100005135

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

JUN 20 2018

Ref: 8ENF-RC

**CERTIFIED MAIL**
**RETURN RECEIPT REQUESTED**

Julia S. Janson
Vice President, Chief Legal Officer, Corporate Secretary
Duke Energy Corporation
550 South Tyron Street
Charlotte, NC 28202-1803

Re: Request for Information Pursuant to Section 104(e) of CERCLA
Bonita Peak Mining District, San Juan County, Colorado SSID #A8-5M

Dear Ms. Janson:

This letter seeks your cooperation in providing information and documents relating to the Bonita Peak Mining District Site (BPMD Site). The BPMD Site consists of historic and ongoing releases from mining operations in three drainages, Mineral Creek, Cement Creek and Upper Animas (referred to generally as the Upper Animas Watershed), which converge into the Animas River near Silverton, Colorado. Mining began in the area in the 1870s. The National Priorities List documentation for the BPMD Site identified 48 mining-related sources containing waste rock, tailings piles and/or discharging mine drainage. These areas are comprised of 35 mines, seven tunnels, four tailings impoundments and two study areas where additional information is needed to evaluate environmental concerns. The last producing mine ceased production in 1991. A map depicting these mining-related sources is found in Enclosure 1.

The U.S. Environmental Protection Agency is investigating the identification, nature, and quantity of materials that have been generated, treated, stored or disposed of at, or transported to, the BPMD Site; the nature or extent of the release of a hazardous substance, pollutant or contaminant at the BPMD Site; and information relating to the ability of persons to pay for or to perform a cleanup at the BPMD Site. For more information concerning the BPMD Site, please visit https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0802497.

Pursuant to the authority of section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9604, as amended, you are hereby requested to respond to the Information Request set forth in Enclosure 2, attached hereto. Specifically, the EPA has information that Dixilyn-Field Drilling Company (Dixilyn Co.) was an owner and operator at the Pride of the West Mill and Tailings and Henrietta Mine (i.e., one of the 48 historic mines mining-related sources) during the 1970s. Duke Energy Corporation (Duke Corp.) is the corporate parent and sole owner of Dixilyn Co.

Please respond to the Information Request within 60 days. Failure to respond fully and truthfully, or to adequately justify your failure to respond, can result in an enforcement action by the EPA, pursuant to section 104(e) of CERCLA and the imposition of penalties of up to $55,907 per day of non-compliance. Please be further advised that provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001.

The Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, *et seq.*

Your response to this request must be accompanied by a notarized certificate that is signed and dated by the person who is authorized by you to respond to this request. The notarized certificate must state that the response submitted to the EPA is complete and contains all documents and information responsive to this request that are known to you following a complete and thorough review of all information and sources available to you. A suggested format for the notarized certificate is included with this request as Enclosure 3.

The response to the Information Request should be mailed to:

U.S. Environmental Protection Agency
Region 8
Attn: Mike Rudy (8ENF-RC)
1595 Wynkoop Street
Denver, CO 80202-1129

