



REGION 8

DENVER, CO 80202

December 8, 2023

J.P. Gallagher, Chief Executive
The City-County of Butte-Silver Bow
155 W. Granite
Butte, MT 59701

Sent via email

Re: EPA Response to Butte-Silver Bow Comments Regarding the Status of Remedy Work at the Butte Priority Soils Operable Unit of the Silver Bow Creek/Butte Area Superfund Site

The EPA thanks Butte-Silver Bow (BSB) for its comments on the EPA's position paper on the use of onsite material at Butte Priority Soils Operable Unit (BPSOU) of the Silver Bow Creek/Butte Area Superfund Site. The EPA is providing responses and clarifications to BSB's letter related to the Residential Lead Standard/Regional Metals Abatement Program (RMAP), onsite material, repository location and haul route, coordination of efforts, and transparency, organized according to the sections of BSB's original letter, below.

<https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.Stayup&id=0800416>

Residential Lead Standard /Regional Metals Abatement Program (RMAP)

Through the Superfund program, the EPA regularly reviews the most current regulatory and scientific information available on contaminants and health impacts at sites, including lead. EPA Headquarters is currently reviewing the 1998 residential soil lead guidance for contaminated sites to determine if new recommendations for sites and facilities with residential soil lead exposures are appropriate. The EPA Region 8 will apply any new recommendations or guidance to our ongoing site work in Butte.

On June 7, 2023, the EPA sent a draft updated residential soil lead guidance for contaminated sites to the Office of Management and Budget for interagency review. This guidance, if finalized, will provide updated recommendations for screening sites and facilities with residential exposures under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) and the Resource Conservation Recovery Act (RCRA) corrective action authorities. The EPA is focused on protecting children from lead exposure, especially those living in communities overburdened by pollution and other health and social stressors.

Updating this guidance is a key action in the EPA's agency-wide [Lead Strategy](#). Since children can be exposed to lead from multiple sources, the Strategy outlines how the EPA is using its full suite of authorities, expertise, and resources to reduce lead exposure in communities overburdened by

pollution to advance the Biden-Harris Administration’s commitment to environmental justice and equity.

The EPA designs all of our cleanups to address the unique conditions at each contaminated area. Updating the guidance would reflect the latest science and give the EPA the flexibility to make site-specific decisions appropriate for each area.

Region 8 recognizes that the potential change in guidance has impacts for our partners in Superfund cleanup work, including BSB, and that planning efforts are constrained while this guidance is pending. We will be sure to share more information on the process and the guidance itself when we have updates from headquarters.

Onsite Material

The EPA is dedicated to developing a remedy that is protective of human health and the environment as part of our responsibilities under CERCLA as well as our commitment to the Butte community. The EPA will ensure that a decision regarding the use of onsite material, in consultation with DEQ, will be: (1) protective of human health and the environment; (2) consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the BPSOU Consent Decree (CD); and (3) reflective of transparent community engagement.

The BPSOU Consent Decree authorizes the use of onsite material as general fill in certain circumstances. The EPA is in the process of considering questions and feedback offered by members of the community and partners in the cleanup related to the use of onsite material at BPSOU. While the opportunity for community engagement on this issue requires additional time before project details can be finalized and executed, the EPA decided it was important to answer questions and consider feedback. The EPA is developing a process to move forward on a decision on the use of onsite material and is providing, and will continue to provide, information as soon as it becomes available. Pre-design investigation data is currently being incorporated into a LeapFrog model and will be used to provide updated estimated volumes of onsite material at the site. Those estimated volumes will be shared with the BPSOU distribution lists. BSB previously received the data in the pre-design investigations for BG, NST, and DE. Please see pre-design investigation documents here: [Draft Preliminary 60% Remedial Design Report](#) and [Draft Final Butte Priority Soils Operable Unit \(BPSOU\) Northside Tailings/East Buffalo Gulch Area and Diggings East Stormwater Basin Area Further Remedial Element 30% Remedial Design](#)

The proposed waste management plans, material segregation plans, sampling and analysis plans, and transportation logistics are being developed by AR. BSB, as well as all other CD parties, and the public will have a chance to review the draft Backfill Material Characterization and Reuse Plans submitted by AR before they are finalized. These draft plans will be subject to EPA approval, in consultation with DEQ, and any changes required by the EPA will need to be made by AR prior to approval.

Repository Location and Haul Route

The EPA appreciates the update on the work BSB and AR are doing to identify an appropriate repository location pursuant to the responsibilities outlined in the BPSOU Consent Decree. The EPA has encouraged the evaluation of potential repository locations to consider other modes of transportation like railways and conveyors, while considering the EPA’s Greener Cleanup Guidance, and looks forward

to receiving and reviewing the draft Repository Siting Study as part of the EPA's role in approving a repository and haul route that reflects public safety and input.

For reference, see below for language from the CD that outlines the repository location selection process:

“Upon entry of the Consent Decree, the Settling Defendants shall initiate a Repository Siting Study, which shall include a community engagement process. The Repository Study shall not include the Timber Butte area, but shall include the existing Butte Mine Waste Repository and identify other potential repository location(s) to dispose of removed Waste Materials. The draft Repository Siting Study will evaluate potential repository location(s) using criteria provided by EPA and DEQ, and will recommend one or more preferred repository location(s) for the Waste Materials. EPA and DEQ shall review and comment on the draft Repository Siting Study, and the Settling Defendants shall submit a draft final Repository Siting Study in response to those comments. After considering public input on the potential and preferred repository location(s), including the proposed haul route(s), EPA, in consultation with DEQ will approve the final repository location(s). Following approval of the repository location(s), the Settling Defendants shall develop construction, operation, maintenance and closure plans for the new Waste Materials repository location(s), as have been developed for the existing Mine Waste Repository.”

On June 4, 2020, AR and BSB received a letter from the EPA describing the “Butte Priority Soils Operable Unit; Repository Siting Criteria and Community Engagement Plan process throughout remedial work.” This process was further outlined and approved in AR and BSB’s “Approved Final Butte Priority Soils Operable Unit Community Engagement Plan for Remedial Work.”

Better Coordination and Transparency Between Stakeholders

The EPA is committed to ensuring a protective cleanup in Butte. The EPA agrees that continued coordination and collaboration between project stakeholders are key to a successful cleanup, with a respectful understanding of the various parties’ different roles and responsibilities.

With regard to the request to share data, information is shared as soon as practicable. Prior to making information publicly available, the EPA needs to ensure that the information is accurate. For example, groundwater data must undergo a validation procedure, which is required for enforcement quality data. Reports require not only preparation, but also internal quality checks, EPA/DEQ review, and revision as necessary. If there is additional data BSB has requested that has not been shared, please specify and the EPA will make efforts to share the data.

The EPA agrees that a focus on communication and coordination will benefit the Butte community throughout the cleanup process and appreciates BSB’s partnership in this effort.

Willingness to Adjust Remedy Approach

The decision to pilot opening certain technical meetings to public observation and to provide additional opportunity for public input on the onsite material proposal is reflective of the EPA’s responsiveness to the Butte community’s questions and demonstrates a willingness to consider additional information throughout this process. The EPA will continue to engage with the Butte community and use input as appropriate to inform decision on the remedy. Any design decision will be

(1) protective of human health and the environment, (2) consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the National Contingency Plan (NCP), and the BPSOU Consent Decree (CD), and (3) reflective of a transparent community engagement process.

The EPA thanks BSB for its time and efforts in providing feedback on the onsite material position paper. The EPA also wants to acknowledge BSB's letter dated November 8, 2023, encouraging responsiveness and transparency in replies to comments received by community members and stakeholders in the cleanup. The EPA is carefully evaluating input received from partners and community members related to the onsite material position paper, and to date, the EPA has provided responses to dozens of specific questions received. The EPA is continuing to respond to questions that it has received. The MDEQ and NRDP responses referenced in BSB's letter are attached for your convenience and will be posted on the website, along with this response to BSB's onsite material feedback. Over the past months the EPA has worked to increase communication with the public by posting Q&As on the website on an ongoing basis, piloting opening various technical meetings for public observation, and initiating a public engagement process specifically related to onsite material, among other efforts. The EPA is committed to continuing to engage with the communities affected by cleanup activities to ensure a safe, healthy and prosperous future in Butte.

The EPA looks forward to continued engagement with BSB and other partners to the CD, as well as the community, as we continue to work through this issue and others in the development of a cleanup that is protective of human health and the environment in Butte.

cc: DEQ
NRDP
BP
BSB Council of Commissioners