



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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AUG 07 2012

Mr. Larry Camper
Decommissioning and Uranium Recovery Licensing Directorate
United States Nuclear Regulatory Commission
Mail Stop T-8F5
11545 Rockville Pike
Rockville, MD 20852

RE: Record of Decision for Operable Units 1 and 2 for the Homestake Mining Company Site, NM.

Dear Mr. Camper,

During the last Executive Steering Committee meeting on June 6, 2012, one of EPA's action items was to decide whether EPA needs to issue one or more decision documents for the operating remedies at Operable Units (OU) 1 and 2 of the Homestake Mining Company (HMC) Superfund Site and to report the conclusion back to the other members. I am writing to report that a Record of Decision (ROD) for OU 1 and OU 2 will be necessary to document findings prerequisite to site deletion in the future.

Since the Steering Committee meeting, my staff have researched site close-out requirements and engaged in extensive discussions with EPA Headquarters and EPA Regional offices working with other agencies to address National Priorities List (NPL) sites under non-CERCLA authorities. The current Agency consensus is to use a ROD (combined or one each for separate OUs) with supporting administrative record to document the risks presented and the response measures necessary to abate them. By undertaking a CERCLA analysis identifying necessary response measures and keeping a record of their implementation, EPA can build a record supporting the conclusion that all appropriate actions have been taken and that "no further action is necessary" at the point of deleting the site from the NPL.

NPL deletion regulations are found in the most recent comprehensive revision to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) at 40 CFR 300.425(e). The regulations for deletion have not changed since their initial promulgation in 1990. However, in 1990, or in 1993 when the Memorandum of Understanding between the Nuclear Regulatory Commission (NRC) Region IV and EPA Region 6 was signed, EPA did not have a great deal of experience with deletion of sites being addressed under joint authority, like the Homestake Mining Site. Since that time, the Agency has gained significant experience in accomplishing (and litigating) rulemaking necessary to add or delete a site from the NPL. EPA has subsequently developed procedures for partial site deletions, and direct final rulemaking for

deletion. In 2000, and again in 2011, EPA issued comprehensive, specific guidance on close out procedures for NPL sites. The guidance describes key programmatic principles and expectations to ensure reasonableness, predictability and consistency in close-out decisions. EPA is now implementing much the same process in connection with NPL sites where other agencies have the lead for site cleanup.

The EPA recognizes that the joint objective of the EPA ROD process and the NRC Corrective Action Plan (CAP) process at the HMC Site is protection of human health and the environment throughout the environmental response process, so that both agencies have records supporting protectiveness when the Site is turned over to the Department of Energy for long-term maintenance. We are committed to working with NRC to implement the respective processes in a complementary way, avoiding contradictory or redundant activities, to help assure that remedial actions occur in a timely and effective manner. We do not expect the decision to issue one or more RODs for OU 1 and OU2 to hinder the CAP process, and expect to continue conveying EPA concerns about NCP consistency to NRC for inclusion in the CAP as appropriate.

Before establishing a time frame for compiling an administrative record and issuing one or more RODs for OU 1 and OU 2, the EPA intends to engage HMC in discussion of an agreement that would facilitate the process. The agreement may include the State of New Mexico as an additional signatory party. Representatives of HMC and the New Mexico Environment Department have expressed interest in initiating these discussions in the near future. The EPA staff will keep NRC staff apprised of the progress toward achieving the agreement and toward issuing the ROD.

While the approach to the Site outlined in this letter this may not be the approach explicitly envisioned at the time the HMC Site Memorandum of Understanding (MOU) between EPA and NRC was signed, we believe that it falls generally within the framework set forth in the MOU. We do not think a modification of the MOU is necessary at this time. If you have a different perspective on this issue, please let me know and we can set up a time for further discussion.

If you have any questions or wish to discuss this matter further, please contact me at 214-665-3110.

Sincerely,


Pamela Phillips
Acting Director
Superfund Division

Cc: Phyllis Bustamante, NMED
Jerry Schoepner, NMED
Kathryn Becker, NMED