

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

IN THE MATTER OF:)
)
Jasper County Site)
Superfund Site)
Jasper County, Missouri)
)
Larry W. Wald and Sandra A. Wald,)
)
Respondents,)
)
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
And
NOTICE OF OPPORTUNITY TO
CONFER

U.S. EPA Region VII
Docket No.: CERCLA-07-2015-0003

ADMINISTRATIVE ORDER
DIRECTING COMPLIANCE
WITH REQUEST FOR ACCESS

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I. JURISDICTION

1. This Administrative Order (“Order”) is issued to Larry W. Wald and Sandra A. Wald (hereinafter, “Respondents”), 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, and redelegated to the Regional Administrators of EPA on May 11, 1994, by EPA Delegation No. 14-6.

2. This Order establishes that Respondents have denied EPA access to their real property, sets forth the relief EPA is seeking, and provides Respondents with an opportunity to confer with EPA regarding access.

II. STATEMENT OF PURPOSE

3. This Order requires Respondents to grant EPA and its authorized representatives entry and access to the property described in Paragraph 4 below (“the Property” or “Respondents’ Property”) located in Joplin, Missouri for the purpose of taking a response action that may include, but is not limited to: removing trees, brush and vegetation from areas where metals exceed the action levels; excavating and removing contaminated soil, sediment and mining wastes; transporting the soils, sediments and mine wastes to adjacent mine pits for disposal; disposing of soils, sediments and mine wastes in the mine pits, filling the pits to the

ground surface, then capping the pits with clay and topsoil; or consolidating mine wastes into a single pile, either on or off the Property, and capping with clay and topsoil; regrading the Property to promote drainage and prevent ponding water; and, revegetating the disturbed areas with fescue grasses at the Jasper County Superfund Site (the "Site"). This Order further requires Respondents 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. The Respondents own certain real property located off County Road 200, Jasper County, Missouri, identified as Jasper County Assessor Property Identification Number Parcel #08220900000007000. Appendix A contains the legal description of the Respondents' Property. The Property contains about 119.220 acres all located within the Site. Approximately 30 acres of the Property is covered with mining wastes and about three and one half acres consisting of two mining pits. Entry and access to the Respondents' Property is necessary to cleanup these mining wastes and prevent exposure to contaminants of concern contained in mining wastes at this Site.

5. EPA has taken actions at the Jasper County Superfund Site in response to a release or a substantial threat of a release of hazardous substances within the Superfund Site. On August 30, 1990 (55 Fed. Reg. 35502), pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Jasper County Site on the National Priorities, List, set forth at 40 C.F.R. Part 300, Appendix B. Pursuant to a Record of Decision (ROD) issued by EPA in September 2004, and the ROD Amendment issued on September 27, 2013, for the mining waste cleanup operable

unit number one (OU1), Appendix B, incorporated herein by reference, the EPA selected a remedial action for this OU in 2004 and 2013, which requires cleanup of the mining wastes and contaminated surface waters at the Site.

6. The Site is in the Missouri portion of the Tri-State Mining District, which also includes portions of Kansas and Oklahoma. Historically, lead and zinc mining, milling and smelting operations generated about 150 million tons of mining and milling wastes within the Site, of which about 10 million tons remain on-site and some of these mining and milling wastes are on about thirty (30) acres of the Respondents' Property.

7. The Remedial Investigation (RI) conducted at the Site by EPA identified that the mining wastes contain concentrations of heavy metals, primarily cadmium, lead, and zinc, (i.e., the contaminants of concern or COCs) that cause unacceptable risk to human health and the environment. In addition, the RI identified COCs in the surface waters due to migration of mining wastes into surface water bodies. The levels of COCs in surface waters at this Site cause unacceptable risk to aquatic life.

8. Mining, milling wastes and soil samples collected from the Respondents' Property contain levels of lead that exceed the action levels EPA selected for the remedy, i.e., concentrations at 400 parts per million lead and 6,400 ppm zinc. The data from samples collected at the Respondents' Property show the maximum level of lead up to 9,500 ppm and zinc in excess of 30,000 ppm. The highest concentrations of zinc were measured in mine tailing material located adjacent to the northwest mine pit. Run-off from these materials drain into the mine pit.

9. To address the release or threatened release of a hazardous substance, pollutant or contaminant at and adjacent to the Property, EPA is conducting response actions in accordance with the OU1 ROD and ROD Amendment. These actions include performing selected remedial actions at the Respondents' Property.

