Director, and for EPA Region 10 shall be [INSERT].

D. If the Deciding Officials do not resolve the dispute within 15 days, the dispute will be elevated to the BLM Alaska State Director and the EPA Regional Administrator for resolution. Within 20 working days of their receipt of the dispute, they shall confer and resolve the dispute. In the event they are unable to resolve the dispute, the dispute may be elevated to the BLM Director and the EPA Deputy Administrator; provided however, that final decision on selection of the final remedy for the Site shall be made by the EPA Administrator

VII Miscellaneous

A. BLM and EPA reserve their rights and authorities under CERCLA, as well as other laws, the NCP, and applicable Executive Orders. No provision of this MOU in any way limits those rights and authorities.

B. This MOU is not intended to, and does not, create any right, benefit, or trust obligation, substantive or procedural, enforceable at law or in equity by any party against the Parties, the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

C. This MOU may be executed in counterparts by each of the signatories. Each of the counterpart documents shall be deemed an original, but together shall constitute one and the same instrument.

D. This MOU is effective upon the date signed by the last Party.

E. This MOU shall remain in effect for both Parties, subject to modification by mutual agreement made in writing and signed by both Parties, until the O&M Closeout Report is completed.

Environmental Protection Agency

By: _____ Date: _____

BLM Bureau of Land Management

By: _____ Date: _____