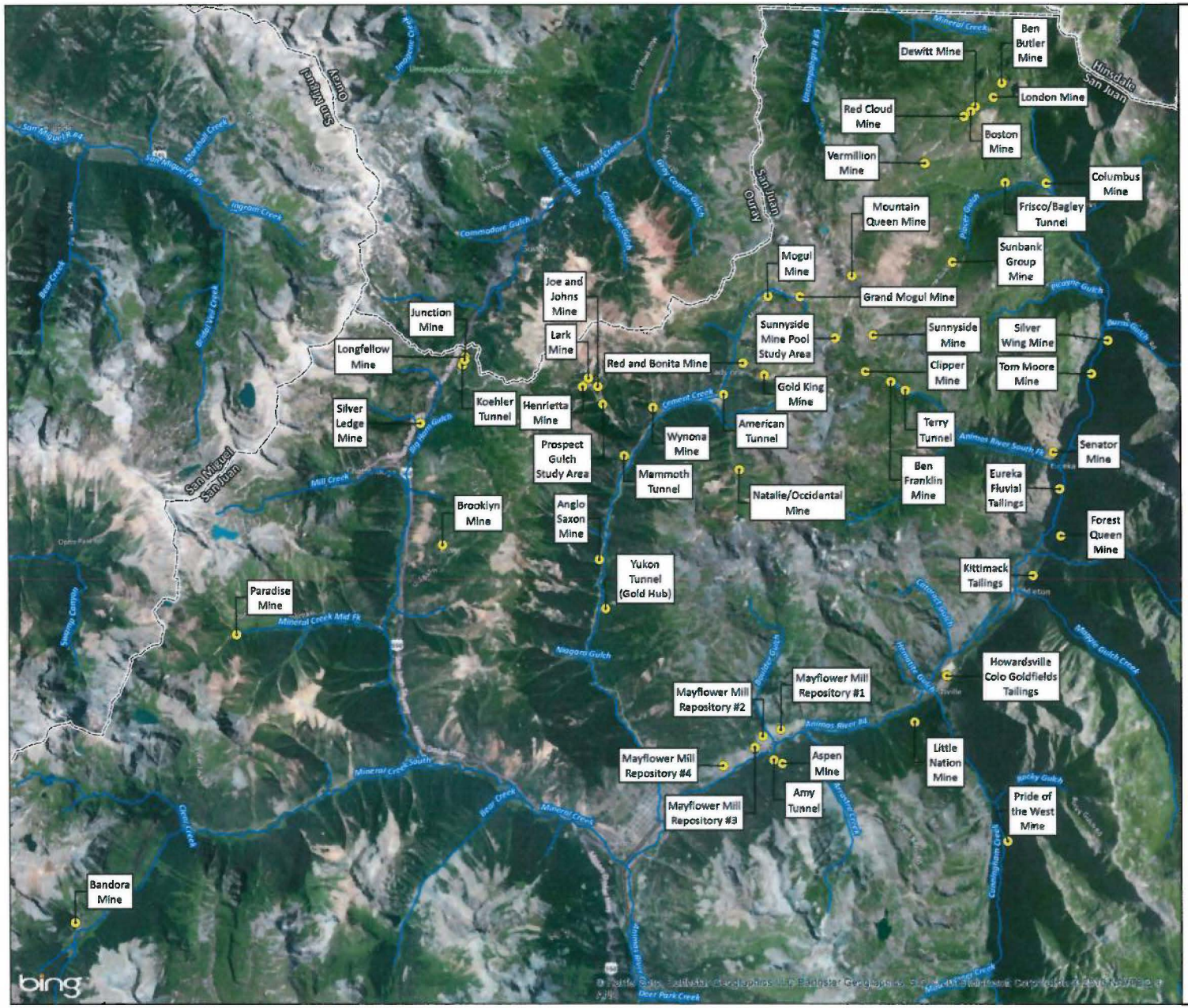
The EPA strongly encourages you to give this matter your immediate attention and respond to the Information Request within the time specified above. If you have any questions relating to this Information Request, please contact Douglas Naftz, EPA Enforcement Attorney, at (303) 312-6942 or Mike Rudy, EPA Enforcement Specialist, at (303) 312-6332. Thank you for your cooperation in this matter.

Sincerely,

Suzanne J. Bohan,
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Richard Sisk, 8ENF-L
Doug Naftz, 8ENF-L
Rebecca Thomas, 8EPR-SA
Mike Rudy 8ENF-RC
CERCLIS IMC (Dianna Lim), 8EPR-PS




# Bonita Peak Mining District

*NPL Sources and Other Possible Sources (Labeled)*

1777520

NPL Sources and Other Possible Sources

Major Streams

Counties

**Map Date:** August 1, 2016

**Data Sources:**
*NPL Sources and Other Possible Sources Locations:* U.S. EPA & USGS (2015)
*Rivers and Streams:* CDOW (2013)
*Counties:* U.S. Census Bureau (2010)
*Base Map:* Microsoft Bing Hybrid (2016)

**Map Projection:** UTM Zone 13 N, NAD83, Meters

TechLaw

N W E S

0 1 2 Miles

0 1 2 Kilometers

**Area of Interest**

**ENCLOSURE 2**

## INSTRUCTIONS FOR THE INFORMATION REQUEST TO DUKE ENERGY CORPORATION
### Bonita Peak Mining District, San Juan County, Colorado, A8-5M

1. Please provide a separate narrative response to each and every Question and subpart of a Question set forth in this Information Request.

2. Precede each answer with the number of the Question to which it corresponds.

3. If information or documents not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to the EPA. Moreover, should you find, at any time after the submission of your response, that any portion of the submitted information is false or misrepresents the truth, you must notify the EPA of this fact as soon as possible and provide the EPA with a corrected response.

4. For each document produced in response to this Information Request indicate on the document, or in some other reasonable manner, the number of the Question to which it corresponds.

