BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

OF THE STATE OF MONTANA

IN THE MATTER OF:
VIOLATIONS OF THE METAL MINE
RECLAMATION ACT BY BLUE ARC LLC, LUKE
PLOYHAR, LEGACY MINING, LLC, AND OWEN
VOIGT AT THE ZORTMAN MINE, PHILLIPS
COUNTY, MONTANA (FID NO. 2XXX)

Administrative Order on Consent

Docket No. MM-22-01 FID 2806

Pursuant to the authority of Section 82-4-361, Montana Code Annotated (MCA), the
Department of Environmental Quality (DEQ) hereby gives notice to Blue Arc LLC (Blue Arc),
Luke Ployhar, Legacy Mining, LLC (Legacy Mining), and Owen Voigt, collective referred to
herein as “Respondents,” of the following Findings of Fact and Conclusions of Law and issues
the following Administrative Order on Consent (Consent Order) with respect to violations of the
Metal Mine Reclamation Act (MMRA), Title 82, chapter 4, part 3, MCA, and its implementing
rules, the Administrative Rules of Montana (ARM), Title 17, Chapter 24, subchapter 1.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

DEQ makes the following Findings of Fact and Conclusions of Law:

1. DEQ is an agency of the executive branch of the State of Montana, created and
existing under the authority of Section 2-15-3501, MCA.

2. DEQ administers the MMRA.

3. Respondents are a “person” as defined in Section 82-4-303(22), MCA, and are
subject to the requirements of the MMRA and the administrative rules implementing the
MMRA.

4. Blue Arc owns mining claim properties at the reclaimed Zortman Mine with
geocodes 11-3637-01-4-04-01-0000, 11-3639-07-2-02-01-0000, 11-3639-07-2-02-04-0000, and
11-3639-07-4-03-02-0000 (Properties).
A. Background Information

5. Major gold mines were permitted within the historic Zortman/Landusky Mining District in 1979. After years of operation, Pegasus Gold Corporation declared bankruptcy in 1998. Shortly thereafter, in 1999, DEQ and the Bureau of Land Management (BLM) took over the site reclamation and water treatment. In addition to maintaining the existing three water treatment systems inherited from Zortman Mining Inc., DEQ and BLM began reclamation of the sites in 2000, including significant surface reclamation and water treatment. A 4th water treatment plant was constructed by DEQ/BLM in 2001/2002. In 2004, BLM issued an Action Memorandum for the site(s), placing the sites under Federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authority. As a result, a CERCLA boundary was established by BLM at the Zortman Mine.

6. The Properties owned by Blue Arc are located within the CERCLA boundary.

7. In June 2004, BLM published the Action Memorandum for Zortman and Landusky Mines Time Critical Removal, Operable Unit 1 (OU1) and Operable Unit 2 (OU2). BLM continues to conduct response actions at the Zortman and Landusky Mines located in Phillips County, Montana, through the agency’s delegated authority (Executive Order 12580) under CERCLA. With the discharge of the ZMI bankruptcy proceedings on November 10, 2003, an operator of record no longer exists. However, a recent review shows conditions at the site continue to pose a potential threat to public health or welfare or the environment; on, from, or to lands under the jurisdiction, custody, or control of the BLM (See Part II, Tables 1-3). These conditions meet the criteria for a Removal Action under 40 CFR 300.415(b)(2) of the National Contingency Plan (NCP).

8. OU1 facilities include the existing seepage capture systems in Ruby Gulch, Alder Spur, Carter Gulch, Montana Gulch, Mill Gulch, and Sullivan Gulch; the Zortman and Landusky
Acid Rock Drainage (ARD) water treatment plants, areas where treated water leaves the plants, and the associated infrastructure serving these facilities including roads, power lines, pipelines, and current or future backup or supplemental power generation equipment.

