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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Received by
EPA Region VIII
Hearing Clerk

IN THE MATTER OF:

Bauer Tailings Site
Tooele, Utah

U.S. EPA Region 8

CERCLA Docket No. CERCLA-08-2022-0001

Sea Ray Investments LLC,

Respondent.

Proceeding under Section 104(e) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. § 9604(e)

**ADMINISTRATIVE ORDER
DIRECTING COMPLIANCE WITH
REQUEST FOR ACCESS**

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TABLE OF CONTENTS

I.	JURISDICTION.....	1
II.	DEFINITIONS.....	1
III.	FINDINGS OF FACT.....	2
IV.	CONCLUSIONS OF LAW AND DETERMINATIONS	3
V.	ORDER	3
VI.	OPPORTUNITY TO CONFER.....	4
VII.	EFFECTIVE DATE.....	5
VIII.	NOTICE OF INTENT TO COMPLY	5
IX.	ENFORCEMENT	5
X.	RESERVATIONS OF RIGHTS BY EPA.....	6
XI.	NOTICES AND SUBMISSIONS.....	6
XII.	ADMINISTRATIVE RECORD	6
XIII.	TERMINATION	6

I. JURISDICTION

1. This Administrative Order (Order) is issued under the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and Section 300.400(d)(4) of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.400(d)(4). This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrator of EPA Region 8 on January 18, 2017, by EPA Delegation No. 14-6, and further redelegated to the below signed official.

2. This Order applies to and is binding on Respondent and its successors and assigns.

II. DEFINITIONS

3. Terms not otherwise defined in this Order have the meanings assigned in CERCLA or in regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Order, the following definitions shall apply:

“Action Memorandum” means the Action Memorandum issued by EPA on August 26, 2021, documenting the response action to address conditions at the Site that present a threat to public health or welfare, a copy of which is attached hereto as Attachment A.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

“Day” or “day” means a calendar day. In computing any period under this Order, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“Effective Date” means the date this Order becomes effective as provided in Paragraph 21.

“EPA” means the U.S. Environmental Protection Agency.

“Paragraph” means a portion of this Order identified by an Arabic numeral or an upper- or lower-case letter.

“Respondent” means Sea Ray Investments LLC, a Utah limited liability corporation.

“Site” means the Bauer Tailings Superfund Site, approximately 160 acres within contiguous parcels 06-017-A-0032, 06-017-C-0029, and 06-017-D-0027 in Toole County, Utah, approximately 40 miles west of Salt Lake City, as generally depicted on the map attached hereto as Attachment B.

“UDEQ” means the Utah Department of Environmental Quality.

III. FINDINGS OF FACT

4. Mining for lead and silver began in and around Bauer, Utah in the 1860’s. In the early 1900’s, miners drove the Honerine haulage and drainage tunnel to de-water active operations. Other miners constructed a gravity concentrating mill at the portal of the tunnel.

5. The gravity concentrating mill at Bauer became a successful milling and processing operation. Ore was shipped to the mill from other mines via rail and the process of fine grinding and selective flotation utilized at the mill became standard procedures for the industry. The mill operated until 1979 when it was closed and abandoned.

6. Tailings from the mill now cover the Site. Fine waste deposits, dozens of feet thick with no vegetative cover, blow across the landscape and create migrating dunes of contamination. The berms once constructed to dry and contain waste from the mill have failed and contaminated deposits have migrated roughly $\frac{3}{4}$ miles to the northwest outside the original footprint of the mill.

7. The Site is undeveloped and unsecured. Access to the Site is unrestricted. It is currently used by off-road enthusiasts. Evidence of other use (illegal dumping, graffiti, spent firearm shells, paintball remnants) is common.

8. Data from sampling efforts conducted by the State of Utah in 2021 indicate that waste deposits at the Site commonly exceed 10,000 mg/kg for lead and 1,000 mg/kg for arsenic. Levels as high as 30,000 mg/kg lead and 8,000 mg/kg arsenic were reported. Sample results are included in Attachment A.

9. Exposure to high levels of lead and arsenic can cause damage to blood cells and to the gastrointestinal, kidney, reproductive and nervous systems. Both lead and arsenic are capable of crossing the placental barrier and causing harm to the fetus.