5. The information requested herein must be provided even though the Respondent may contend that it includes possibly confidential information or trade secrets. You may, if you desire, assert a confidentiality claim covering part or all of the information requested, pursuant to sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. 9604(e)(7)(E) and (F), section 3007(b) of RCRA, 42 U.S.C. 6927(b), and 40 C.F.R. 2.203(b), by attaching to such information at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," or "proprietary" or "company confidential." Information covered by such a claim will be disclosed by the EPA only to the extent, and only by means of the procedures set forth in 40 C.F.R. Part 2, 41 Fed. Reg. 36,902 (1976) (amended at 43 Fed. Reg. 40,000 (1978), and 50 Fed. Reg. 51,661 (1985)). If no such claim accompanies the information when it is received by the EPA, it may be made available to the public by the EPA without further notice to you. You should read the above cited regulations carefully before asserting a business confidentially claim, since certain categories of information are not properly the subject of such a claim.

## DEFINITIONS AND INFORMATION
## Bonita Peak Mining District, San Juan County, Colorado, A8-5M

The following definitions shall apply to the following words as they appear in this Enclosure:

1. The term "arrangement" means every separate contract or other agreement between two or more persons.

2. The term "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, and can be found at 42 U.S.C. section 9601, *et seq*.

3. The terms "document" and "documents" shall mean any written, recorded or visually or aurally reproduced material of any kind in any medium in your possession, custody, or control or known by you to exist, including originals, all prior drafts and all non-identical copies.

4. The term "hazardous substance" shall have the same definition as that contained in section 101(14) of CERCLA and includes any mixtures of such hazardous substances with any other substances, including petroleum products.

5. The term "hazardous waste" shall have the same definition as that contained in section 1004(5) of RCRA.

6. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.

7. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number if any (invoice or purchase order number), and the substance or the subject matter.

8. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.

9. The term "materials" shall mean all substances that have been generated, treated, stored or disposed of, or otherwise handled at or transported to the BPMD Site, including but not limited to, all hazardous substances, pollutants or contaminants, hazardous wastes and solid wastes, as defined herein, and mercury.

10. The term "person" shall have the same definition as in section 101(21) of CERCLA: an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision of a state, or any interstate body.

11. The term "pollutant or contaminant" shall have the same definition as that contained in section 101(33) of CERCLA, and includes any mixtures of such pollutants or contaminants with any other substances, including petroleum products.

12. The term "District" shall, for purposes of this information request only, mean San Juan County, Colorado, and shall include any mining-related sources situated on the border of San Juan and Ouray Counties, Colorado, if such mining-related sources have the potential to release hazardous substances into the Upper Animas Watershed.

13. The term "RCRA" means the Resource Conservation and Recovery Act, amendments to the Solid Waste Disposal Act, and can be found at 42 U.S.C. section 6901, *et seq*.

14. The term "release" has the same definition as that contained in section 101(22) of CERCLA, 42 U.S.C. section 9601(22), and includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant.

15. The term "solid waste" shall have the same definition as that contained in section 1004(27) of RCRA.

16. The term "you" or "Respondent" shall mean the addressee of this Request, and its predecessors, successors, parent companies, and subsidiary companies.

All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, 42 U.S.C. § 9601, *et seq*.; RCRA, 42 U.S.C. § 6901, *et seq*.; or their regulations found at 40 C.F.R. Part 300 and 40 C.F.R. Part 260, *et seq*. respectively, in which case the statutory or regulatory definitions shall apply.

## QUESTIONS
## Bonita Peak Mining District, San Juan County, Colorado, A8-5M

1. Identify the person(s) answering these questions by providing their name, address, and telephone number.

2. Identify the person(s) whom you wish to receive all further communications from the EPA related to the District.

3. For each and every question contained herein, identify all persons consulted in the preparation of the answer.

4. For each and every question contained herein, identify documents consulted, examined, or referred to in the preparation of the answer or that contains information responsive to the question and provide accurate copies of all such documents.

5. Describe all property interests that Respondent currently owns or has previously owned at the District, including the following information. To the extent the information requested below is provided in deeds or other documents submitted with your response to this Request, you need not include the information in your narrative response.
    a. Provide the legal description of properties owned;
    b. Describe the nature of the interest Respondent own(ed), (i.e. surface, mineral, surface and mineral, fractional ownership, fee title, leasehold, option to buy);
    c. Identify the entity from which Respondent acquired the interest, and the date acquired;
    d. If Respondent has sold or in any manner transferred property at the District, identify the person to whom Respondent sold or transferred property, describe the property sold or transferred, and provide the date of the sale or transfer;
    e. If Respondent owns a fractional interest in any property at the District, describe what portion Respondent owns and identify the other owners of the property;
    f. Please provide copies of all deeds or other conveying instruments by which Respondent acquired or transferred title to property at the District.