9. OU2 includes the leach pad containment areas with residual process solutions; the biological treatment system used to treat leach pad solutions; associated ponds, pipelines, pumps and pre- or post-treatment apparatus; and the land application disposal system (LAD).

10. Operable Unit 3 (OU3) consists of the area of mine disturbance at the Site where reclamation has occurred or is in the process of occurring.

11. A bio-treatment cell was added in 2006/2007. A 5th water treatment plant was constructed in 2009/2011. Applicable reclamation actions included: (1) backfilling and capping mine pits to minimize infiltration that could reach water treatment plants; (2) research, development, construction, and operation of the Swift Gulch treatment system; (3) removal and reclamation of historic mill tailings from King Creek; (4) installation of a passive treatment cell to remove low levels of nitrate and selenium; and (5) installation of a water storage impoundment upstream of the Swift Gulch water treatment plant for further protections during high rainfall events. The estimated cost, to date, for the reclamation activities at the Zortman/Landusky sites is $80-$85 million.

12. On August 12, 2019, DEQ staff met with Owen Voigt about potential projects he was considering. Owen Voigt stated, “I would like to discuss the exploration permit and operating permit process with you. I am thinking of the South of Boulder Area. Also, the Zortman/Landusky Mine.” Owen Voigt also stated that, “Secondarily, I would like to discuss two other items; that being the process of obtaining an operating permit for the Zortman Mine for an underground operation and issues pertaining to permitting cyanide vat leaching for
underground ore as well as custom ore from historical mining operations.” DEQ staff communicated to Owen Voigt the concerns and problems with such a proposal at Zortman Mine.

13. In August 2001, Luke Ployhar purchased the private lands associated with the Pegasus Gold bankruptcy. In the signed Property Purchase Agreement, Article V Possession, Prorations and Expenses: Possession- Sole and exclusive possession of the Property shall be delivered to Purchaser on the Closing Date, provided, however, that Purchaser acknowledges that the Property conveyed subject to the right of access of DEQ and its agents for the completion of reclamation, as more particularly set forth in Paragraph 7.03. It should be noted that water treatment is in perpetuity at this site (SEE ALSO 6.03 PURCHASERS ACCESS TO THE PROPERTY, as well as 7.03 Access Rights of Agencies). Article VII of the Purchase Agreement, Property to be Conveyed as is Access Rights of Agencies (7.01).

14. Luke Ployhar/Blue Arc have not been issued a license for any of the applications submitted to DEQ. Luke Ployhar/Blue Arc do not hold any other exploration licenses within Montana.

15. Owen Voigt is the "licensee" for Exploration License No. 00849, which is not associated with the Zortman Mine. No exploration licenses have been issued to Legacy Mining. Small Miner Exclusion Statements (SMES) have been obtained by both Owen Voigt (2) and Legacy Mining (4).

16. Since 2020, Respondents have applied three times for exploration licenses from DEQ for activities in and around Zortman/Landusky. The applications have been submitted for exploration at three different sites on Properties owned by Blue Arc. Disturbances have been created on the Properties at eight locations in the general vicinity of the locations for the three exploration license applications.
17. On March 6, 2020, DEQ received an Application for Exploration License (Original Application) for the extraction of up to a 1,000-ton bulk sample from a single site at the former Zortman Mine for shipment and metallurgical testing at a facility in Nevada. The Original Application stated that it would employ the use of an excavator with a hammer attachment to remove the bulk sample from an exposed highwall left behind from the previous mine operation. The licensee name identified on the Original Application form was “Owen Voigt” whereas the licensee name identified on the License Amendment Supplemental Information form included with the Original Application was “Blue Arc LLC.”

18. DEQ assigned the Original Application with Exploration License Application No. 00846.


20. On February 1, 2021, DEQ finalized the Environmental Assessment and issued a Decision for the Original Application. The information was sent to Blue Arc c/o Owen Voigt. In its Decision, DEQ stated "Blue Arc is not authorized to conduct any exploration activity, or to conduct any action in anticipation of conducting exploration activity (such as mobilization of equipment) that is subject to DEQ's approval, until Blue Arc submits the required bond to DEQ and DEQ has notified Blue Arc of its acceptance of the submitted bond."

