

Gilt Edge Superfund Site Agreement and Order on Consent Responsiveness Summary

A. Overview

On January 27, 2023, EPA, the State of South Dakota and Agnico Eagle Mines Ltd. entered into an agreement and order on consent (AOC) for Agnico to perform a reuse assessment at the Gilt Edge Mine Superfund site. On March 22, 2023 EPA announced a thirty-day public comment period relating to the agreement. The public comment period concluded on April 21, 2023.

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 fifty-five written or oral submissions during the comment period. These comments were either submitted to the Regulations.gov website, were emailed to EPA staff, or were provided verbally during the public meeting on April 18, 2023. Forty-five commenters supported the agreement. The remaining commentors provided questions and concerns about the agreement. 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. 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 remedial project manager, Liz Stengl: stengl.liz@epa.gov, or EPA's community involvement coordinator, Chris Wardell: 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. The first phase of remedy construction occurred from 2017 through 2019. Future phases of the remedy construction may take 8 to 10 years to complete. Progress on the remedy construction is currently paused while the future reuse of the site is determined.

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 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. It is anticipated that long term water treatment will be required.

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 reduce leakage from the clean water diversion ditches by pressure grouting or lining the stretches that had been shown to be leaking clean surface water into the repository. 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.

The majority of comments received were supportive of the agreement and will not be responded to here. EPA received several comments generally not supportive of the AOC. Concerns and questions are grouped and responded to below.

1. Concerns included (a) whether the proposed AOC would lead to future re-mining and recontamination; (b) potential degradation of the Black Hills; (c) size and type of future mining and (d) 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 State and Federal regulatory process and explore re-mining the site.
- b. EPA cannot address whether underground mining would be a viable option in the future, nor the potential size of a proposed mine. If any entity is interested in re-mining the Site, that entity will be required to provide their mining plans to the State and the US Forest Service, as applicable on USFS land, 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 22, 2023, 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 also held a public meeting regarding the AOC on April 18, 2023. 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

In addition, EPA's tribal consultation policy requires that EPA consult with federally recognized Tribes and their governments in certain circumstances. EPA did not receive such request from any tribal government during the public comment period. EPA encourages any member of the public, including Tribal members, to contact the Community Involvement Coordinator and Remedial Project Manager for site updates.

2. EPA received comments asking about how to deal with generation of or releases of acidic water and refuse water from any drill holes and if lined ponds are utilized at the site. A comment also asked about allowing off-site shipments.

EPA Response:

Lined ponds are used at the site to collect and store acid mine drainage water prior to treatment. Lined repositories are also used for long term storage of treatment generated

solids (sludge) where meteoric precipitation on these ponds can be managed and collected for treatment. Drill cuttings, drill fluids and any water produced in the wells will be disposed of in the onsite lined repositories or treated through the water treatment plant. Boreholes will be fully grouted from bottom to surface once data collection is completed. Borehole plugging information is provided through the completion of a South Dakota Water Well Completion Report. The State of South Dakota will perform field oversight of the borehole plugging.

Off-site shipments of waste to an appropriate treatment or disposal facility is allowable upon approval by EPA, only if EPA determines that materials generated during the drilling activities are not compatible for treatment or long term disposal on-site.

3. A Commenter expressed concerns about acid water in Whitewood Creek.

EPA Response:

Water from the Gilt Edge Mine site drains to Bear Butte Creek and not to Whitewood Creek. EPA monitors surface water in Bear Butte Creek quarterly. These results are evaluated in the July 2022 Five-Year Review, which can be provided upon request.

4. There was one question on the duration of the agreement.

EPA Response:

Paragraph 30 discusses duration of the agreement: Agnico is required to complete field investigations within three years of the Effective Date and complete the reuse assessment within four years of the Effective Date. If Agnico decides not to proceed with remining the Site, Section XXXV discusses the processes under which it can terminate the agreement. The effective date is determined by EPA after the public comment period and is not the same as the signature date.

5. EPA received a comment regarding the previous cadmium study.

EPA Response:

The cadmium studies are available here:

<https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.scs&id=0801668&doc=Y&colid=34696®ion=08&type=SC>

6. 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. The locations 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. Revegetation is required on otherwise undisturbed land. The financial assurance for this agreement is to cover borehole grouting and revegetation if Agnico fails to comply with those requirements. Traffic to and from the site is anticipated to be similar to or less than the amount of traffic that has occurred from the first phase of the OU 1 remedial action construction activities.

7. EPA received a comment on paragraph 42, whether Agnico would be subject to any permits or approvals from Lawrence County.

EPA Response:

Pursuant to Section 121(e) of CERCLA, parties doing work under a CERCLA agreement are not required to obtain federal or state permits. Parties are, however, required to comply with substantive provisions of applicable environmental laws and regulations. EPA and the State will be conducting oversight of Agnico's activities to ensure compliance with all applicable or relevant and appropriate environmental laws and regulations during the course of on-site work. EPA is not aware of any permits or approvals from Lawrence County that would impact the borehole drilling work contemplated under this Agreement.

8. EPA received a comment on the "future response costs" that were included in the 2018 agreement and why they are not in the present agreement.

EPA Response:

The "future response costs" included in the 2018 agreement are similar to the costs specified for payment by Agnico in paragraph 48 of the present agreement with the heading: "Payment of Oversight Costs". Language has been updated for this type of agreement.

9. EPA received a comment about the definition of Site, and whether the project will only occur at the mine site, or outside the previously disturbed area.

EPA Response:

This agreement is only for drilling within the Superfund Site. Much of the Site consist of disturbed land. See response number #5.

10. EPA received a question regarding consultation with the Fish and Wildlife Service on endangered species.

EPA Response:

EPA, the State, and Agnico will be working through a list of the substantive requirements Agnico will need to follow during implementation of the agreement.

Typically, substantive requirements of the Endangered Species Act, including prohibitions on taking endangered species, would be included as substantive requirements to follow. Specifically for bats, surveys done in 2017 before closure of two mining adits, did not find bats living in or near the adits.

11. EPA received a question regarding why the State could not object to claims of business confidentiality.

EPA Response:

The federal regulations at 40 C.F.R. section 2.204 establish EPA's practice for addressing business confidentiality claims. The regulations do not include a process that includes the State in business confidentiality determinations.

12. EPA received a question about the sufficiency of the water treatment payments.

EPA Response:

While there is a certain degree of uncertainty regarding future water treatment costs, EPA is confident that the water treatment payments will offset funding the government would otherwise be obligated to expend to treat water.

13. EPA received a question regarding the sufficiency of financial assurance.

EPA Response:

The amount of Financial Assurance is not calculated to take over water treatment costs. Should Agnico default on water treatment, EPA would resume water treatment and complete implementation of the existing remedy. Financial assurance is calculated to cover the cost of plugging any abandoned drill holes and conducting revegetation work as needed, if Agnico does not comply with these requirements.

14. EPA received a letter that made several line by line suggestions to the AOC.

EPA Response:

EPA carefully considered the suggestions to the AOC, and changed the reference in Paragraph 79 from Paragraph 74.a-e to 74.d-g.

15. The same letter above made several suggestions to the SOW.

EPA Response:

EPA believes several of the issues raised regarding the SOW will be addressed in the Work Plan that Agnico will submit pursuant to Section VII, Work to be Performed. Because this agreement focuses only on performance of a reuse assessment, some of the issues may be premature (socioeconomic study, cultural resource study).