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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Honorable Wayne Owens
House of Representatives
Washington, D.C. 20515

Dear Mr. Owens:

This is in response to your letter of October 5, 1988, to Stephen Lingle, Director of the Hazardous Site Evaluation Division, regarding the Richardson Flat Tailings site in Summit County, Utah. This site was proposed for listing on the National Priorities List (NPL) in a Federal Register announcement on June 24, 1988. Mr. Lingle and Ms. Crystall of my staff and Ms. Lupton of our Congressional liaison office met with you and representatives of the United Park City Mining Company on October 5, 1988, to discuss this site. That meeting was in response to a request you made to Lee Thomas in a letter of September 20, 1988.

In the meeting, and in your subsequent letter to Mr. Lingle, you addressed three principal issues. You pointed out your belief that the listing of this site would have severe economic consequences in your State and could damage a vulnerable company that has contributed to Utah's economic strength. You stated your belief that there were "procedural and substantive irregularities" in the Environmental Protection Agency's (EPA's) proposed listing of the Richardson Flat Tailings site under the "old" Hazard Ranking System (HRS) as contrasted with the decision to "postpone action on the adjacent and similar Prospector Square site until the new ranking system is developed." Finally, you stated your concern that the Regional office may be planning to begin studies at the site, or requesting the United Park City Mining Company to begin studies, before a final determination on the listing is made. You were particularly concerned that comments provided by the United Park City Mining Company on the proposed listing be considered before any further action is taken at the site.

The following points respond to your concerns; I believe they are in accord with responses which Mr. Lingle provided in your discussions.

Economic consequences. The HRS, the technical evaluation model used for scoring and listing sites on the NPL, does not provide for consideration of the possible economic consequences of remedial actions that may ultimately be required. It is important to note that the mere inclusion of a site on the NPL does not represent a determination that remedial action is warranted or will be taken.

Procedural irregularities. As directed in the Superfund Amendments and Reauthorization Act of 1986 (SARA), EPA is to continue to use the existing HRS until the revised HRS takes effect (Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 105(c)(1)). The Prospector Square site was not postponed until the revised HRS takes effect; rather, based on comments received on the proposal of that site, the Agency determined that additional data would be needed to reach a final determination on listing. The field work to gather that data has not yet been completed. In addition, legislative action was taken to drop the site from the proposed NPL pending the development of that data (SARA Section 118(p)). That site is an exception to the Agency's practice of routinely evaluating appropriate mining sites for the NPL using the current HRS.

Starting further studies. EPA need not delay implementation of a remedial investigation/feasibility study (RI/FS) pending a final listing decision. The only legal restriction at sites not listed on the NPL is that CERCLA fund money may not be spent for "remedial" action (National Contingency Plan at 40 CFR 300.66(c)(2)); "removal" and enforcement actions pursuant to CERCLA authorities may be taken at a site even if it is not included on the NPL. RI/FSs at proposed sites are performed under the Agency's removal authority under CERCLA. Section 101(23) defines "remove" or "removal" to include "such actions as may be necessary to monitor, assess and evaluate the release or threat of release...." The definition of "removal" also includes "action taken under Section 104(b) of this Act...," which specifically authorizes the Agency to perform studies, investigations, and other information gathering activities. Accordingly, studies like the RI/FS to determine the extent of contamination at a site are not contingent on NPL listing. It is not unusual for the Agency to commence studies at a site, or to ask responsible parties to agree to undertake studies, without a final listing determination having been made.

At this time, however, the Agency has made no decision regarding a time frame for starting studies at the Richardson Flat Tailings site. I am advised that Mr. Lingle did not agree that no funds will be expended for further studies

until a final decision on listing is made; he recalls assuring you that EPA would carefully consider your comments before initiating any studies or other action at the site, and would be willing to discuss with you the Agency's plans for any such action at the site. However, this would not be a discussion of the Agency's final listing determination, which as stated, is not a prerequisite to further studies at a site.

I hope that this clarifies the Agency's position on the listing of the Richardson Flat Tailings site. If I or my staff can be of further assistance, please let us know.

Sincerely,

Jonathan Z. Cannon
Deputy Assistant Administrator