

# Atlantic Richfield Company

Anthony R. Brown

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April 20, 2016

Patrick A. McCoy  
Lands and Minerals Forester  
United States Forest Service  
San Juan National Forest  
Dolores Ranger District  
pmccoy@fs.fed.us

Dear Mr. McCoy:

I am writing this letter to you in regards to Atlantic Richfield Company's (AR's) ongoing work under a Unilateral Administrative Order (Order) issued by the Environmental Protection Agency (EPA) in 2011. As the Forest Service is aware, the Order directs AR to conduct investigation and response actions in and around the Rico-Argentine, St. Louis Tunnel Site (Site), which includes actions on National Forest System lands within the San Juan National Forest.

At the request of the Forest Service, AR has been working on drafting and obtaining a Special Use Permit (SUP) for the elements of EPA-ordered work at the Site that will occur on lands managed by the Forest Service. AR is willing to submit the SUP application to the Forest Service and accept a permit in the spirit of cooperation, but a permit from the Forest Service should not be required under EPA's CERCLA authority for Site work. A copy of your March 28, 2016 email on the SUP topic that was directed to Todd Robertson, a consultant helping AR with various matters at the Site, is enclosed with this letter.

Under the EPA Order, AR is required to dry and temporarily stage precipitated solids from past water treatment and mining-related operations in an Interim Drying Facility (IDF) within the Pond 13 area. This activity is described in AR's March 2016 Small Tracts Act (STA) application and the IDF/Pond 13 area is shown on figures submitted with the STA application. The STA application requests the Forest Service convey a 5.35 acre mineral survey fraction to AR, which includes the IDF/Pond 13 area. All of the planned work at the IDF/Pond 13, which includes management of solid wastes removed from the upper ponds prior to permanent placement into a Solids Repository, is required by EPA under the Order and will be completed under EPA's oversight.

In your email to Todd Robertson, you indicated the Forest Service may have concerns with plans to temporarily store overburden material either within the 5.35 acre proposed STA section or elsewhere on National Forest System lands. Your email suggests the EPA-approved plan for placement of non-hazardous solids at the Site may not comply with the initial screening criteria in the Forest Service's SUP regulations. Your email also indicates that unless AR could ensure the solid wastes at the IDF/Pond 13 were "clean" the Forest Service would have to deny AR's application for special use authorization.

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Because your comments imply that use of the IDF/Pond 13 area for temporary staging of solid wastes is new information to the Forest Service, we would like to clarify this point. My understanding is that you and other Forest Service representatives have toured the Site, and AR's representatives have explained to the Forest Service that the IDF/Pond 13 area would temporarily house the solid wastes until a permanent repository was constructed. Construction of the IDF and use of the Pond 13 area for temporary staging of solid waste has also been routinely described in the monthly reports AR prepares and submits to EPA under the Order. Going forward, we would be happy to copy you or another Forest Service representative directly on the monthly reports if the Forest Service has not accessed the reports through coordination with EPA related to Site activities.

As noted above, in this circumstance, with AR taking actions pursuant to the Order, we don't believe that Forest Service regulations require you to deny AR's temporary SUP authorization. However, to the extent a Forest Service permit is needed at all, please note that the temporary staging of the solid wastes in the IDF is just that—temporary. This material will be moved to a permanent repository, permitted by state and local authorities, and located on AR property. Thus, there is no solid waste "disposal" occurring that would conflict with the initial screening criteria.

Even if "disposal" of this material was not an element of the Order for response work on National Forest System lands, our understanding and interpretation of Forest Service policy and regulations is that such activity may be approved. With respect to solid waste disposal, the Forest Service policy discourages (but does not prohibit) solid waste disposal, and the Service has guidelines for "solid waste systems" that are located on National Forest Lands and implemented by special-use permittees. See FSM 2130 and 2723.13. We should also point out that the materials handled in the IDF are not subject to regulation as hazardous waste under RCRA, which exempts certain mining-related wastes from the definition of hazardous waste. Given that the staging of the solid wastes at the IDF/Pond 13 area is temporary only and mandated by the Order pursuant to EPA oversight, the Forest Service would be well within its discretion to authorize the SUP and, in fact, we believe such authorization is more consistent with the intent of governing Forest Service policy than would be a denial.

AR would like to schedule a meeting with the Forest Service so that we can review the information discussed in this letter and answer any questions or concerns about the SUP authorization being requested. I have asked Todd Robertson to contact you to coordinate scheduling for the meeting. Importantly, we would like to make sure that there are no misunderstandings about the nature and extent of the EPA-ordered work that will occur either on Forest System lands or AR property.

As always, AR appreciates the Forest Service's cooperation and coordination with EPA as we carry out the investigation and cleanup activities at the Site under the EPA Order.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony R. Brown".

Anthony R. Brown  
Project Manager  
Atlantic Richfield Company

Enclosure

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cc: Derek J. Padilla, USFS  
Mark B. Lambert, USFS  
Steve Way, EPA  
Amelia Piggott, Esq., EPA  
Nathan Block, Esq.  
Brian S. Johnson  
Todd Robertson, WLG  
Chris Sanchez, AEI