



REGION 9

SAN FRANCISCO, CA 94105

April 3, 2025

Mayor Matthew Fenn
2735 S Highway 69
Dewey, Arizona 86329
Mayor.Fenn@dhaz.gov

Re: Iron King Mine – Humboldt Smelter Superfund Site

Dear Mayor Fenn:

We appreciate the opportunity to meet with you, other representatives of the Town of Dewey-Humboldt (the “Town”), and the Arizona Department of Environmental Quality (“ADEQ”) on February 27 and March 11, 2025, to discuss the remedial design and remedial action (“RD/RA”) phase for the Iron King Mine – Humboldt Smelter Superfund Site (the “Site”) as well as various issues of concern for the Town, including plans for the Town to assume ownership of five parcels of property near the Site currently owned by Dakota Logging, LLC, in the near future. As we explained in these meetings, the RD/RA phase for the non-residential portions of the Site will occur over several years and will require careful coordination between EPA, the Town, and ADEQ. As a follow-up, we would like to make the following clarifications regarding several matters in order to inform our mutual expectations on the work ahead:

- **The Town’s Land Acquisition Plans:** EPA has not agreed to and takes no position regarding the plans the Town has discussed with us to acquire the parcels currently owned by Dakota Logging, LLC, or any other plans for acquiring privately-owned properties at the Site. EPA does not take any position regarding the acquisition of properties by or between third parties at Superfund sites, unless it creates potential conflict with the anticipated or implemented remedy. The Town should be aware that by making such acquisitions it could potentially acquire liability for response costs under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). The Town should carefully consider the self-implementing protections afforded by EPA’s policy regarding Bona Fide Prospective Purchasers (“BFPP”) and carefully comply with all the requirements summarized therein as well as the policy protections afforded to parties such as contiguous landowners and “innocent landowners,” as stated in EPA’s Common Elements guidance issued on July 19, 2019. See <https://www.epa.gov/sites/default/files/2019-08/documents/common-elements-guide-mem-2019.pdf>.

- **Dakota Logging Parcel:** Regarding the Yavapai County Parcel No. 402-01-007D currently owned by Dakota Logging, LLC, EPA's Iron King Mine Humboldt Smelter Site October 20, 2023 Record of Decision ("ROD") includes undertaking remedial action at its western border to stabilize a deposit of mine overburden waste rock and tailings from the old mine operations. This is not inclusive of the work that may be needed after planned soil samples on this parcel.
- **Development on Repository Covers:** We are aware of the Town's interest regarding the potential for construction of future developments on the two waste repositories to be constructed per the ROD – one at the old Iron King Mine and the other at the Humboldt Smelter. As we emphasized during our meetings with you, the permanent cap on the waste repositories will be constructed to prevent infiltration of precipitation into the consolidated wastes. The great majority, if not all land uses, including construction of buildings or parks, would not be compatible with the evapo-transpirative type of cap that is anticipated in the ROD. It is further important to note that, if some type of land use were compatible, the responsibility for maintenance of the repositories will be by the State of Arizona after their construction. Any operations by another party that cause or permit deterioration or failure of the waste repositories may trigger potential liability for that party for CERCLA response costs. This would be independent and regardless of any BFPP status that may have existed before.
- **Notion of Partial Repository Covers:** Similarly, we wish to correct the statement made by the counsel for the Town during the Town Council meeting of July 16, 2024, suggesting that the cap on the two waste repositories at the Site will be "partial" and that the repositories would be available for deposit of residual wastes in the future. The cap will completely cover the two waste repositories and, to ensure its integrity of purpose, will not be designed or constructed to accommodate deposition of additional waste.
- **Soil Management:** We understand that the Town may be considering a soil management ordinance applicable to all residential parcels. As we have repeatedly emphasized in the past, EPA plays no role in zoning and land-use controls. However, we are not aware of this type of ordinance being passed at any other Superfund site. Because the scope of EPA's residential investigation and cleanup in the Town is limited and necessarily focused on those areas closest to the old mine and smelter, if the Town proceeds with this ordinance we would advise the Town to carefully limit the scope of any soil management ordinance to those areas that were exposed to contamination from the Site. Not all parcels to which EPA has sought property access are necessarily contaminated, as evidenced by EPA's sampling efforts. EPA is still sampling residential properties to determine which ones are impacted from the Site, however there are many properties in Dewey Humboldt that do not need sampling.
- **Town Outreach re Property Access:** In September 2024, EPA shared with the Town a list of approximately 120 residential properties for which EPA had requested access for soil sampling pursuant to the ROD but had not received consent for access. EPA appreciated the Town's offer to assist the Agency with this outreach effort, however, from the Town's outreach efforts, EPA received consent for only three properties on this list. EPA has also received consent for property access from approximately ten residents whose properties were not on that list and reside in areas where EPA is not presently conducting sampling. These residents have indicated to us that a consultant to the Town has approached them to obtain property access for EPA.

While we have welcomed the Town's assistance with obtaining consent for access to residential properties where EPA has determined sampling is needed, EPA requests that the Town cease outreach regarding soil sampling to residents whose properties were not on the September 2024 list we shared with the Town. These efforts create an unreasonable expectation that properties will be sampled, and that EPA will broaden its soil sampling to areas for which it may not be warranted. EPA is expending extensive time and resources to conduct the sampling effort and must focus such resources where EPA determines them to be appropriate.

We look forward to our continued coordination with you, the Town, and ADEQ as EPA moves forward to design and implement the cleanup at the Site. If you have any further questions, please contact me at (415) 972-3082 or michelle.rogow@epa.gov or David H. Kim, the EPA attorney for the Site, at (415) 972-3882 or kim.david@epa.gov.

Sincerely,



Michelle Rogow, P.E.
Manager, Arizona NPL Sites Section
Superfund and Emergency Management Division

cc: Jeremiah Barron, Town of Dewey-Humboldt
Jason Chisholm, Town of Dewey-Humboldt
Michael Donovan, Town of Dewey-Humboldt
James Hamula, Camelback Law Group
Karin Harker, ADEQ
Thomas Mallette, Jr., Town of Dewey-Humboldt
Terry Nolan, Town of Dewey-Humboldt
Denise Rogers, Town of Dewey-Humboldt
William Sims, Town of Dewey-Humboldt
Rick Zeise, Office of the Arizona Attorney General