21. On February 19, 2021, DEQ sent Owen Voigt the bond amount required for the exploration activities associated with the Original Application. The bond was not posted; therefore, a license for the Original Application (Exploration License Application No. 00846) was not issued.
23. On March 10, 2021, DEQ received a second Application for Exploration License (2nd Application) for mineral exploration at the Properties. The 2nd Application was submitted by Legacy Mining, on behalf of Blue Arc, and proposed to add two new sites, Badger King Portal #1 and Pink Eye Portal, to the Original Application. The 2nd Application indicated that all exploration activities would be underground, with no new disturbance to the surface. The 2nd Application noted the gold and silver bearing structure and geology inside the adit and stated the applicant’s intention to open the adit and look for viable material containing gold and silver for processing.

24. On July 12, 2021, DEQ received a third Application for Exploration License (3rd Application) for mineral exploration at the Properties. The 3rd Application was submitted by Owen Voigt and named Blue Arc as the licensee. The 3rd Application proposed exploration of the Ross Pit to include a trench approximately 35 feet long, 10 feet wide and 25 feet deep to extract a 125-ton bulk sample for metallurgical testing. The 3rd Application also included roads 850 feet long, 10 feet wide, and 1 foot deep, with overland travel 330 feet long by 8 feet wide.

25. The submittal of the three applications indicated that Respondents were aware of the licensing/application/bonding requirements of the MMRA and that Respondents wished to conduct trenching and underground activities as a form of exploration. In the three applications, Respondents expressed an understanding of the need to reclaim the disturbances.

26. On August 6, 2021, DEQ issued a deficiency letter for the 3rd Application. In the deficiency letter, DEQ requested clarification from the applicant about the licensee, as several different names had been used to date. In addition, DEQ requested additional information, such as information to support the stated application request to construct a trench to collect a sample and construct an underground portal to collect a sample, details on a reclamation plan, etc.
27. On August 26, 2021, in response to a DEQ deficiency letter, the 3rd Application was resubmitted with the licensee name as "Luke Ployhar" and the primary contact person as "Owen P Voigt Legacy Mining LLC."

28. On September 30, 2021, Luke Ployhar submitted an e-mail indicating that "Owen is a representative for me as we pursue the exploration of my property". Owen has been the applicant on behalf of Blue Arc and Luke Ployhar on all three applications submitted. All correspondence regarding application specific questions and clarification for Blue Arc/Luke Ployhar projects were sent to both Owen Voigt and Luke Ployhar. Owen Voigt was the primary respondent each time.

29. On October 4, 2021, DEQ received a revised Plan of Operation for the 3rd Application. The revised Plan of Operations confirmed that Luke Ployhar was applying as an individual, Owen Voigt is a legal representative for Luke Ployhar, and included dimensions and quantities of features, road location plans, equipment to be used soil salvage plans, etc.

30. On November 9, 2021, DEQ received an email notification from Legacy Mining that the 2nd Application was to be withdrawn.


32. On November 30, 2021, DEQ staff met with Owen Voigt about his proposed projects at Zortman. DEQ staff again communicated to Owen Voigt the concerns and problems with mining/exploration proposals at Zortman.

