



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-L

SEP 29 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

7008 3230 0003 0726 8692

Richard Davis
1483 Springdell Drive
Provo, Utah 84604

Re: Administrative Order Directing Compliance
with Request for Access
Antimony Mills Superfund Site
Docket No. CERCLA-08-2009-0008

Dear Mr. Davis:

Enclosed please find an "Administrative Order Directing Compliance with Request for Access" (Order), which directs you to provide the United States Environmental Protection Agency (EPA) with access to the property you own located at the Northwestern portion of Garfield County, Utah, approximately 5.6 miles southeast of Antimony, Utah, Section 21, Township 31 South, Range 1 West of the Salt Lake Based and Meridian (Property) that is located on the Antimony Mills Superfund Site. The coordinates for the Property are Latitude 38.09611 and Longitude 111.898611.

EPA requires access to the Property to conduct field inspections and investigations and to take samples of surface and subsurface soil, groundwater, surface water and sediments. The purposes of this investigation are to report information concerning Site conditions to sufficiently assess the threat posed to human health and the environment from hazardous materials and/or potential releases of hazardous materials, and to support decisions regarding further investigation under CERCLA or other appropriate authorities.

In accordance with the terms of the Order, if you wish to request a conference with EPA to discuss the Order, you should do so within three (3) business days of your receipt of the Order. Such a conference should take place within two (2) business days after your request. If EPA does not receive a timely request for a conference, the Order shall be effective five (5) days after your receipt of the Order. Please see Sections VIII. and IX. for further information regarding the opportunity to confer and the effective date of the Order.

Penalties for failing to comply with the Order are set forth in Section VI. A court may impose a civil penalty of up to \$37,500 for each day that a recipient of an Order unreasonably fails to comply with this Order

As stated in Section X. of the Order, on or before the effective date of the Order, you must notify EPA as to whether you will comply with the Order.

If you have any questions, please contact Margaret Williams, EPA Site Assessment Manager, at (303) 312-6943 or have your attorney contact Michelle Marcu, EPA Enforcement Attorney, at (303) 312-6921.

Sincerely,



Kelcey Land, Acting Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 SEP 29 PM 3:35

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:
Antimony Mills
Garfield County, Utah

ADMINISTRATIVE ORDER DIRECTING
COMPLIANCE WITH REQUEST FOR
ACCESS

Richard Davis

U.S. EPA Region 8
CERCLA Docket No. **CERCLA-08-2009-0008**

Respondent

Proceeding Under Section 104(e) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. § 9604(c)

**ADMINISTRATIVE ORDER DIRECTING COMPLIANCE
WITH REQUEST FOR ACCESS**

TABLE OF CONTENTS

| | | |
|-------|---|----|
| I. | JURISDICTION | 1 |
| II. | STATEMENT OF PURPOSE | 1 |
| III. | FINDINGS OF FACT | 2 |
| IV. | CONCLUSIONS OF LAW AND DETERMINATIONS | 5 |
| V. | ORDER | 6 |
| VI. | ENFORCEMENT | 8 |
| VII. | ADMINISTRATIVE RECORD | 9 |
| VIII. | OPPORTUNITY TO CONFER | 9 |
| IX. | EFFECTIVE DATE; COMPUTATION OF TIME | 10 |
| X. | NOTICE OF INTENT TO COMPLY | 11 |
| XI. | TERMINATION | 12 |
| XII. | ATTACHMENTS | 13 |

I. JURISDICTION

1. This Administrative Order (Order) is issued to Richard Davis (hereinafter, Respondent), pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9604(e)(5), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.400(d)(4). This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, redelegated to the Regional Administrators of EPA on May 11, 1994, by EPA Delegation No. 14-6, and further jointly redelegated jointly to the supervisors of Region 8 Legal Enforcement Program and the Technical Enforcement Program.

II. STATEMENT OF PURPOSE

2. This Order requires Respondent to grant EPA and its authorized representatives needing entry and access to the property described in Paragraph 3 below (the Property) located at the Northwestern portion of Garfield County, Utah, approximately 5.6 miles southeast of Antimony, Utah, Section 21, Township 31 South, Range 1 West of the Salt Lake Based and Meridian. The coordinates for the Site are Latitude 38.09611 and Longitude 111.898611. The Site is approximately 210 miles south of Salt Lake City, Utah and can be reached by traveling south from Antimony, Utah on Highway 22 to the Antimony Bench Road (approximately 2.2 miles south of Antimony).