10. To perform the response actions described above, it will be necessary for employees, agents, contractors, and other representatives of EPA to enter the Property. The activities for which entry is required may include, but are not limited to, removal of vegetation and soil, excavation, capping of mine wastes, filling/capping mining pits, and revegetation of the disturbed area and establishing long-term operation and maintenance of the capped areas.

11. The EPA estimates that the duration of the required entry and access will be approximately six months to conduct cleanup. Also, EPA will perform at least two years of periodic inspections to establish that the remedy is operational and functional and to conduct the first year of operation and maintenance for the filled and capped pits. The first year of operation and maintenance will require semi-annual inspections. After the first year, operation and maintenance will become the responsibility of the state of Missouri. Further access arrangements with the Respondents will be managed by the state with assistance from EPA.

12. EPA has undertaken considerable efforts to obtain consensual access to the Respondents' Property, but Respondents have refused access. The EPA representatives contacted and met in person with Respondent Larry W. Wald several times in February, March, and May 2015. During these meetings, Respondent attempted to condition and limit EPA's access and refused to sign a voluntary access agreement. In a meeting on or about, February 26, 2015,

Respondents refused to discuss access with EPA representatives. During the week of March 6, 2015, after being informed that cleanup of the Property is essential for the Site, Respondent Larry W. Wald again refused to allow voluntary access for purposes of performing the response activities. Finally, during a meeting on May 11, 2015, with Respondent Larry W. Wald, his attorney, Mark A. Elliston, and EPA representatives, Respondent again refused to grant access. During the meeting of May 11, 2015, Respondent Larry Wald provided a list of demands and conditioned voluntary access upon EPA's agreement. EPA indicated that most of the demands are consistent with the planned response activities at the Property, but that certain demands are inconsistent with the selected remedy, for example, stockpiling chat (a hazardous material) and yearly testing, replanting and fertilizing soil. See Appendix C, Correspondence and the list of demands.

13. EPA and its contractors have been ready to perform the response activities and initiate cleanup actions since March 1, 2015, but have been prevented from so doing because of the Respondents' refusal to grant access. In addition, EPA and its contractors have been granted access to properties adjacent to Respondents' Property, but cannot complete work at the adjacent property. EPA needs access to Respondents' Property because the mining pit that needs to be filled straddles the property line between Respondents' Property and the adjacent property to the south. Therefore, Respondents' refusal to grant access is inhibiting and delaying EPA from cleaning up not only Respondents' Property, but also Respondents' neighbor's property to the south. See Appendix D, Map, incorporated herein by reference.

14. In accordance with Paragraph 32 of this Order, Respondents' exercised their opportunity to confer with EPA. Representatives of EPA and Respondents met on June 4, 2015, in Webb City, Missouri. Respondents also provided written comments to EPA, Region 7. Based on the information from Respondents during the conference and their written comments, EPA acknowledges that Respondents intend to continue using the Property in connection with their cattle operation after the cleanup is complete; that certain trees on the Property are used as shade trees for the cattle; that the Property has existing fencing and pasture; and that the cattle operation uses an existing mining pit as a watering pond.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

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

16. Respondents are each a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

17. Cadmium, lead and zinc 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).

18. The past disposal and migration of a hazardous substance or pollutant or contaminant 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. §

9604(e)(1).

19. The Property owned or controlled by Respondents referred to in Paragraphs 3 and 4 above is, or is adjacent to, a facility, establishment, or other place or property:

- a. where a hazardous substance or pollutant or contaminant has been generated, stored, treated, disposed of, or transported from; and
- b. from or to which a hazardous substance or pollutant or contaminant has been or may have been released; and
- c. 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).

20. Entry to property owned or controlled by Respondents by the agents, contractors, or other representatives of the United States is needed for the purposes of taking a response action within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

21. Respondents refused access for cleanup. In addition, Respondents attempted to condition EPA access with requirements such as stockpiling hazardous materials and annual replanting and fertilizing soil. This denial of access and attempt to condition access is 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

22. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record, Respondents are 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:

- Removing trees, brush and vegetation from areas where metals exceed the action levels;
 - Shade trees will be left in place to the extent possible, provided Respondent identifies said shade trees in a reasonable time before commencing work
- Excavating and removing contaminated soil, sediments, and mining wastes;
 - Discrete waste piles that consist solely of bullrock (i.e., large boulders) and do not exceed action levels may be left in place
 - Pasture land that does not exceed action levels will not be disturbed
- Transporting the soils, sediments, and mine wastes to adjacent mine pits for disposal;
 - The smaller mine pit will be filled first
 - The larger mine pit used as a watering pond will be filled second, as necessary
 - If both mine pits are filled, a new replacement watering pond will be constructed
- Disposing of soils, sediments, and mine wastes in the mine pits, filling the pits to the ground surface, then capping the pits with clay and topsoil, or;
- Consolidating mine wastes into a single pile, either on or off the Property, and capping such pile with clay and topsoil;
- Re-grading the disturbed and excavated areas on the Property to promote drainage and prevent ponding water;

- Re-vegetating the disturbed and excavated areas with fescue/Bermuda mix grasses
 - Lime and fertilizer will be added, as necessary, with appropriate pH adjustments for optimum level to initiate re-vegetation
 - Removed fencing will be replaced with as nearly as possible the same quality and quantity as existing fencing
- Establishing operation and maintenance for the filled and capped mining pits
 - To promote proper drainage and control erosion and prevent ponding
 - For the duration of the RA, until the State of Missouri takes over performance of O&M
- Egress/ingress onto the Property for the duration of the cleanup will be established
 - Using the least intrusive route to protect cattle pasture
 - Conducted during reasonable hours with advance notice to Respondents

23. Respondents 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.

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

25. This Order shall apply to and be binding upon Respondents and their successors, heirs and assigns, and each and every agent of Respondents and upon all other persons and

entities who are under the direct or indirect control of Respondents, including any and all lessees of Respondents.

26. In the event of any conveyance by Respondents, or Respondents' agents, heirs, successors and assigns, of an interest in the Property, Respondents or Respondents' 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.

Respondents, or Respondents' 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

27. 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 Respondents of up to \$37,500 for each day that Respondents unreasonably fail 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, 78 Fed. Reg. 66643 (November 6, 2013), 40 C.F.R. § 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 Property, and recovery of the costs thereof.

28. 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 Respondents, or against any entity which is not a party to this Order.

29. 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 Respondents or any other parties under CERCLA which relate to this Property or any other site.

30. 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

31. 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 at the EPA Regional Office in Lenexa, Kansas. To review the Administrative Record, please contact Jane Kloeckner at (913) 551-7235 to make an appointment. A copy of the Administrative Record is also available for viewing at the following:

Webb City Public Library
101 South Liberty
Webb City, Missouri 64870.

VIII. OPPORTUNITY TO CONFER

32. In accordance with this paragraph, Respondents exercised their opportunity to confer with EPA on June 4, 2015, and submitted written comments on or about June 3, 2015. The opportunity covered the Order prior to its modification and provided that:

- A. Within seven (7) days after receipt of the Order by Respondents, Respondents may request a conference with EPA, to be held no later than seven (7) days after Respondents' 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 Respondents are ordered to take, or any other relevant and material issues or contentions which Respondents may have regarding this Order. Respondents may appear in person or by an attorney or other representative at the conference.
- B. Respondents 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 (2) days before the effective date of this Order if Respondents do not request a conference. EPA will deem Respondents to have waived their right to the conference or to submit written comments if they 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:

Jane Kloeckner
Office of Regional Counsel
U.S. Environmental Protection Agency, Region VII
11201 Renner Boulevard, Lenexa, Kansas 66219
Telephone: (913) 551-7235
kloeckner.jane@epa.gov

IX. EFFECTIVE DATE: COMPUTATION OF TIME

33. A modification of the Order as executed on May 14, 2015, has been determined by EPA to be necessary. This modified Order has been re-issued and re-executed by EPA. This modified Order shall become effective upon notification by EPA to the Respondents. Any EPA notification under this paragraph may, at EPA's discretion, be provided to Respondents 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 Respondents or their legal counsel. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.

34. 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

35. On or before the effective date of this Order, Respondents shall notify EPA in writing whether Respondents will comply with the terms of this Order. Respondents' failure to notify EPA of their unconditional intent to fully comply with this Order by the time the Order

becomes effective shall be construed as a denial of EPA's request for access, and as of the effective date of the Order, treated as a violation of the Order. Such written notice shall be sent to:

Jane Kloeckner
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Telephone: (913) 551-7235
kloeckner.jane@epa.gov

XI. TERMINATION

36. This Order shall remain in effect until Mark Hague, Acting Regional Administrator, or his designee notifies Respondents in writing that access to the Property is no longer needed.

SO ORDERED and MODIFIED.

Date: AUG 11 2015



Mark Hague
Acting Regional Administrator