33. On January 4, 2022, DEQ held a public meeting on the proposed 3rd Application. DEQ received significant public comment/input on the project. Many of the commenters indicated that the affected area, including all the areas previously disturbed, has significant cultural importance to the tribes.
34. On February 16, 2022, DEQ received a proposal from Owen Voigt/Legacy Mining regarding removal and reprocessing of carbon waste material from the water treatment tank/carbon facility at Landusky. In the application, the applicant states, "Attachment 10 Legacy Mining sludge assays show a concentration of approximately 3 ounces of arsenic to the ton and concentrations of nearly 5.5% iron and 5.34% sulfur, meaning for every ton of sludge material placed in the North Alabama pit, there is 110 pounds of iron and 107 pounds of sulfur. Legacy Mining sludge assays show that through 2014, approximately 1,100,000 pounds of iron and 1,068,000 pounds of sulfur have been removed from the water treatment plants and placed in the North Alabama pit. We are conducting further volume and content analysis of the sludge material and hope to come up with a suggestion for removing or neutralizing the sludge soon."

Attachment 4 of the proposal is the Legacy Mining Assays received by the lab on 2019-02-28 and finalized 2019-03-12, indicating that Owen Voigt/Legacy Mining had already taken material from the site to perform the analysis.

35. On March 4, 2022, DEQ sent Blue Arc a letter regarding the annual bond overview and the risk assumed with exploration activities at the Zortman Mine. The letter notified Blue Arc that any exploration activities on the Properties must not disrupt completed and ongoing reclamation activities at the Zortman Mine. The letter further notified Blue Arc that any disruption of completed or ongoing reclamation sites, new releases of hazardous substances, or potential releases of hazardous substances could result in liability for the operator under CERCLA and/or the Comprehensive Environmental Cleanup and Responsibility Act. Finally, as part of the annual bond overview, DEQ requested that Blue Arc send a written response stating that it understood and assumed the risks it would be taking by creating a disturbance at the site.

36. On March 13, 2022, DEQ received a response from Legacy Mining/Owen Voight regarding the annual bond overview process. The response stated, "We appreciate the fact DEQ
will be taking that into consideration as the bond amount required should be reduced to reflect
use of the road by the State of Montana, Forest Service and others from historic use, such as
when hauling material with semi's during reclamation, to driving a D9 cat on the road for
firefighting efforts." While DEQ requested a confirmation from the operators of their
understanding of the CERCLA implications for disturbance at the site, no such
acknowledgement was made.

37. During a routine imagery check conducted by DEQ to see if updated
World Imagery of the constructed treatment pond to the east of Disturbance 1 was
available at the site, 7 disturbances were discovered on the Properties owned by Blue
Arc.

38. On March 28, 2022, DEQ’s Hard Rock Mining personnel conducted a site
inspection at the Properties owned by Blue Arc to assess the current site conditions as they
related to a recently received carbon removal proposal and the existing Exploration License
applications (Original Application and 3rd Application). During the inspection, DEQ made on-
site observations and deployed an Unmanned Aerial System (UAS) for aerial imagery. Through
its on-site observations and aerial imagery, DEQ documented that Respondents had conducted
mining activities without an operating permit and engaged in mineral exploration without an
exploration license at seven locations within the Properties. DEQ also attempted to inspect the Pink
Eye Portal, but the location was not visible from the aerial flight and snowpack prevented
accessing the adit by foot. The UAS was flown between 200-300 feet on a double grid for photo
clarity. The imagery was later processed in Pix4D Software to provide calculations for the
disturbance sizes as well as material removed at each disturbance. Location 7 was noted as
disturbed from the UAS imagery due to the material stockpile located adjacent to the site that
appeared with a fresh/different coloration than surrounding soil. DEQ identified the seven
39. The disturbances created by Respondents damaged reclamation work that had been completed at the Zortman Mine. The backfilling and capping were compromised by the mining activity undertaken at the site, with vegetation removed, soil removed, capping material removed, and no corresponding salvage of the topsoil or protective steps to address water impacts. Disturbances at Locations 1 and 2 are located in an area where 18" of soil was previously placed as a cap to ensure groundwater protection. The location (Zortman Underground Workings, Spectrum, 1999) of Location 1 is immediately overtop two adits, running north/south and east/west, that were buried and capped as part of the bankruptcy remedy.