10. According to Tooele County property records, Respondent owns the Site.

11. To address the release or threatened release of a hazardous substance or pollutant or contaminant at the Site, EPA has determined to conduct certain response actions in accordance with the Action Memorandum. These actions include regrading the tailings impoundment, constructing lined and rocked drainage ditches to control runoff, and capping the tailings with local alluvium and/or gravel.

12. EPA estimates that the duration of the required entry and access will be approximately two years.

13. Despite multiple requests from EPA, Respondent has refused to provide access for purposes of performing the response activities described above. These requests include a certified letter from EPA On-Scene Coordinator Martin McComb received by Respondent’s

representative, Ronald Bushnell, on September 8, 2021, phone calls made by Mr. McComb to another of Respondent's representatives, Brad Brown, on September 13 and 16, 2021, and emails sent by Mr. McComb and EPA Enforcement Attorney Amelia Piggott to Mr. Brown on September 16, 17, and 29, 2021, requesting Respondent's consent for access.

14. EPA anticipates mobilizing to the Site to begin response actions between late October and early November. Respondent's failure to grant access will delay cleanup and increase risk to individuals who frequent the Site for recreation or for those living in the area and being impacted by windblown tailings.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

15. Based on the foregoing Findings of Fact, and the administrative record supporting issuance of this Order, EPA has determined that:

a. Hazardous substances as defined by Section 101(14) CERCLA, 42 U.S.C. § 9601(14) have been generated at, stored at, disposed of at, or transported to or from the Site. A release of hazardous substances as defined by Section 101(14) CERCLA, 42 U.S.C. § 9601(14), is or may be threatened at the Site.

b. The Site is a facility where hazardous substances have been generated, stored, treated, disposed of, or transported from; from or to which hazardous substances have been or may have been released; where such release is or may be threatened; where entry is needed to determine the need for response, to identify the appropriate response, or to effectuate a response action within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

c. EPA has a reasonable basis to believe that there may be or has been a release or threat of release of a hazardous substance at the Site.

d. Respondent owns the Site.

e. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

f. Entry to the Site by EPA and its officers, employees, agents, contractors, and other authorized representatives is needed for the purposes of taking a response action at the Site.

g. Respondent has not granted EPA's requests for access to the Site.

V. ORDER

16. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the administrative record supporting the issuance of this Order, EPA hereby orders Respondent to provide EPA and UDEQ and their officers, employees, agents, contractors, and other authorized representatives, full and unrestricted access at all reasonable times to the Site for the purpose of conducting response activities, including, but not limited to performing

the response action detailed in the Action Memorandum and post removal site controls as necessary to protect EPA's response action.

17. Respondent shall not prevent, limit, or otherwise interfere with EPA's access to the Site as described in Paragraph 16 or any activity described in Paragraph 16 by EPA, its officers, employees, agents, contractors, and other authorized representatives. Any interference with any activity described in Paragraph 16 shall be deemed a violation of this Order.

18. If Respondent conveys the Site, or its agents, successors or assigns, convey an interest in the Site, Respondent or Respondent's agents, successors or assigns shall convey the interest in a manner which ensures continued access to the Site by EPA and its authorized representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance must restrict the use of the Site so that the transferee's use will not interfere with EPA's access as described in Paragraph 16. Respondent, or Respondent's agents, successors or assigns must notify EPA under Paragraph 29 at least 30 days before the conveyance of any interest in the Site, and must, prior to the transfer, notify the other parties involved in the conveyance about this Order.

VI. OPPORTUNITY TO CONFER

19. Respondent may request a conference with EPA to discuss the Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions which Respondent may have regarding this Order, provided it submits a request to EPA for such a conference within three working days after receipt of the Order. Respondent is entitled to submit written comments or a statement of position, provided Respondent submits, within three working days after receipt of the Order, a notice to EPA of its intent to submit such written materials.

