



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Washington, D.C. 20240

<http://www.blm.gov>

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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: Proposal to List Red Devil Mine, Alaska, on the National Priority List

Dear Mr. Stanislaus:

This letter conveys the concerns of the Bureau of Land Management (BLM) about the Environmental Protection Agency's (EPA) proposal to place the Red Devil Mine Site, an abandoned cinnabar mine in Alaska, on the National Priority List (NPL).

Since 1989, the BLM has worked cooperatively with the State of Alaska Department of Environmental Conservation (ADEC) and the EPA Region 10 Office to address contamination issues at the site. In recent years, the BLM has spent over \$4 million conducting removal actions to limit human exposure and mitigate physical hazards at the site. In Fiscal Year 2009, the BLM dedicated \$630,000 to initiate a Remedial Investigation/Feasibility Study (RI/FS) and \$1.8 million to remediate and remove petroleum-contaminated soils at the site. Currently, the BLM is working with the ADEC and EPA Region 10 Office to develop a work plan for the RI/FS that is scheduled for field work in 2010. The BLM will continue to work cooperatively with the ADEC while sharing information with the EPA Region 10 federal facility coordinator to fully characterize the site and to select a responsive course of action. The BLM is collaborating with the U.S. Geological Survey (USGS) to identify potential impacts to the Kuskokwim River from this site and the many other mercury sources in the watershed.

The Red Devil Mine is entirely on federal land managed by the BLM. The BLM has conducted research and has identified no viable Potentially Responsible Parties (PRP). It is my understanding that the EPA intends to list the mine as a "federal facility" under section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The BLM has serious legal and policy concerns about the listing of an abandoned mine site, such as Red Devil, on the NPL. Specifically, section 120 of CERCLA makes no reference to abandoned mine sites located on public lands as "federal facilities" that should be listed on the NPL. At the time of CERCLA's enactment, Congress was concerned with expediting the cleanup of military

bases, Department of Energy sites, and other types of federal installations – not public lands contaminated by private mining activities. This is particularly the case for mine sites – like Red Devil – that were operated by private mineral interests under the Mining Law of 1872 prior to the BLM's implementation 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 and to control surface use and activities. Until the passage of FLPMA, federal land managers had no practical regulatory authority over surface uses, including mining.

It is my understanding that the EPA has not previously listed an abandoned mine site on the NPL as a "federal facility" pursuant to section 120 of CERCLA. Other mine sites listed in the NPL such as White King/Lucky Lass uranium mines that are partially located on the Fremont National Forest in Oregon are not listed as federal facilities and are not abandoned mines because PRPs are identified at the site. The EPA has entered into an agreement with a private mining company for cleanup of these uranium mines. The EPA's consistent practice of not listing abandoned mines located on federally-managed lands on the NPL represents sound public policy and allows federal land managers to appropriately exercise their CERCLA authorities to remediate contaminated sites on public lands.

Because of their very limited "federal character," the BLM does not believe abandoned mines are appropriately described as "federal facilities" and therefore subject to listing on the NPL. Indeed, the EPA itself recognized the limited federal nature of such sites when it issued its "Policy on Listing Mixed Ownership Mine or Mill Sites Created as a Result of the General Mining Law of 1872 on the Federal Hazardous Waste Compliance Docket." In that policy, the EPA acknowledged the special nature of mine sites resulting from the Mining Law and concluded that, at least with respect to mixed ownership sites, listing of such sites on the Docket – which is a pre-requisite for NPL listing – creates the potential for significant policy concerns.

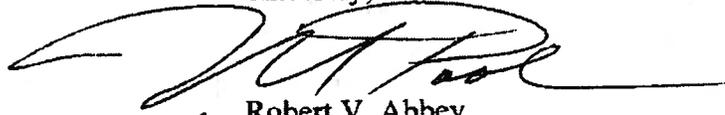
In addition, the BLM is concerned that a listing on the NPL implies liability by the federal government for these abandoned mines and would impede our efforts to hold PRPs responsible for cleanup. The BLM currently has over 20,000 abandoned mine sites with over 50,000 features in the abandoned mine database inventory system. It is anticipated that this inventory will grow given that, for the first time in Fiscal Year 2009, the BLM received funding to complete inventory activities. The BLM is also working on cleanup of a number of abandoned mines, but with very limited resources.

If the EPA decides to list abandoned mines developed under the Mining Law as federal facilities on the NPL despite our objections, the BLM requests that the EPA consider delaying the listing of the Red Devil mine site until the RI/FS is complete. This study should help to determine the actual risk to human health and the environment. The BLM is concerned that entering into a Federal Facility Agreement with the EPA on this one site could redirect limited resources from other mine sites that pose potentially greater risks to public health.

The BLM is committed to moving forward as quickly as possible to conduct a quality RI/FS at Red Devil site consistent with the National Contingency Plan. The BLM takes its stewardship responsibilities very seriously and will continue to work cooperatively with the EPA and the ADEC to protect public health and the environment.

Given the serious nature of these issues, I would like to meet with you to discuss the BLM's concerns as soon as possible and prior to any action by the EPA to list the Red Devil site on the NPL. I believe that the public interest is best served if we work collaboratively to develop a solution for this site. I have directed my Executive Assistant to contact your office to set up a meeting at a mutually convenient date and time.

Sincerely,



Robert V. Abbey
Director

cc: Wilma A. Lewis, Assistant Secretary, Land and Minerals Management
Willie Taylor, DOI, Office of Environmental Policy and Compliance
Pam Haze, Deputy Assistant Secretary, Policy Management & Budget
Ed Roberson, Assistant Director, Renewable Resources and Planning