At the Zortman Mine, the majority of the treated water seeps into the bedrock beneath Ruby Gulch and does not appear as surface water downstream of the town of Zortman except during major run-off events. The treated water infiltrates to the Madison Formation, an important aquifer, where it outcrops in Ruby Gulch near Zortman. Disturbances at Locations 3-6 are located in an area where 12" of soil was previously placed as a cap to ensure groundwater protection.

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40. DEQ notified Luke Ployhar/Blue Arc of the violations for mining without an operating permit, engaging in exploration activities without an exploration license, and conducting exploration and mining activities without a performance bond for the seven disturbance locations through Violation Letter #VLHRM20220330-00071, dated April 1, 2022. The violation letter informed Luke Ployhar/Blue Arc that it could achieve compliance with the MMRA by ceasing mining at the Properties and either reclaiming the disturbances or obtaining the necessary operating permit or exploration license, including filing an adequate performance bond, to cover the disturbance locations.

41. DEQ notified Owen Voigt/Legacy Mining of the violations for mining without an operating permit, engaging in exploration activities without an exploration license, and conducting exploration and mining activities without a performance bond for the seven disturbance locations through Violation Letter #VLHRM20220330-00072, dated April 1, 2022. The violation letter informed Owen Voigt/Legacy Mining that it could achieve compliance with the MMRA by ceasing mining at the Properties and either reclaiming the disturbances or obtaining the necessary operating permit or exploration license, including filing an adequate performance bond, to cover the disturbance locations.

42. On April 15, 2022, DEQ sent Owen Voigt/Legacy Mining a response to its February 16, 2022 Carbon Waste Material Removal proposal. In its letter, DEQ communicated to Owen Voigt/Legacy Mining that the proposed activity: (1) was not reclamation; (2) was not exploration; (3) was mining that was ineligible to be done as a SMES; and (4) was mining that triggers the operating permit requirements. In the letter, DEQ concluded, “DEQ does not agree that the activities proposed by Legacy in the proposal are reclamation or an extension of DEQ’s reclamation. Rather, DEQ through review of the MMRA, concluded the proposed activities are “mining” and the processing of mine waste material. Therefore, the proposed activities are
subject to regulatory oversight as prescribed by the MMRA. Further, DEQ cannot issue Legacy a 

Hard Rock Mine Operating permit until the alleged violations have been resolved and/or 

addressed. With the extensive reclamation activities performed at the Zortman and Landusky 

mine sites to date, Legacy should be fully aware of the potential liability it would incur by 

conducting any type of mining activity at the mine sites. Finally, DEQ notes that Legacy’s 

proposal inaccurately characterizes the Zortman and Landusky mine site facilities, reclamation 

history, material characterizations, water treatment processes, and other technical site 

characteristics."

43. On April 15, 2022, Blue Arc sent DEQ an email response to Violation Letter 

#VLHRM20220330-00071. The response informed DEQ that Blue Arc was not exploring the 

Properties for mining or extracting material for mining, but rather was developing several 

campground sites that will contain cabin, recreation vehicle, and tent sites. In the email, Blue Arc 
denied that alleged sites were mining, but went on to state, "Yes, mining is of great interest to me 

but Zortman/Landusky hold many opportunities that I will be exploring over the next several 

years. Our interest in mining is in the locations that we have applied for exploration permits and 

following the law. When I purchased the property in 2001 it came with all mining records. These 

included over 2000 drill holes as well as extensive geological reports. The areas that the DEQ are 

claiming we are pursuing exploration and mining have NO value to mining. I know exactly 

where the gold mineralization is and these areas are not it." DEQ staff noted that the sites 

selected for disturbance by Respondents align very closely with previous mining features at 

Zortman.