20. If Respondent timely requests a conference, the conference must be held within two working days after Respondent's request. Respondent and/or Respondent's representative may appear at the conference. If Respondent timely notifies EPA of its intent to submit written materials, Respondent must submit those written materials within five working days after receipt of the Order, or, if a conference is scheduled, within two working days after the conference. EPA may specify in writing later deadlines for the conference or for submission of written materials. The conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of the Order. EPA will deem Respondent to have waived its right to the conference or to submit written comments if it fails to request or schedule the conference or submit comments within the specified time period(s). Any request for a conference or written comments or statements should be submitted via email to:

Amelia Piggott
Office of Regional Counsel
United States Environmental Protection Agency
(303) 312-6410
Piggott.amelia@epa.gov

VII. EFFECTIVE DATE

21. This Order is effective as of the later of: (a) three working days after Respondent or its designated representative receives the Order; (b) three working days after the conference scheduled by EPA under Paragraph 20, provided that Respondent timely requested a conference in accordance with Paragraph 19; (c) three working days after the deadline for submission of written materials if a conference is not scheduled in accordance with Paragraph 20, provided that Respondent timely notified EPA of Respondent's intent to submit written materials in accordance with Paragraphs 19. If EPA determines that the Order should be modified based on the conference or written materials, EPA shall notify Respondent, within the applicable three-day period, that EPA intends to modify the Order. The modified Order shall be effective two working days after it is received by Respondent.

VIII. NOTICE OF INTENT TO COMPLY

22. Respondent shall notify EPA, using the form provided at the end of this Order and in accordance with Paragraph 29, on or before the Effective Date, whether or not it intends to fully and unconditionally comply with the Order. Respondent's failure to notify EPA of its intent to fully and unconditionally comply with this Order by the time the Order becomes effective shall be 1) construed as a denial of EPA's request for access, and 2) as of the effective date under Paragraph 21 of this Order, treated as a violation of the Order.

IX. ENFORCEMENT

23. Any non-compliance with this Order is enforceable under Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). Section 104(e)(5)(B) of CERCLA provides that a court may assess civil penalties for each day of noncompliance against any person who unreasonably fails to comply with an access order issued under Section 104(e)(5)(A) of CERCLA. As of the date of issuance of this Order, the statutory maximum amount is \$59,017 per violation per day. This maximum amount may increase in the future, as EPA amends its civil penalty amounts through rulemaking pursuant to the 1990 Federal Civil Penalties Inflation Adjustment Act (Public Law 101-410, codified at 28 U.S.C. § 2461), as amended by the 2015 Federal Civil Penalties Inflation Adjustment Act Improvement Act (Section 701 of Public Law 114-74)). The maximum amount to be applied to this violation will be set as the most recent maximum amount set forth in 40 C.F.R. § 19.4 as of the date that the U.S. District Court assesses any such penalty. Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such failure to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

24. Nothing in this Order precludes EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Site, and recovery of the costs thereof.

X. RESERVATIONS OF RIGHTS BY EPA

25. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondent, or against any person or entity who is not a Respondent to this Order.

26. Nothing in this Order limits or otherwise affects the right of EPA to issue any other orders to, or take any other administrative or civil action against, Respondent or any other person under CERCLA which relate to the Site or any other site.

27. Nothing in this Order limits or otherwise affects any right of entry held by the United States under applicable laws, regulations, or permits.

28. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

XI. NOTICES AND SUBMISSIONS

29. All notices and requests specified in this Order (collectively, “Notices”) must be in writing and must be sent to EPA via email as specified below.

Amelia Piggott
Office of Regional Counsel
United States Environmental Protection Agency
(303) 312-6410
Piggott.amelia@epa.gov

XII. ADMINISTRATIVE RECORD

30. EPA has established an administrative record that contains the documents that form the basis for the issuance of this Order. It is available for review at https://response.epa.gov/site/doc_list.aspx?site_id=15313&RadUrid=9bfb573a-0df9-4e48-9300-ad2aedcb7f66. An index of the administrative record is attached as Attachment C.

XIII. TERMINATION

31. This Order is in effect, and Respondent shall provide access to the Site, from the effective date until EPA notifies Respondent that the activities for which access is needed are complete and access to the Site is no longer needed.

It is so Ordered.

BY: _____
Christopher Thompson
Region 8
U.S. Environmental Protection Agency

DATE: _____

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8

CERCLA Docket No _____

IN THE MATTER OF: Bauer Tailings Site, Tooele, Utah

NOTICE OF INTENT TO GRANT ACCESS

I hereby notify the United States Environmental Protection Agency, in accordance with Paragraph 22 of EPA's Administrative Order Directing Compliance With Request For Access (Order) that I will fully and unconditionally comply with the Order with regard to the Site identified in Paragraph 3 of this Order.

Respondent

Date