6. If Respondent leased the property, provide copies of all lease agreements.

7. Describe and provide all documentation related to mining or mineral processing activities the Respondent has conducted or is conducting at the District, including, but not limited to, excavation, grading, filling, drilling, reworking, milling or other earth moving the Respondent conducted at the District. These descriptions should include the following:
    a. The dates of operation;
    b. The location within the District where the mining or mineral processing activities were conducted;
    c. The individuals and/or entities responsible for such activities;
    d. The physical changes made to the District;
    e. The mining and mineral processing activity conducted at the District, including, but not limited to, exploration activities;

f. Other entities the Respondent partnered with to perform mining and mineral processing activities at the District;
g. The activities taken upon cessation of mining and mineral processing activities at the District related to reclamation and restoration.

8. Describe all waste materials from Respondent's operations at the District, including, but not limited to, waste rock, tailings, spent ore, and treatment plant sludges. State the quantities produced of each such waste. Describe where each such waste was disposed of. Identify any hazardous substances contained in such wastes and provide copies of any and all documents that describe any analysis of such wastes and the results of the analysis.

9. Describe and, where available, provide maps and construction drawings that depict the physical characteristics of the District and all changes that Respondent or its contractors made at the District, including, but not limited to, the following:
   a. Surface structures (e.g., buildings, tanks, etc.);
   b. Exploration drill holes, groundwater wells, including drilling logs;
   c. Underground storage tanks;
   d. Any and all additions, demolitions, or changes of any kind to physical structures on, under, or about the District, or to the property itself (e.g., excavation work). State the dates on which such changes occurred;
   e. Ore repositories, heap leach pads, and mine waste impoundments;
   f. Shafts, adits, and tunnels or other excavations;
   g. Roads.

10. Identify companies or individuals that Respondent hired to perform work at the District. Provide all documentation, including contracts, pertaining to this work. Include information about the purpose of and documentation related to Respondent's contracts at the District.

11. For each and every prior owner, operator, lessor, or lessee of any portion of the District known to you:
    a. Identify the person (provide name, current address, and phone number) and the nature of their business operations at the District;
    b. Describe the portion of the District that was owned, operated, or leased by each person identified above, and give the dates during which they owned, operated, or leased a portion of the District;
    c. Provide copies of all documents that evidence or relate to such operation, or lease, including, but not limited to, purchase and sales agreements, leases, etc.; and,
    d. Provide all evidence that hazardous materials were released or threatened to be released at the District during the period they owned a portion of the District.

12. Describe Respondent's corporate relationship with the following:
    a. Dixilyn Corporation;
    b. New Panhandle Two, Inc.;
    c. Field Drilling Company;
    d. Dixilyn-Field Drilling Company.

Provide copies of all documents related to each relationship, including, but not limited to, articles of incorporations, merger agreements, ventures, partnerships, purchase agreements, property transfer documents, indemnification agreements, assumptions of liability, name changes, and records of dissolutions.

13. Identify all persons who may be responsible for Respondent's liabilities arising from, or relating to, the release or threatened release of hazardous substances at the District, including, but not limited to, predecessors, successors, corporations, and individuals.

14. Provide copies of all documents regarding environmental conditions at the District including, but not limited to, any sampling information, solid and hazardous waste management plans, and any known releases of hazardous substances.

15. Provide copies of any and all permits issued by State or Federal agencies related to Respondent's operations at the District, including permits Respondent obtained on behalf of any other entities.

16. Provide all existing technical or analytical information in your possession about the District, including, but not limited to, data and documents related to soil, water (ground or surface), geology, geohydrology, or air quality on and about the District.

17. Provide all information, including documents related to Respondent's efforts to conduct response action work on abandoned tailings at the District. Identify the individual(s) responsible for such effort and the activities undertaken, if any, related to the reclamation.

18. Provide copies of all casualty, liability, and/or pollution insurance policies issued to Respondent (or Respondent's predecessors), including, but not limited to, comprehensive general liability, primary, umbrella, and excess policies, as well as any environmental impairment liability or pollution legal liability insurance that may have provided coverage during the time of Respondent's ownership, leasing, and/or operations at the District.

19. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Question contained herein or who may be able to provide additional responsive documents, identify such persons and the additional information or documents that they may have.

**ENCLOSURE 3**

## NOTARIZED CERTIFICATE

I, _____, having been duly sworn and being of legal age, hereby state:

1. I am the person authorized by Duke Energy Corporation to respond to the Environmental Protection Agency's request for information concerning the Bonita Peak Mining District, San Juan County, Colorado, A8-5M.

2. I have made a complete and thorough review of all documents, information, and sources relevant to the request.

3. I hereby certify that the attached response to the EPA's request is complete and contains all information and documents responsive to the request.

_____
(Signature)

_____
(Name)

_____
(Title)

(SEAL)

Subscribed and sworn to me this_____ day of_____, 2018.
Notary Public

My Commission Expires_____

My address is_____

_____