3. The purpose for EPA and its authorized representative entry and access is to determine the need for response, choose a response action, potentially take a response action, or otherwise

enforce the provisions of CERCLA by conducting field inspections and investigations and taking samples of surface soil, subsurface soil, groundwater, surface water and sediments at the Antimony Mills Site (Site). This Order further requires Respondent to refrain from interfering with access to the Property by EPA and its authorized representatives for the purposes set forth herein.

III. FINDINGS OF FACT

4. Respondent owns property described in Paragraph 2 above. Said property, and its location and legal description, and ownership documentation are contained the attached “Revolving Credit Deed of Trust” and a “Quit Claim Deed” (Attachments 1 and 2). The Property is located at the Site.

5. The Property is a place where a hazardous substances or pollutants or contaminants may be or have been generated, stored, treated, disposed of, or transported from; to or from which a hazardous substance or pollutant or contaminant has been or may have been released; where there is or may be a threat of release; where entry is needed to determine the need for response or the appropriate response, or to perform a response action; or a property adjacent to one of the foregoing. *See* CERCLA § 104(e)(3); 40 C.F.R. § 300.400(d). Specifically, the Site was entered into the Comprehensive Environmental Response Compensation, and Liability Information System (CERCLIS) on April 15, 2002. Historic information suggests two mills were constructed at the Site for processing antimony ore. A Site visit was conducted on June 28, 2002 for the purpose of documenting general Site Characteristics. Historic ore piles and tailings were observed at the Site. Ore minerals associated with deposits found in Antimony Canyon consist of Stibnite, Valentinite and Serarmontite. Arsenic could also be a contaminant of concern since

seams of Realgar and Orpiment were identified in a sulfide deposit found on the north slope of Antimony Canyon. Wastes associated with the milling of antimony ore would typically consist of tailings containing antimony and possibly arsenic.

6. The State of Utah Department of Environmental Quality Division of Environmental Response and Remediation completed a Preliminary Assessment Report on January 27, 2003 that indicated that ground water, soil and surface water have been impacted by contaminants found at the Site. Specifically, the Site is located in an area of ground water recharge and it is likely that contaminants found at the Site have infiltrated ground water. Ground water from the Site could influence wells west of the Site and the drinking water spring located 0.8 miles southwest of the Site, since ground water flow is assumed to be toward the west. It is likely that contaminants found at the Site have infiltrated surface waters, since Antimony Creek is adjacent to the Site and tailings were observed along the banks of Antimony Creek. It is also likely that meteoric waters have transported potential contaminants into Antimony Creek during periods of heavy rain and snowmelt, since Antimony Creek is adjacent to and downgradient of the historic Mill Site. It is likely that individuals who use the Site for recreational purposes have been exposed or could be exposed to contaminants found in the soil at the Site. The Site is not fenced and can be easily accessed from the secondary road at the mill's base or from the jeep trail located above the Mill Site (Attachment 3 and 4).

7. To address the release or threatened release of a hazardous substance or pollutant or contaminant at the Site, EPA is planning to conduct certain response actions. These actions include (a) conducting field inspections and investigations; (b) taking samples of surface soil, subsurface soil, groundwater, surface water and sediments. EPA also anticipates the possible

conduct of response actions at the Site under CERCLA, which would be included in a separate request for access. The purposes of this investigation are to report information concerning Site conditions to sufficiently assess the threat posed to human health and the environment from hazardous materials and/or potential releases of hazardous materials, and to support decisions regarding further investigation under CERCLA or other appropriate authorities.

8. To perform the response actions described above, it will be necessary for employees, agents, contractors, and other representatives of EPA to immediately enter the Property. The activities for which entry is required include those set forth in Paragraph 7 above.

9. EPA estimates that the duration of the required entry and access will be approximately one week, potentially requiring more time if additional work is required.

