

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:

Upper Tenmile Creek Mining Area
Superfund Site
Lewis and Clark, County, Montana,

Kirk and Cathy Eakin,

Respondents.

U.S. EPA Region 8

Docket No. CERCLA-08-2009-0006

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

TABLE OF CONTENTS

I.	JURISDICTION	1
II.	STATEMENT OF PURPOSE	1
III.	FINDINGS OF FACT	2
IV.	CONTAMINATION ON THE SIEWERT AND GOTT PROPERTIES	7
V.	CONCLUSIONS OF LAW AND DETERMINATIONS	7
VI.	ORDER	9
VII.	ENFORCEMENT	10
VIII.	ADMINISTRATIVE RECORD	11
IX.	OPPORTUNITY TO CONFER.....	11
X.	EFFECTIVE DATE; COMPUTATION OF TIME	12
XI.	NOTICE OF INTENT TO COMPLY	13
XII.	TERMINATION	14
	ATTACHMENT	15

I. JURISDICTION

1. This Administrative Order (Order) is issued to Kirk and Cathy Eakin (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 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, and further jointly re-delegated to the supervisors of the Region 8 Legal Enforcement Program and the EPA Region 8 Montana Operations Office.

II. STATEMENT OF PURPOSE

2. This Order requires the Respondents to grant EPA and its authorized representatives entry and access to the Property described in Paragraph 3 below, located in or near the community of Rimini, Lewis & Clark County, Montana, for the purpose of determining the need for a response, choosing a response action, taking a response action, and otherwise enforcing the provisions of CERCLA by removing contaminated soils from residential property adjacent to the Property owned by Respondents. 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

3. Respondents Kirk and Cathy Eakin own real property ("Property" or "Weston Property") at the following location:

A tract of land lying within Mineral Survey No. 1716, Lot No. 56-A (Minnie Lea Lode), situated in Sections 32 and 33, Township 9 North, Range 5 West, of the Principal Meridian Montana, Lewis and Clark County, Montana, more particularly described as:

Beginning at a point on the north boundary (course 2-3) of M.S. No. 1716, Lot 56-A (Minnie Lea Lode), from which corner number 2 (a brass cap by the B.L.M.) of said Mineral Survey bears South 87° 30' East 166.30 feet distant, and corner No. 3 (a brass cap by the B.L.M.) of said Mineral Survey bears North 87° 30' West 1326.07 feet distant; thence from the point beginning North 87° 30' West 42.71 feet along the north boundary of Mineral Survey No. 1716; thence South 63° 45' 26" West 130.0 feet; thence South 18° 20' 22" East 143.54 feet; thence North 64° 48' 50" East 161.00 feet; thence North 25° 03' 43" West 124.86 feet; thence North 64° 18' 17" East 23.64 feet to the point of beginning; as shown on Certificate of Survey filed under Document No. 439954/B as Tract A.

Said property, previously known as and sometimes referred to herein as the Weston Property, is located at 3440 Rimini Road, Rimini, Montana, and its location and legal description are further set forth in a letter from Iris H. Basta, counsel for the Respondents, in an emailed letter to EPA dated September 21, 2006. (Attachment A) The Property is located within the Upper Tenmile Creek Mining Area Superfund Site (Site).

4. The Upper Tenmile Creek Mining Area Superfund Site was listed on the CERCLA National Priorities List, 40 C.F.R. Part 300, App. B, pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B), in October, 1999.

5. EPA mobilized the U.S. Bureau of Reclamation and EPA's contractor, Envirocon, in July, 2002, for the purpose of performing response actions at the Site, including, among other things, removal and remediation of residential soils in the community of Rimini, Montana, including the Weston Property, referenced above. Analytical data collected during these activities indicate that soils at the Site are contaminated by mine waste containing high levels of arsenic and lead, among other substances, identified by EPA as hazardous substances and human carcinogens. Both lead and arsenic are present in residential soils, including soils at the Weston Property, referenced above, at concentration levels that pose a threat to the environment and the Property residents, residents at the Site, and the residents of the community of Rimini, Montana.

