

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2007 APR 26 AM 9:11

EPA REGION VIII  
HEADQUARTERS

IN THE MATTER OF:  
Clear Creek/Central City Superfund Site  
Gilpin County, Colorado

ADMINISTRATIVE ORDER DIRECTING  
COMPLIANCE WITH REQUEST FOR  
ACCESS

Mack C. Ratcliffe,  
  
Respondent.

U.S. EPA Region 8  
CERCLA Docket No. **CERCLA-08-2007-0005**

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

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

**I. JURISDICTION**

1. This Administrative Order (“Order”) is issued to Mack C. Ratcliffe (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 CFR § 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, further delegated to the Assistant Regional Administrator, Office of Ecosystems Protection and Remediation and the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice on December 20, 1996, and further delegated to the Directors of the Technical Enforcement and Legal Enforcement Programs.

**II. STATEMENT OF PURPOSE**

2. This Order requires Respondent to grant EPA, the Colorado Department of Public Health and the Environment (“CDPHE”), and their authorized representatives entry and access to Respondent’s property known as the Church Placer claim and further described in Paragraphs 3 and 4 below (hereinafter the “Church Placer Property” or “Property”) located in Gilpin County, Colorado. Such access is required for the purpose

of implementing response actions and otherwise enforcing the provisions of CERCLA. This Order further requires Respondent to refrain from interfering with access to the Church Placer Property by EPA, CDPHE and their authorized representatives for the purposes set forth herein.

### III. FINDINGS OF FACT

3. The Church Placer Property encompasses approximately 98 acres of land in Gilpin County, Colorado and is included within operable unit 4 (“OU4”) of the Clear Creek/Central City Superfund Site. The Clear Creek/Central City Superfund Site is a State-lead site, included on the National Priorities List in September 1983. OU4 was created in 1999 to study the impacts of acid and metals loading to the North Fork of Clear Creek, a tributary to Clear Creek, caused by the vestiges of historic mining activity in the district. The Church Placer Property has been contaminated by heavy metals from the Druid, Frontenac, Adudell and East Addudell mines which border the Church Placer Property along its southern border. EPA and CDPHE issued a Record of Decision selecting a remedy for OU4 in September 2004 which was amended in September 2006 (“OU4 ROD”).

4. Respondent acquired the Church Placer Property pursuant to a Treasurer’s deed issued by Gilpin County on or about April 26, 2006, a copy of which is attached hereto as Attachment A.

5. EPA and CDPHE have determined that there is widespread metals contamination, including arsenic, cadmium, copper, lead, and zinc, in surface and near surface soils as result of historical and recent mining activity located across the Church Placer Property. Heavy metals are migrating from the Property and are a source of acidic

drainage and metals loading into the Clear Creek watershed. EPA and CDPHE are planning on taking response actions to address these releases of these hazardous substances from the Property that will include channel stabilization and construction of rock check structures, re-grading, runoff and run-on control ditches, capping, and revegetation. In addition, there are mine waste piles located on or near the Property with elevated concentrations of barium, cadmium, copper, lead and zinc including the Anchor Waste Pile and the Hazeltine Waste Pile. EPA and CDPHE are planning a response action to address releases of hazardous substances from these waste piles that will include grading and capping, controlling erosion, and re-vegetating disturbed areas.

6. To perform the response actions set forth in the OU4 ROD including the work described above, it will be necessary for employees, agents, contractors, and other representatives of EPA and CDPHE to enter the Church Placer Property.

7. EPA estimates that the duration of the required entry and access will be three years.

8. Despite requests from representatives of EPA, CDPHE, and the Department of Justice, Respondent has refused to provide access for purposes of performing the response activities described above. Respondent was first approached regarding access to the Property in May 2006. Additional requests were made in July 2006, December 2006 and March 2007. In each instance, Respondent either denied the request in its entirety or imposed conditions on access that were tantamount to a denial, including limitations on duration and the work that could be performed on the Property. In addition, Respondent rejected EPA's offers to meet to discuss the matter.

#### IV. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

11. All of the substances listed in Paragraph 5 above 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).

12. The past and present disposal and migration of hazardous substances at or from the Property constitutes an actual "release" or a threat of such a release into the "environment" within the meaning of Sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22), and thus there is a reasonable basis to believe that there may be a release or threat of release within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 104(e)(1).

13. Entry to Property by agents, contractors, or other representatives of EPA and CDPHE is needed for the purposes of 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).

14. Respondent's attempts to condition his grant of access amounts to a denial of access 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

15. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record, Respondent is hereby ordered to provide EPA, CDPHE, and their 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 necessary to implement the OU4 ROD.

16. 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, CDPHE, their officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.

17. Nothing herein limits or otherwise affects any right of entry held by EPA or CDPHE pursuant to applicable laws, regulations, or permits.

18. This Order shall apply to and be binding upon Respondent and his 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.

19. 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, CDPHE, and their 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, CDPHE and their 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

20. 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 \$32,500 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 or CDPHE 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 Property, and recovery of the costs thereof.



21. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA or CDPHE has now or may have in the future against Respondent, or against any entity which is not a party to this Order.

22. Nothing in this Order shall affect in any manner the right of EPA or CDPHE 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 Property or any other site.

23. 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

24. 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 at EPA offices located at 1595 Wynkoop Street, Denver, Colorado. To review the Administrative Record, please contact Peggy Linn at (303) 312-6622. A copy of the Administrative Record is also available for viewing at the Gilpin County Court House, 203 Eureka Street, Central City, Colorado.

#### VIII. OPPORTUNITY TO CONFER

25. Within three business days after receipt of this Order by Respondent, Respondent may request a conference with EPA, to be held no later than five 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 he 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:

Andrea Madigan  
Legal Enforcement Program  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202  
303-312-6904

#### IX. EFFECTIVE DATE; COMPUTATION OF TIME

26. This Order shall be effective five 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 its legal counsel. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.

27. 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

28. 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:

Andrea Madigan  
Legal Enforcement Program  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202  
303-312-6904

#### XI. TERMINATION

29. This Order shall remain in effect until the Assistant Regional Administrator, Office of Ecosystems Protection and Remediation and the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice or their designees notify Respondent in writing that access to the Church Placer Property is no longer needed.

SO ORDERED.

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

By: Sharon L Kercher Date: 4/24/2007  
Sharon Kercher  
Director, Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

By: Matt Talan Date: 4/26/07  
David Janik *For*  
Acting Director, Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice