

## **Gilt Edge Superfund Site Agreement and Order on Consent Responsiveness Summary**

### **A. Overview**

On February 12, 2018, EPA, the State of South Dakota and Agnico Eagle Mines Ltd. entered into an agreement and order on consent (AOC) for Agnico to perform certain remedial investigative activities within operable unit 2 (OU2) at the Gilt Edge Mine Superfund site. On March 1, 2018 EPA announced a thirty-day public comment period relating to the agreement. The public comment period concluded on April 2, 2018.

OU2 addresses the management and treatment of acid rock drainage that threatens surface water in the area. Agnico's investigation is related to sources of historic mining contamination, and will be used to help define the nature and extent of contamination within OU2 as part of the ongoing remedial investigation within the Superfund process. This agreement provides for the performance of work and payment of certain response costs incurred at or in connection with the Gilt Edge Superfund site.

EPA received twenty written comments during the comment period, including the support from the State of South Dakota. These comments were either submitted to the Regulations.gov website or were emailed to EPA staff. In the majority of the twenty comments received, there were several comments, questions and concerns raised in such comments. Some comments, questions and concerns did not pertain directly to the AOC, but are addressed herein to the greatest extent possible.

EPA provides many opportunities for public engagement throughout the Superfund process. The 2012 Gilt Edge Community Involvement Plan provides a blueprint for community involvement at the site. The most recent opportunity for public input was during the community interview process for the 2017 Five Year Review. EPA solicited public comments on the Site and remedy, and interviewed local officials and stakeholders. Concerns raised at that time included the cost of the remedy and truck traffic to and from the site. If members of the public are interested in pursuing additional community involvement activities relating to the Gilt Edge Mine Superfund site, they are encouraged to contact EPA's Community Involvement Coordinator:

Chris Wardell, EPA Community Involvement Coordinator  
303-312-6062  
wardell.christopher@epa.gov

### **B. Site Background**

The 360-acre Gilt Edge Mine site is located about 6.5 miles east of Lead, South Dakota. The primary mine disturbance area encompasses a former open pit and a cyanide heap-leach gold mine, as well as prior mine exploration activities from various companies. In the late 1990s, the most recent mine operator, Brohm Mining Company, abandoned the site and its on-going

water treatment responsibilities. Those responsibilities included addressing the acidic heavy-metal-laden water (acid rock drainage) that was and is constantly generated from the exposed highwalls of the three open mine pits and from the millions of cubic yards of acid-generating spent ore and waste rock.

EPA divided the site into three areas, also known as operable units (OUs). OU1 addresses surface contamination. OU2 addresses management and treatment of the acid rock drainage that threatens surface water in the area. OU3 addresses the Ruby Gulch Waste Rock Pile.

### Status of the Remedy

OU1: The long-term remedy, selected in 2008 and modified by an explanation of significant difference in 2014, addresses source materials, including contaminated waste rock fill materials, spent ore, exposed rock surfaces, amended tailings, sludge and underground mine workings. It includes removal of mine waste from source areas and consolidation of this waste into on-site repositories in the Sunday, Dakota Maid and Anchor Hill Pits. The on-site repositories will be capped with a cover to limit infiltration. Areas that previously contained contaminated fill or other source material will be covered with enough topsoil to support vegetation. The remedy also includes institutional controls. Remedial design was completed in September 2014. Construction of the remedy began in 2017 and may take 8 to 10 years to complete. Progress on the construction will be dependent on the availability of federal funding.

OU2: An interim remedy, selected in April 2001, included use of an existing acid rock drainage (ARD) collection system at the toe of the Ruby Gulch Waste Rock Dump and the existing water treatment facility to treat ARD. In November 2001, EPA expanded the interim remedy to include collection and treatment of ARD from additional areas and converted the treatment process to a lime, high-density sludge system. This provided a cheaper and more efficient means of treating the water on site. Construction finished in October 2003. Water treatment and water quality monitoring are ongoing. After finishing the OU1 remedy, EPA will complete a remedial investigation/feasibility study (RI/FS) at OU2 to investigate the resulting new site conditions and develop a final cleanup plan.

OU3: EPA selected an interim remedy for OU3 in November 2001. Beginning in 2001, EPA graded and capped the Ruby Gulch Waste Rock pile, creating a repository to contain the waste rock and reduce water infiltration that produced large quantities of ARD. The cap also included a monitoring system, runoff and run-on diversion ditch control structures, an impermeable geomembrane and a clean soil vegetated cover. EPA also installed a toe drain to collect the residual acid mine drainage water generated due to base groundwater flows that could not be prevented. EPA finished the remedy in April 2006. Following construction, operation and maintenance activities and performance monitoring are ongoing.

In 2009, EPA, in consultation with the South Dakota Department of Environment and Natural Resources (DENR), decided to minimize leakage from the diversion ditches by pressure grouting

or lining the stretches that had been shown to be leaking surface water into the ground. The work took place between 2009 and 2011.

A final remedy for OU3 will be developed in the future. The final remedy is anticipated to address the connection between the OU3 and the OU1 remedy cover systems by selecting a remedy for the final 8 acres of uncapped Ruby dump (near the water treatment plant) that are adjacent to the planned OU1 cover system. The final OU3 remedy will need to be consistent with the OU1 remedy cover system so that together both remedies are effective in meeting their respective remedial action goals.

### **C. Summary of Comments Received During the Public Comment Period and Agency Responses.**

1. EPA received several comments generally not supportive of the AOC. Concerns included (a) Agnico's motivations for entering the AOC, and whether the proposed AOC would lead to future re-mining and recontamination; (b) potential degradation of the Black Hills; and (c) lack of community outreach, including tribal consultation.

#### **EPA Response:**

- a. Agnico will be completing the investigations detailed in the AOC and may use the information gathered in the investigation to analyze whether it desires to work through the regulatory process and explore re-mining the site. The AOC only deals with investigation and facility upgrades associated to support the work at the site as set forth in the Statement of Work (appendix B to the AOC). The work to be performed in accordance with the AOC will be conducted on State-owned land. Other private and public lands in and around the site are not subject to the AOC.
- b. EPA cannot address whether underground mining would be a viable option in the future. If any entity is interested in re-mining the Site, that entity will be required to provide their mining plans to the State as part the permitting process. The permit submissions would include whether that entity is proposing surface or underground mining at the Site. Any entity wishing to re-mine the site would also be required to comply with applicable State laws and regulations or federal laws and regulations should federal public land be pursued for mining. In addition, because the site is listed on the NPL, any future mining will ultimately be tied into a final CERCLA remedy decision that requires any mining entity to take on environmental remediation and cleanup requirements.
- c. EPA adheres to the 2012 Gilt Edge Community Involvement Plan, which outlines specific activities and resources EPA uses to help the public be actively involved in the cleanup process. On March 7, 2018, EPA published a public notice announcing a 30-day public comment period on the AOC, how the public could submit comments regarding the AOC along with Site contact information. EPA maintains a public website that contains

current information on current and past Site activities along with publicly available documents to view. The website is:

[www.epa.gov/superfund/gilt-edge](http://www.epa.gov/superfund/gilt-edge)

In spring 2017, EPA sent out a postcard with a brief update and contact information to individuals that live nearby the site. EPA provides many opportunities for public engagement throughout the Superfund process. If members of the public are interested in pursuing community involvement activities in relation to the Gilt Edge Mine Superfund site, they are encouraged to contact EPA's Community Involvement Coordinator listed below.

Chris Wardell, EPA Community Involvement Coordinator  
303-312-6062  
[wardell.christopher@epa.gov](mailto:wardell.christopher@epa.gov)

In addition, EPA's tribal consultation policy requires that EPA consult with federally recognized Tribes and their governments. EPA did not receive such request. However, EPA encourages any member of the public, including Tribal members, to contact the Community Involvement Coordinator and request they be added to the mailing list of citizens who will receive communications about the site.

2. EPA received several comments which were supportive of this effort to help characterize the cadmium source in Strawberry Creek.

**EPA Response:**

Further investigation into this issue had previously been scheduled to occur after EPA made substantial construction progress on the source control measures as prescribed the OU1 remedy Record of Decision (ROD). This is an opportunity to leverage resources and conduct this investigation work sooner than was otherwise feasible.

3. There were questions and concerns on how the AOC was negotiated without public input.

**EPA Response:**

Settlement discussions are by their nature confidential. Public input was solicited upon finalization of the AOC in accordance with CERCLA.

4. EPA received a comment that there is "secret agreement the State of South Dakota has with Agnico."

**EPA Response:**

Neither the State of South Dakota nor the EPA have secret agreements with Agnico.

5. EPA received a couple of questions and concerns regarding potential groundwater and surface area contamination resulting from the proposed drilling outlined in the AOC.

**EPA Response:**

There is groundwater contamination at the site resulting from past mining operations as documented in the 2008 Remedial Investigation report. The Subsurface Hydrogeologic Investigation will further delineate the extent of the contamination. The methods used for drilling bore hole will be further detailed in the required work plans. Boreholes will be abandoned pursuant to South Dakota DENR borehole abandonment regulations 74:02:04:67. Additionally the AOC has specific language in section VIII. 26. (a) that requires “complete sealing and grouting the length of the borehole” once data collection is complete to prevent these features from becoming subsurface conduits for contaminant migration. Section VIII. 34. (d) specifies specific requirements for drill cuttings and fluids so migration of contaminants to surface water is prevented.

6. EPA received comments requesting that more information be provided on the workplan outlined in the AOC.

**EPA Response:**

The Statement of Work is included as Appendix B to the AOC. Once the AOC becomes final, the AOC requires the company to prepare work plans based on the Statement of Work that will be reviewed by both EPA and SD DENR project managers at the site. EPA will approve those work plans only after any concerns raised by EPA or SD DENR have been addressed.

7. EPA received two comments in which concern was raised on the lack of details in the Statement of Work in Appendix B, pertaining to potential disturbance of the local area.

**EPA Response:**

The site has been substantially disturbed from past surface mining activities. The proposed drilling locations will be on State owned properties and are anticipated to be within the disturbed area and will be approved by EPA through the workplan submission and review process. The AOC requires implementation of additional protection requirements if any borehole will be drilled on undisturbed land. Traffic to and from the site is anticipated to be similar to the amount of traffic that has occurred from the first phase of the OU 1 remedial action construction activities.

8. EPA received a few comments on the need to provide updates to the community such as the number of boreholes, location and planned depth of boreholes, disturbance and reclamation associated with access, planned work times, any other activities that could cause the disturbance of the properties.

**EPA Response:**

EPA will coordinate with Agnico on notifying property owners along the access road and perimeter roads of the site with timing, activities, and contact information. Should any property owner wish to be added to the Gilt Edge mailing list, please contact Community Involvement Coordinator Chris Wardell at [wardell.christopher@epa.gov](mailto:wardell.christopher@epa.gov) or (303) 312-6062.

9. EPA received a comment on section XII Compliance with Other Laws, paragraph 48. The commenter is concerned that this along with statement of work appears to grant Agnico to perform work without significant public oversight or public reporting.

**EPA Response:**

Pursuant to Section 121(e) of CERCLA, parties doing work under a CERCLA agreement are not required to obtain permits. Parties are, however, required to comply with substantive provisions of applicable environmental laws and regulations. EPA and the State will be conducting oversight on Agnico to ensure compliance with all applicable or relevant and appropriate environmental laws and regulations during the course of on-site work.

10. EPA received comments and questions regarding deliverables and a concern on Section X of the AOC, Access to Information. These concerns are regarding access to business confidential claims and whether it includes access to mineralization or assay results from drilling or sampling that could be generated. Another question raised was whether the data belong to Agnico, or Agnico and EPA, and whether it could be release to the public.

**EPA Response:**

Generally, deliverables submitted by Agnico to EPA and the State will be publicly releasable documents. Agncio may claim that certain information (for example, assay information) constitutes confidential business information and, therefore, is not subject to public release pursuant to federal law. Should that claimed information be subject to a Freedom of Information Act request, Agnico would be required to substantiate its claim for confidentiality, and the EPA would make a final determination regarding the confidentiality of information.

The benefit to the CERCLA process from this AOC will be the generation of environmental data. The environmental data and summary reports focusing on

determining the source of the low-level cadmium concentration in Strawberry Creek will be publicly available upon completion and are anticipated to be incorporated into a final remedial investigation for the site.

11. EPA received a comment that the agreement specifically states in section VII a. that Acid Base Accounting will be characterized as part of the subsurface-hydrogeological investigation and yet only a general mention of geochemical analysis to be performed is found in the attached work plan. Commenter would like to know what is the complete list and reasons for each geochemical analyses.

**EPA Response:**

Section VIII 26. (a) of the AOC describes the work to be performed for the subsurface hydrogeological investigation. Once the AOC becomes final, the AOC requires the company to prepare work plans including a Quality Assurance Project Plan (QAPP)/Sampling Analysis Plan (SAP), based on the Statement of Work. These plans will be reviewed by both EPA and SD DENR project managers at the site. The specific geochemical analyses will be determined in the review process and detailed in the QAPP/SAP.

The EPA's overall goal of the investigations is to better understand the source of low level cadmium in Strawberry Creek as identified in the site's Five-Year Reviews so a final remedy can address this issue. It is anticipated that the geochemical analysis will include a suite of metals consistent with metals found in the groundwater at the site. These metals are documented in the 2008 Remedial Investigation as well as in the ongoing monitoring that is summarized in annual reports and the Five-Year Reviews.

Acid Base Accounting analysis of rock material provides information with respect to the potential for acid rock drainage generation and infers the potential for resulting metals mobility from the rock. The company may analyze samples for additional metals or other analytes that have not previously been part of past investigations at the site.

12. EPA received comments that the work proposed in the AOC should be performed by an independent contractor.

**EPA Response:**

Under the terms of the AOC, Agnico will hire a contractor to conduct the work. EPA and the State will oversee all work to ensure it is being done in accordance with the AOC and associated work plans.

13. EPA received a comment raising a concern that the insurance and financial assurance are inadequate in the AOC.

**EPA Response:**

The AOC requires financial assurance for the estimated cost to conduct the investigatory work. The AOC does not allow re-mining nor does it require financial assurance for any speculative future activities at the Site.

14. EPA received a comment to not allow expanding/improving the infrastructure at the Site as stated in the AOC.

**EPA Response:**

As described in the Statement of Work, Appendix B of the AOC, item (III A) includes updates to the existing internet and phone communications system at the site and item (III B) includes upgrades to the existing office building to extend the life and usefulness of the existing facility. These upgrades are included to support the personnel, contractors and storage needs required while conducting the investigation work.

These facilities and communications systems will also continue to be used by EPA and State personnel and contractors supporting the on-going remedial action activities at the site. Item (II C) of the Statement of Work includes the installation of a weather monitoring station. EPA believes these upgrades and improvements will benefit and facilitate current and future site cleanup activities. The AOC does not allow the expansion of structures or buildings at the site.

15. EPA received a comment asking about an individual listed in the AOC.

**EPA Response:**

The individual listed is an Agnico employee.

16. EPA received a comment raising a concern that Section XIV of the AOC, Payment of Future Response Costs, is some type of bribe.

**EPA Response:**

EPA is authorized under CERCLA to recover site-related response costs, including costs for oversight. Future response costs as defined in the AOC are the costs that EPA and the State will incur in overseeing Agnico's work. These payments will be deposited into a special account and used to fund additional work at the site.

17. EPA received a comment on section XV of the AOC, Dispute Resolution, noting a concern that this mechanism would prevent the public from raising concerns on the work to be performed.



**EPA Response:**

The dispute resolution provision governs potential disagreements between the parties to the AOC. The community will be kept informed about ongoing work in accordance with the 2012 Community Involvement Plan. Any community members wishing to be added to the Gilt Edge mailing list should contact Chris Wardell, Community Involvement Coordinator, at [wardell.christopher@epa.gov](mailto:wardell.christopher@epa.gov), or by phone at (303) 312-6062.

18. EPA received a comment requesting the formation of a citizen's board to review work at the site and have concerns addressed.

**EPA Response:**

EPA provides many opportunities for public engagement throughout the Superfund process. If the public is interested in pursuing community involvement activities in relation to the Gilt Edge Mine Superfund site, they are encouraged to contact EPA's Community Involvement Coordinator. EPA can provide support for the formation of a Community Advisory Group for the site.

A Community Advisory Group (CAG) is made up of representatives of diverse community interests. Its purpose is to provide a public forum for community members to present and discuss their needs and concerns related to the Superfund decision-making process. A CAG can assist EPA in making better decisions on how to clean up a site. It offers EPA a unique opportunity to hear-and seriously consider-community preferences for site cleanup and remediation. However, the existence of a CAG does not eliminate the need for the Agency to keep the community informed about plans and decisions throughout the Superfund process.

Please contact the Community Involvement Coordinator for more information on organizing a CAG.