10. Despite requests from representatives of EPA, Respondent has refused to provide access for purposes of performing the response activities described above. These requests include, but are not limited to, the following: (a) on August 3, 2009, EPA Region 8 Site Assessment Manager Margaret Williams, spoke with Respondent to request access to the Property. Respondent clearly expressed that he would not grant EPA access to his property (Attachment 5); (b) on August 10, 2009, Michelle Marcu, EPA Region 8 Enforcement Attorney, sent a letter via certified mail, return receipt requested (#7008 0500 0000 5592 8652) to Respondent with an attached "Consent for Access to Property" form (Consent Letter and Form) that requested Respondent complete and return the form to Ms. Marcu within five days receipt of the letter (Attachment 6). The Consent Letter and Form requested that Respondent provide EPA's officers, employees and authorized representatives access to his property from September 14 - September 18, 2009; (c) on August 27, 2009, Ms. Marcu and Ms. Williams left a voice mail

message for Mr. Davis requesting a status report on his response to EPA's Consent Letter and Form. To date, Mr. Davis has failed to respond to the August 27th voice mail message; and (d) on September 16, 2009, EPA received the unclaimed Consent Form and Letter. United States Postal Service records indicated that Respondent failed to claim the letter (Attachment 7).

11. EPA's action must be performed in an expeditious manner because EPA and its contractors have been ready to perform the sampling since September 14, 2009, but have been prevented from so doing because of the Respondent's failure to grant access. Any additional delay in conducting the sampling poses potential continued health and safety risks, as set forth in Paragraph 6 above.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

12. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

13. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

14. Antimony and arsenic are hazardous substances or pollutants or contaminants within the meaning of Sections 101(14) and 101(23) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(23).

15. Based on the information provided in Paragraphs 5 and 6 of this Order, EPA has a reasonable basis to believe that there may be a release or threat of release of a hazardous substance or pollutant or contaminant, within the meaning of Sections 101(22) and 104(e)(1) of CERCLA, 42 U.S.C. §§ 9601(22) and 9604(e)(1), at the Site. The property owned or controlled by Respondent referred to in Paragraph 2 above is a vessel, facility, establishment, or other place or property:

- a. where a hazardous substance has been generated, stored, treated, disposed of, or transported from; and
- b. from or to which a hazardous substance has been or may have been released; and
- c. where such release is or may be threatened; and
- d. where entry is needed to determine the need for response, to identify the appropriate response, or to effectuate a response action within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

16. Entry to property owned or controlled by Respondent by the agents, contractors, or other representatives of the United States is needed for the purposes of determining the need for response, choosing a response action, potentially taking a response action, or otherwise enforcing the provisions of CERCLA, within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

17. EPA's request for access to the Property has not been granted and Respondent's denials of access are within the meaning of Section 104(e)(5)(A) of CERCLA, 42 U.S.C. § 9604(e)(5)(A), and 40 C.F.R. 300.400(d)(4)(I).

V. ORDER

18. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record, Respondent is hereby ordered to provide EPA and its officers, employees, agents, contractors, and other representatives, full and unrestricted access at all reasonable times to the Property for the purpose of conducting response activities, including but not limited to conducting field inspections and investigations; taking samples of surface soil, subsurface soil, groundwater, surface water and sediments. EPA also anticipates the possible

conduct of response actions at the Site under CERCLA. EPA intends to designate START 3 or other EPA contractors as its representatives at the Site solely for the purposes set forth within this document.

19. Respondent shall not interfere with EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e) and 40 C.F.R. § 300.400(d), and shall not interfere with or otherwise limit any activity conducted at the Property pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.

20. Nothing herein limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, or permits.

21. This Order shall apply to and be binding upon Respondent and his successors, heirs and assigns, and each and every agent of Respondent and upon all other persons and entities who are under the direct or indirect control of Respondent, including any and all lessees of Respondent.

22. In the event of any conveyance by Respondent, or Respondent's agents, heirs, successors and assigns, of an interest in the Property, Respondent or Respondent's agents, heirs, successors and assigns shall convey the interest in a manner which insures continued access to the Property by EPA and its representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of the Property so that the use will not interfere with activities undertaken or to be undertaken by EPA and its representatives.

Respondent, or Respondent's agents, heirs, successors and assigns shall notify EPA in writing at least thirty (30) days prior to the conveyance of any interest in the Property, and shall, prior to the transfer, notify the other parties involved in the conveyance of the provisions of this Order.

VI. ENFORCEMENT

23. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). A court may impose a civil penalty on Respondent of up to \$37,500 for each day that Respondent unreasonably fails to comply with this Order, as provided in Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, 40 C.F.R. Part 19.4. In addition, any person who is liable for a release or threat of release of a hazardous substance or pollutant or contaminant and who fails to comply with this Order may be liable for punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Site, and recovery of the costs thereof. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondent, or against any entity which is not a party to this Order.

