



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

AR0508

June 28, 1993

Edward S. Atkinson
Baker and McKenzie
Two Embarcadero Center, Suite 2400
San Francisco, CA 94111-3909

Dear Steve:

This letter responds to your request for a letter clarifying the Environmental Protection Agency's (EPA) position on mining operations by Iron Mountain Mines, Inc. (IMMI) at the Iron Mountain Mine (IMM) Superfund site. We have discussed these issues on several occasions recently and you forwarded a written request to confirm these matters on June 8, 1993.

EPA's efforts at the Site are intended to reduce or eliminate the adverse environmental impacts from the IMM site and are not intended to reduce opportunities for lawful mining (or other commercial) activity at the site. The question arises, however, because of the practical effect of many of the selected response actions on possible mining activity, and our mutual interest in avoiding misunderstandings in the event a planned mining activity has consequences for the response action. In addition, I understand that IMMI and Mr. Arman wish to document for business purposes that the Superfund action does not prevent IMMI or Mr. Arman from engaging in lawful commercial or mining activity, subject to the legal constraints on such operations.

The principal legal constraint on activities by Mr. Arman and IMMI is the court order prohibiting Mr. Arman or IMMI from "obstructing, impeding or otherwise interfering with" the Superfund response action at IMM. Should any proposed mining activity "obstruct, impede or otherwise interfere with" this action, we would obviously oppose such an activity.

It is difficult to prescribe specific guidelines exhaustively defining which activities would be permitted under this court order and I expect you agree that such an exercise would not be fruitful. There is no question that there is a broad range of activities IMMI could conduct which would violate neither the letter nor the spirit of the court's order.

Given the fact that there is such a broad range of lawful activities, I question whether there is a need to establish procedures for EPA review of any and all planned activities that

Mr. Arman might wish to conduct. If, however, Mr. Arman wishes to engage in an activity which poses some risk of obstructing, impeding or interfering with response actions at the site, EPA would be willing to review and comment on any such planned activity to assure that the activity can be conducted without obstructing, impeding or interfering with the CERCLA action.

When requested to do so, we will try to provide a response shortly after receipt of any such proposal, but it is not possible to commit to any specific review time for any and all proposals. Obviously the level of review accorded the proposal and the amount of time such review would require would be controlled in part by the complexity of the proposal. In some instances, it might be possible to respond within two to four weeks, but more complex proposals could very well take longer.

Similarly, if Mr. Arman is uncertain whether there are planned response actions in an area in which he wishes to conduct activities, he is encouraged to contact the Remedial Project Manager, Rick Sugarek, at (415) 744-2226. If the answer is clear, it might be possible to respond immediately or within a few days.

Although many mining or other development activities could proceed without interfering with the response actions, I should note that at least some of the activities Mr. Arman indicates he wishes to pursue could be inconsistent with the CERCLA action depending upon the manner of implementation. For example, you have indicated that IMMI's proposed mining operation has two major elements:

- 1) open pit mining of Brick Flat Pit, and
- 2) in-situ mining of other deposits.

With respect to the first of these two elements, there will be some obvious practical concerns with respect to open pit mining of Brick Flat Pit as long as the acid mine drainage is being treated and disposed of in Brick Flat Pit. If IMMI were to pursue mining the sulfide deposit in Brick Flat Pit, IMMI would need to design and construct a suitable alternate sludge disposal facility to avoid interference with the remedial action. There may be other issues related to Brick Flat Pit as well, including questions whether such activity would have other environmental impacts, such as generation of acid mine drainage from waste rock produced during the mining.

The in-situ mining proposal raises somewhat more complex issues. If the in-situ mining relies upon continued generation of acid mine drainage, that approach could be inconsistent with efforts to eliminate the chemical reaction within the mine. Alternate remedial action approaches are under continued consideration for these sources and I understand some of these alternate approaches may be consistent with in-situ mining of the deposits or some other forms of metal recovery processes.

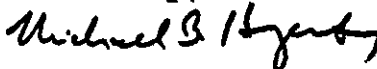
I must also stress that any action which Mr. Arman engages in should be in full compliance with all environmental laws. Were Mr. Arman to engage in mining or other activities, we would not review those actions solely with respect to CERCLA, but would expect Mr. Arman to comply fully with the Clean Water Act and other laws.

Please note that EPA does not agree with all of the factual and other allegations made in your letter. For example, EPA certainly rejects IMMI's unsubstantiated claims that the "ores" in Brick Flat Pit have any demonstrated value, let alone the claimed \$100 million.

Finally, your letter requests "an immediate meeting" to discuss alternatives to the disposal of sludge at Brick Flat Pit. As you know, this use of Brick Flat Pit was the subject of public notice and comment and the location for sludge disposal was selected in accordance with the procedures of the National Contingency Plan. Any decision to change the location would also need to be made pursuant to those regulations. Mr. Arman submitted comments on the record and his views were not adopted. Nevertheless, if there is significant new information on this decision, EPA remains willing to meet to discuss the issue. If Mr. Arman or IMMI have new information, we would prefer to review it in advance of any meeting.

I hope this letter provides you with the information you require. If you have any questions, do not hesitate to call me at (415) 744-1315.

Sincerely,



Michael B. Hingerty
Assistant Regional Counsel