6. To address the release or threatened release of hazardous substances, pollutants or contaminants, EPA is conducting certain response actions at residential properties (hereinafter referred to as the Siewert and Gott properties) adjacent to the Property owned by Respondents. These actions generally include, among others, removal and replacement of residential soils contaminated by mine waste.

7. To perform the response actions described above, it will be necessary for employees, agents, contractors, and other representatives of EPA to enter and cross the Property. The activities for which entry is required include:

- a. Travel by EPA employees, contractors and other representatives, including representatives of the State of Montana from the road fronting the Property to the adjacent Siewert and Gott properties.
- b. Transportation of earth moving equipment and trucks;
- c. Transportation of contaminated soils across and away from the Property;
- d. Transportation of clean soils and landscaping materials onto properties being remediated.

8. EPA estimates that the duration of the required entry and access will be approximately thirty (30) days from the time of first entry, but may exceed thirty days depending on circumstances encountered at the Siewert and Gott properties.

9. EPA has requested access to the Property, but Respondents have refused to provide access for purposes of performing the response activities described above. In addition to a number of telephone and personal conversations by EPA employees with the Respondents, a partial chronology of communications by EPA and the State of Montana with the Respondents to gain access across the Respondents' property includes the following:

August 1, 2006: EPA wrote to Russell Weston, Sr., then owner of the Property, to confirm that he had retracted his prior permission for EPA to enter and clean up the Property, in anticipation of Mr. Weston's transfer of the Property to the Respondents. EPA reminded Mr. Weston that the Property was contaminated with arsenic, which might pose a risk to human health and the environment.

August 21, 2006: Representatives of the Montana Department of Environmental Quality spoke to one of the Respondents about the possibility of getting

access to the Siewert and Gott properties. The Respondent stated an intention to provide access to those properties but questioned sampling data showing contamination and requested road watering on the weekend.

September 21, 2006: Respondents' counsel sent EPA a proposed "License to Use Property for Access" to be signed by EPA, which set out the Respondents' conditions for giving EPA access across their property. Among the express 23 conditions, set out in the cover letter and access license were:

- (1) EPA must pay for alleged damage done to the Property before Respondents owned it,
- (2) EPA must provide a written promise to clean up property used by the Respondents as a driveway, but owned by the Forest Service,
- (3) EPA must "back" the Respondents' petition, along with six other landowners, to be removed from the local Sewer and Water District,
- (4) Respondents could revoke permission for access, "with or without cause," at any time,
- (5) EPA must acknowledge the Agency would be subject to civil or criminal suit if the Agency continued to enter the property after permission was revoked,
- (6) EPA must agree that, upon "premature termination" of permission for access, EPA would pay for any damage to the Property,
- (7) EPA must indemnify and hold the Respondents harmless for any lawsuits, etc. arising from any occurrence, etc., on the Property,
- (8) EPA must maintain personal and property liability insurance naming the Respondents as insureds,
- (9) EPA's contractors and representatives must be bound by agreement and subject to its terms,
- (10) EPA must pay the Respondents' attorneys fees if there is a dispute and Respondents are required to "enforce" the access agreement against EPA.

EPA could not agree with the above provisions and other restrictions imposed by the Respondents. Negotiations continued, but Respondents did not provide EPA with access to clean up the Property or the Siewert and Gott properties.

October 5, 2006: Respondents provided access for cleanup of a portion of land adjacent to the Property and used by the Respondents as a driveway. This property was owned by the U.S. Forest Service. Even so, Respondents imposed conditions on that access, even though they did not own that property.

March, 2007: Mike Bishop, Remedial Project Manager for the Site, contacted the Respondents by telephone and offered to relocate them at EPA's expense during the time required for EPA to clean up the Gott and Siewert properties, if the Respondents would allow EPA access to those properties. Respondents declined.

April 18, 2007: Respondents characterized EPA's attempts to obtain access by saying it "amounts to harassment."

July 23, 2007: Respondents wrote to Ms Carol Rushin, then Assistant Regional Administrator, asking that EPA pay the Respondents' attorneys fees for unsuccessfully negotiating access with EPA and damages allegedly caused by EPA's contractors to the Property before Respondents took title.