24. Nothing in this Order shall affect in any manner the right of EPA to issue any other orders to or take any other administrative or civil action against Respondent or any other parties under CERCLA which relate to this Site or any other site.

25. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

VII. ADMINISTRATIVE RECORD

26. EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of 8:00 a.m. and 5:00 p.m. at the EPA Region 8 offices at 1595 Wynkoop Street, Denver, Colorado 80202. To review the Administrative Record, please contact Margaret Williams at (303) 312-6943 to make an appointment.

VIII. OPPORTUNITY TO CONFER

27. Within three (3) business days after receipt of this Order by Respondent, Respondent may request a conference with EPA, to be held no later than two (2) business days after Respondent's request, on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions which Respondent may have regarding this Order. Respondent may appear in person or by an attorney or other representative at the conference. Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or at least two business days before the effective date of this Order if Respondent does not request a conference. EPA will deem Respondent to have waived his right to the conference or to submit written comments if it fails to request the conference or submit

comments within the specified time period(s). Any request for a conference or written comments or statements should be submitted to:

Michelle Marcu
Legal Enforcement Program (8ENF-L)
United States Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129
Telephone Number: (303) 312-6921
Facsimile Number: (303) 312-6953

IX. EFFECTIVE DATE; COMPUTATION OF TIME

28. Because of the need to conduct the activities described above, this Order shall be effective five (5) business days after its receipt by Respondent or Respondent's designated representative unless a conference is timely requested as provided above. If a conference is timely requested, then at the conclusion of the conference or after the conference, if EPA determines that no modification to the Order is necessary, the Order shall become effective immediately upon notification by EPA of such determination. If modification of the Order is determined by EPA to be necessary, the Order shall become effective upon notification by EPA of such modification. Any EPA notification under this paragraph may, at EPA's discretion, be provided to Respondent by facsimile, electronic mail, or oral communication; provided that if EPA does use such a form of notification, it will also confirm such notification by first class, certified or express mail to Respondent or his legal counsel. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.

29. For purposes of this Order, the term "day" shall mean a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or

federal legal holiday. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or federal legal holiday, the period shall run until the next business day.

X. NOTICE OF INTENT TO COMPLY

30. On or before the effective date of this Order, Respondent shall notify EPA in writing whether Respondent will comply with the terms of this Order. Respondent's failure to notify EPA of its unconditional intent to fully comply with this Order by the time the Order becomes effective shall be 1) construed as a denial of EPA's request for access, and 2) as of the effective date of the Order, treated as a violation of the Order. Such written notice shall be sent to:


Michelle Marcu
Legal Enforcement Program (8ENF-L)
United States Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129
Telephone Number: (303) 312-6921
Facsimile Number: (303) 312-6953

XI. TERMINATION

31. This Order shall remain in effect until Margaret Williams, Region 8 Site Assessment Manager, or her designee notifies Respondent in writing that access to the Property is no longer needed.


SO ORDERED.

Date: 9/29/09



Matthew Cohn, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance and Environmental Justice

Date: 9/29/09



Kelcey Land, Acting Director
Technical Enforcement Program
Office of Enforcement, Compliance and Environmental Justice

XII. ATTACHMENTS

- Attachment 1 “Revolving Credit Deed of Trust,” among Richard W. Davis and Zions First National Bank dated June 26, 2009
- Attachment 2: “Quit Claim Deed,” from Kinesva Development Corporation and Richard Davis, dated December 31, 2009
- Attachment 3: “Preliminary Assessment Report” for Antimony Mills, Garfield County, Utah, Prepared by Utah Department of Environmental Quality, Division of Environmental Response and Remediation, dated January 27, 2003
- Attachment 4: “Site Inspection Work Plan” for Antimony Mills, Garfield County, Utah, Prepared by Utah Department of Environmental Quality, Division of Environmental Response and Remediation, dated January 13, 2006
- Attachment 5: Communication record between Margaret Williams, United States Environmental Protection Record and Richard W. Davis documenting August 3, 2009 conversation
- Attachment 6: Letter from Michelle Marcu, Enforcement Attorney, United States Environmental Protection Agency, to Richard Davis regarding “Request for Access to Property at the Antimony Mills Site,” dated August 10, 2009 (Certified Mail Number #7008 0500 0000 5592 8652)
- Attachment 7: United States Postal Service Track and Confirm for Certified Mail Number #7008 0500 0000 5592 8652.