September 10, 2007: John Wardell, Director of EPA's Office of Montana Operations, responded to the Respondents letter of July 23, 2007, expressing EPA's continuing desire to not only clean up the Respondents' property, but to clean up the Siewert and Gott properties as well.

October 5, 2007: Respondents wrote Mr. James Woolford, then Director of EPA's Office of Superfund Remediation and Technology Innovation, providing a bill and asking him for payment of the Respondents' damages claims and attorneys' fees.

Respondents stated that because EPA "renege" and would not sign Respondents' license for access, they "feel no obligation work any further with the EPA regarding access."

April 29, 2009: Respondents refused to accept delivery of EPA's April 20, 2009 letter from John Wardell, Director of EPA's Montana Office, which extended the Agency's most recent request for access, sent by certified mail.

IV. CONTAMINATION ON THE SIEWERT AND GOTT PROPERTIES

10. Lead and arsenic, which EPA soil sampling has shown are present at the Siewert and Gott properties, are "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

11. EPA has a reasonable basis to believe that the presence of and the past, present, and future migration of hazardous substances at or from the Site constitute an actual and/or threatened "release" of hazardous substances into the environment, as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

V. CONCLUSIONS OF LAW AND DETERMINATIONS

12. The Site and associated residential properties, as well as the Weston Property, referenced above are "facilities" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

13. Respondents are "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

14. Lead 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. The past disposal and the potential for migration of a hazardous substance or pollutant or contaminant at, on, or from the Siewert and Gott properties, and the Weston Property, referenced above, 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 EPA has more than a reasonable basis to believe 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).

16. The Property owned or controlled by Respondents referred to in Paragraph 3, above is, or is adjacent to, 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 and to effectuate a response action within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

17. EPA and the agents, contractors, or other representatives of the United States need to enter the Property owned and controlled by Respondents for the purposes of determining the need for a response, choosing a response action, taking a response action, or otherwise enforcing CERCLA, within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

18. EPA's request for access to the Property has not been granted, and Respondents' prior attempts to condition their 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)].

VI. ORDER

19. 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 onto and across the Property for the purpose of conducting response activities on the adjacent Siewert and Gott properties. EPA designates CDM Federal Program and its subcontractors as its representatives solely for the purpose of entering the Property and conducting response activities.

20. Respondents shall not interfere with EPA's exercise of its access authorities under 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 on 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.

21. Nothing herein limits or otherwise affects any authority to enter the Property otherwise held by the United States pursuant to applicable laws, regulations, or permits.

22. 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.

23. 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 that insures continued access to the Property by EPA and its representatives for the purpose of carrying out the activities set forth in this Order. Any such conveyance shall restrict the use of the Property such 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.

VII. ENFORCEMENT

24. Compliance with this Order can be enforced under Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). 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, 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. 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 recovering the costs thereof.

25. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action that EPA has or may have against Respondents, or against any entity that is not a party to this Order.

26. Nothing in this Order shall affect in any manner EPA's right to issue any other orders to or take any other administrative or civil action against Respondents or any other parties under CERCLA that relate to this Property or any other site.

27. 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).

VIII. ADMINISTRATIVE RECORD

28. EPA has established an Administrative Record containing documents that form the basis for the issuance of this Order. This Administrative Record is available for review by appointment on weekdays between the hours of 8:00 a.m. and 5:00 p.m. at the EPA offices located at the Federal Building, 10 West 15th Street, Suite 3200, Helena, Montana, 59626. To review the Administrative Record, please contact Mike Bishop at (406) 457-5041 to make an appointment.

IX. OPPORTUNITY TO CONFER

29. Within seven (7) business days after receipt of this Order by either Respondent, Respondents may request a conference with EPA, to be held no later than seven (7) business 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, by telephone, or by an attorney or other representative at the conference. 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 business days before the effective date of this Order if Respondents do not request a conference. EPA will deem Respondents to have waived their rights to the conference or to submit written comments if they fail to request the conference or submit comments within the specified time period. Any request for a conference or written comments or statements should be submitted to:

Lorraine Ross
Legal Enforcement Program, 8ENF-L
United States Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado, 80202-1129
Telephone: (303) 312-6888
Facsimile: (303) 312-7202

X. EFFECTIVE DATE; COMPUTATION OF TIME

30. Because of the need to conduct the activities described above, this Order shall be effective seven (7) business days after its receipt by Respondents or Respondents' 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 of Respondents 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 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.

31. 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.

XI. NOTICE OF INTENT TO COMPLY

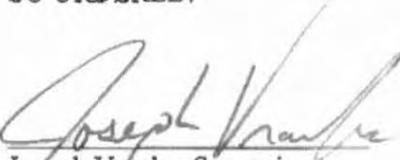
32. On or before the effective date of this Order, Respondents shall notify EPA in writing whether Respondents will comply with the terms of this Order. Respondents' failure to notify EPA of their unconditional intent to fully comply with this Order by the time the Order becomes effective shall be: (1) 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:

Lorraine Ross
Legal Enforcement Program, 8ENF-L
United States Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado, 80202-1129
Telephone: (303) 312-6888
Facsimile: (303) 312-7202

XII. TERMINATION

33. This Order shall remain in effect until Mike Bishop, EPA Region 8 Remedial Project Manager or his designee notifies either Respondent in writing that access to the Property is no longer needed.

SO ORDERED.


Joseph Vranka, Supervisor
Superfund Section
Montana Operations Office, 8MO
U.S. Environmental Protection Agency, Region 8
Federal Building
10 West 15th Street, Suite 3200
Helena, Montana 59626

21 September 2009
Date

AND


Matthew Cohn, Supervisor
Legal Enforcement Program, ENF-L
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

9/23/09
Date

ATTACHMENT A

JACKSON, MURDO & GRANT, P.C.
ATTORNEYS AT LAW

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SEP 22 2006
MONTANA OFFICE

Kathryn Connors
Certified Legal Assistant
Office Administrator

Telephone extension: 107
e-mail address: ibasta@jmgm.com

September 21, 2006

Mr. Mike Bishop, Project Manager
United States Environmental Protection Agency
Region 8, Montana Office
Federal Building
10 W. 15th Street, Suite 3200
Helena, MT 59626

Re: *License to Use Property for Access*

Dear Mike:

As I indicated in my telephone message to you last week, Kirk and Cathy Eakin have been continuing their consideration of giving EPA, its general contractor, CDM, and the various sub-contractors, a license to cross their property to reach the Siewert and Gott properties. Enclosed is our proposed license agreement for your consideration.

In addition to the terms and conditions found in the license agreement itself, and in consideration of the license agreement itself, the Eakins would also like to reach an agreement that contains the following terms:

1. That the EPA pay for the trees and shrubs previously damaged and/or removed off the "Weston" property when Morrison-Maierle's surveyors entered the property without permission on or about July 1, 2006. Further, that the EPA pay for the brush pile and dirt which EnviroCon removed from the Weston/Eakin property. Kirk was saving the pile to use for mulch and was promised it would be replaced by CDM. It has never been replaced. Eakins believe that a total of about \$1,500 in damage altogether was done to the properties.

Page 2
September 21, 2006

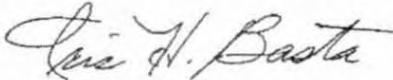
2. The Eakins want a written promise that their own driveway will be cleaned up. Furthermore, they would like to include work to be done on "Westons" in the agreement but would like to talk to you or your representative first about the extent of that work.
3. Eakins want your support and backing of theirs and 6 other property owners' petitions presented to Rimini Water & Sewer District requesting to be removed from the sewer and water district.

I will be out of my office and out of state from September 22 to October 2, 2006. If you wish to discuss any aspect of the license or the matters addressed here before then, you should call Kirk Eakin directly.

Please advise of your position on these matters and upon the proposed license agreement. I look forward to a quick resolution of these matters.

Very truly yours,

JACKSON, MURDO & GRANT, P.C.



By: Iris H. Basta

Enclosure

c: Kirk and Cathy Eakin

LICENSE TO USE PROPERTY FOR ACCESS

This Agreement is made this _____ day of September, 2006, by and between Kirk and Cathleen L. Eakin (hereafter "Eakins" or "Grantors") and Mike Bishop as Project Manager for the Environmental Protection Agency of the United States of America, located in Helena, MT (hereafter "EPA"), and CDM Federal Program, the designated general contractor; (hereafter "CDM"); EnviroCon, CDM's sub-contractor of Missoula, MT; and Morrison-Maierle, CDM's sub-contractor of Helena, MT (hereafter "Sub-Contractors"); and all parties may be further designated jointly as "Grantees.". The parties agree, as follows.

Eakins hereby grant a revocable license to the EPA and to CDM its designated general contractor, and by delegation to its Sub-Contractors hired by the General Contractor; and such parties accept this revocable license from Eakins for and in consideration of ONE DOLLAR (\$1.00) and other good and valuable consideration for the following purposes and uses of the following described real property:

The Eakins' entire property which is the subject of this license is located in Lewis and Clark County, State of Montana, and is described as follows:

A tract of land lying within Mineral Survey No. 1716, Lot No. 56-A (Minnie Lea Lode), situated in Sections 32 and 33, Township 9 North, Range 5 West, of the Principal Meridian Montana, Lewis and Clark County, Montana, more particularly described as follows:

Beginning at a point on the north boundary (course 2-3) of M.S. No. 1716, Lot 56-A (Minnie Lea Lode), from which corner number 2 (a brass cap by the B.L.M.) of said Mineral Survey bears South 87°30' East 166.30 feet distant, and corner No. 3 (a brass cap by the B.L.M.) of said Mineral Survey bears North 87°30' West, 1326.07 feet distant; thence from the point of beginning North 87°30' West 42.71 feet along the north boundary of Mineral Survey No., 1716; thence South 63°45'26" West 130.0 feet; thence South 18°20'22" East 143.54 feet; thence North 64°48'50" East 161.00 feet; thence North 25°03'43" West 124.86 feet; thence North 64°18'17" East 23.64 feet to the point of beginning; as shown on Certificate of Survey filed under Document Number 439945/B as Tract A.

Such property is also known as the Weston property.

The purpose for this license and the uses of the property specified is subject to the following terms and conditions:

1. Eakins grant a license limited to the privilege to use the above described real

property as a temporary means of ingress and egress with vehicles and construction equipment, to and from the real property currently owned by Roger Siewert and Del Gott described as follows:

(Roger Siewert property)

TRACT 7 (7A)

A tract of land located in the Minnie Lea Mining claim, M.S. 1716 Lot 56A in the SW1/4 of Section 33, Township 9 North, Range 5 West, P.M.M., Lewis and Clark County, Montana, and more particularly described as follows:

Commencing at the BLM brass cap being corner number 2 of mineral survey 1716, thence N87° 31' 30" W, 208.95 feet to the Point of Beginning; thence S63° 48' 06" W, 130.01 feet; thence S18° 20' 22" W, 143.54 feet; thence S42° 11' 06" W, 28.97 feet; thence S09° 30' 48" E, 16.14 feet; thence N72° 08' 00" E, 152.40 feet; thence S30° 12' 12" W, 58.83 feet; thence S60° 48' 21" E, 18.16 feet; thence along a non-tangent curve to the right having a radius of 703.00 feet, through a central angle of 270° 30' 04", with a length of 337.43 feet, being subtended by a chord bearing N32° 02' 47" W, with a length of 334.20 feet; thence N25° 30' 00" E, 93.55 feet; thence S87° 31' 30" E, 248.19 feet to the Point of Beginning; containing 0.96 acres.

(Del Gott real property)

A tract of land in the NW1/4 SW1/4 of Section 33, T. 9 N., R. 5 W. of the Principal Meridian Montana, Lewis and Clark County, and being a portion of MINNIE LEA LODGE (Mineral Survey No. 1716, Lot 56-A) in the Town of Rimini and referred to as 3438 Rimini Road, said tract of land being more particularly described as follows:

Beginning at a survey cap in the center of the old Montana Central Railway grade from which corner No. 2 of M.S. No. 1716 (a brass cap by the B.L.M.) is N. 28° 23' 36" E., 257.1 feet; thence from the point of beginning S. 20° 55' 29" E., 50 feet along the old Montana Central Railway grade to a survey cap; thence S. 61° 30' 17" W., 136 feet to a survey cap; thence N 20° 55' 29" W., 50 feet to a survey cap; thence N. 61° 30' 17" E., 136 feet to the point of beginning, containing 0.155 acre, all according to the attached plat, and being the same tract of land described in Book of Deeds 289, Page 582 in accordance with COS 374606.

The EPA and CDM shall use only the specifically designated and marked corridor across Eakins' described real property and Grantee expressly agrees it shall so use and maintain the property marked and designated in such manner that the use thereof will in no way hinder or prevent the proper and reasonable use and enjoyment of the Grantors' property by Grantor.

2. The Grantee further covenants with Grantors that Grantees will drive only upon that portion of the real property which has been specifically marked and designated by Grantors and will not deviate in any material way from that specifically marked and designated route onto any other portions of Grantors' property. The Grantees further covenant with the Grantors that they will, when using the property, close and lock all of the gates of Grantors and will maintain Grantors' "no trespassing" signs at the locations where such signs have been posted for the prohibition of entry by all other third parties, excepting only Rick Garrison, who has permission from Grantors for the use of the property.
3. The parties hereto agree further that as a substantial and material part of this grant, the Grantees shall only use the specifically marked and designated property for access for EPA and its general contractor and Sub-Contractors to allow the conduct of EPA clean-up operations of the Siewert and Gott properties.
4. The portion of the above described property to which this license applies shall be marked and designated by the following means: metal fence posts, marked with orange paint to designate a lane upon which travel is allowed. This license shall not apply to any other portions of the property except that marked by the foregoing means.
5. This license for access use shall be personal to Grantees and their employees, and to no others for the above described purposes only and this license shall not be assignable to any other party for any reason.
6. This grant of use for access shall be revocable by the Grantors at any time for any reason, with or without cause. Any such revocation shall be effective immediately upon notice given by either named Grantor to any one of the following representatives of the Grantees: Grantees' employees, Sub-Contractors, Mike Bishop, or CDM. Such notice shall be delivered in person or by mailing such notice to any Grantee, certified mail, return receipt requested.
7. The term of this Agreement shall commence on September 22, 2006 and automatically terminate on October 31, 2006, unless further extended by Eakins, at their sole discretion, in writing.
8. Grantees recognize that any utilization by Grantees, their employees or Sub-Contractors of the property after the termination or cancellation of this Agreement will be subject to a civil lawsuit or criminal charge for trespass upon real property.

9. In the event Grantees damage the real property or any surrounding property in any manner as a result of Grantees' use of the property, Grantees shall restore the property to its original condition and repair all such damage to Eakins' reasonable satisfaction.
10. Upon a premature termination of this license, Grantees may be required to pay for any property damage inflicted upon the real property in order to restore the property to the condition in which it was at the beginning of this agreement.
11. Grantees will indemnify Eakins and save Eakins harmless from and against any and all claims, actions, damages, lawsuits, liability and expenses, including reasonable attorneys' fees, arising from or out of any negligent or intentional action, accident, death, injury or similar occurrence in, upon, or at the property, or as a result of the occupancy or use of the property, to the extent caused in whole or in part by any act or failure to act by Grantees, its agents, contractors, or employees.
12. This license does not authorize Grantees to grant or allow access to or use of the Property by any other person or entity (including but not limited to Siewert or Gott) without specific written permission from Eakins.
13. Grantees will maintain, at its expense, general liability insurance for the Property and its uses during the term of this Agreement, with bodily injury or death liability limits of \$1,000,000 and property damage liability limits of \$100,000. Such policy of insurance shall name Eakins as an additional insured and shall contain a clause that the insurer shall not cancel or change the terms of such insurance policy without first giving Eakins thirty (30) days' prior written notice thereof. Such insurance policy shall be issued by an insurance company authorized to do business in Montana, and a copy of such policy shall be delivered to Eakins.
14. It is agreed that if any other Sub-Contractors are hired by CDM or EPA who will use this License, those Sub-Contractors shall be required by EPA or CDM to join in this agreement by execution of a counterpart of this Agreement.
15. EPA and CDM agree to specifically instruct each and every Sub-Contractor hired upon the use of the Property to ensure conformance with this agreement.
16. In the event it becomes necessary to retain counsel to enforce any right or privilege under this Agreement or take any action to terminate this Agreement or remove any cloud created hereby, then it is agreed that the successful party shall be entitled to attorney's fees and costs.
17. Grantors and Grantees agree that this Agreement may be executed in two or more counterparts. Each counterpart shall be deemed an original document, but all of which together shall constitute one and the same instrument.

18. The provisions of this Agreement shall be deemed independent and severable, and the invalidity, partial invalidity, or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision herein.
19. This Agreement and all counterparts, if any, is the entire agreement between the parties. No alterations, modifications, or additions to this Agreement shall be binding unless reduced to writing and signed by the parties to be charged herewith. No covenant, term, or addition to this Agreement shall be deemed waived unless such waiver shall be reduced to writing and signed by Grantors and Grantees.
20. This Agreement shall bind and inure to the benefit of any heirs, personal representatives, successors and permitted assigns of the Grantors and Grantees.

In Witness Whereof, the parties have hereunto set their hands this _____ day of September, 2006.

ENVIRONMENTAL PROTECTION AGENCY OF THE UNITED STATES OF AMERICA

By: _____
Mike Bishop, Project Manager

CDM FEDERAL PROGRAMS

By: _____
Title: _____

Morrison-Maierle, Inc.

By: _____
Title: _____

ENVIRO-CON

By: _____
Title: _____

STATE OF MONTANA
County of Lewis and Clark

This instrument was acknowledged before me on September _____, 2006, by _____ as _____ for CDM Federal Programs.

SEAL

(Signature)

(Print Name)
Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires: _____

STATE OF MONTANA
County of Lewis and Clark

This instrument was acknowledged before me on September _____, 2006, by Mike Bishop, as Project Manager for and on behalf of EPA.

SEAL

(Signature)

(Print Name)
Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires: _____

STATE OF MONTANA
County of Lewis and Clark

This instrument was acknowledged before me on September _____, 2006, by Kirk and Cathleen L. Eakin.

SEAL

(Signature)

(Print Name)
Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires: _____

STATE OF MONTANA
County of Lewis and Clark

This instrument was acknowledged before me on September _____, 2006, by
_____ as _____ for and on behalf of Morrison-Maierle.

SEAL

(Signature)

(Print Name)

Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires: _____

STATE OF MONTANA
County of Lewis and Clark

This instrument was acknowledged before me on September _____, 2006, by
_____, as _____ for and on behalf of EnviroCon.

SEAL

(Signature)

(Print Name)

Notary Public for the State of Montana
Residing at _____, Montana
My Commission expires: _____

G:\users\lib\2931-001 license.wpd

IN THE MATTER OF:

Upper Tenmile Creek Mining Area
Superfund Site
Lewis and Clark County, Montana
Kirk and Cathy Eakin, Respondents

Docket No. CERCLA-08-2009-0006

CERTIFICATE OF SERVICE

I certify that the attached ADMINISTRATIVE ORDER DIRECTING COMPLIANCE WITH REQUEST FOR ACCESS was sent this day in the following manner to the addresses below:

Original and one copy hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Copy by certified mail, return receipt requested to:

Kirk and Cathy Eakin
2598 Shaman Drive
Helena, Montana 59601

And

Kirk and Cathy Eakin
3440 Rimini Road
Helena, Montana 59601

24 September 2009
Date

Lorraine Ross Lorraine Ross
Name