44. On May 5, 2022, Luke Ployhar sent an e-mail to DEQ stating, “following up 

on our phone conversation last Friday reg. Owen [Voigt] being listed on that violation. I 

think that he shouldn’t be implicated since I’m the one that is digging around on my property
for my other projects that don’t include Mining. Owen helps with application paperwork etc.
for the exploration permits we have been pursuing not any of these other projects I’m
working on for camp sites etc.. Just thought I would send this email just to have a record of
my opinion on the matter."

45. On May 27, 2022, DEQ conducted a follow-up inspection at the Properties and
took photographs of each of the seven locations of disturbance identified during the March 28,
2022 inspection. In addition, DEQ inspected the Pink Eye Portal and documented that this site
was an eighth location where Respondents had conducted mining activities without an operating
permit and engaged in mineral exploration without an exploration license. DEQ documented that
the adit entrances at Badger King Portal and Pink Eye Portal (location 8) had been altered and
material had been removed, as had been proposed in the previously withdrawn 2nd Application.
DEQ identified the eighth location of disturbance as:

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46. DEQ notified Luke Ployhar/Blue Arc of the violations for mining without an
operating permit, engaging in exploration activities without an exploration license, and
conducting exploration and mining activities without a performance bond at the Pink Eye mine
adit through Violation Letter #VLHRM20220602-00075, dated June 6, 2022. The violation letter
informed Luke Ployhar/Blue Arc that it could achieve compliance with the MMRA by ceasing
mining at the Properties and either reclaiming the disturbance or obtaining the necessary
operating permit or exploration license, including filing an adequate performance bond, to cover
the disturbance location.

47. DEQ notified Owen Voigt/Legacy Mining of the violations for mining without an
operating permit, engaging in exploration activities without and exploration license, and
cconducting exploration and mining activities without a performance bond at the Pink Eye mine
adit through Violation Letter #VLHRM20220602-00076, dated June 6, 2022. The violation letter
informed Owen Voigt/Legacy Mining that it could achieve compliance with the MMRA by
ceasing mining at the Properties and either reclaiming the disturbance or obtaining the necessary
operating permit or exploration license, including filing an adequate performance bond, to cover
the disturbance location.

48. On June 1, 2022, Luke Ployhar sent an email to DEQ stating, “Per our
conversation several weeks ago I am waiting on a time from you for a meeting with
the DEQ. As discussed I wanted to be able to clarify what deq believes I can and
cannot do on my private property. The only stipulation I had in the purchase agreement was to
not impede reclamation activities and give reasonable access for operations. I have not heard
anything back from my response to the violation letter you sent me. this is my premium time
of year to develop my property and I don't want that hindering my projects. Can you contact me
soon so I can sort this out?”

49. On June 2, 2022, Luke Ployhar submitted a letter to Governor Gianforte. In the
letter, Mr. Ployhar stated the following:

a. “We are very aware of the sensitivity of this site and what it will require to
develop into a successful mine operation.”

b. “As part of the property I received extensive mineralogy information from
Pegasus that included over 2000 drill logs and detailed geological reports that
located the mineralized zones on both sections for Zortman and Landusky. This
included the information for over a 1.2 million ounce gold ore reserve on the
Zortman side alone and significant amounts of silver.”
c. “After spending the last 15 years extrapolating the data and creating new 3D models of the mineralized structures I moved my family back to Montana in 2016 (I grew up in Lewistown and am a native Montanan) to pursue the interests in our land and develop not only the mineral reserves of our property but also the recreational viability of our property.”

d. “Knowing that our property has vast mining potential that could provide many long term jobs I have kept pursuing these interests.”

e. “Knowing that our property falls under certain CERCLA authorities we have been very accommodating over the past 20 years giving total access to the DEQ and their agents/contractors to do any and all reclamation and water treatment.”

f. “Our goals are to mine the ore, which, in turn will help mitigate water issues that the DEQ claims will require perpetual treatment costing taxpayers untold millions over time. By mining out the highly mineralized structures this would vastly improve the issues with acid rock drainage and assist with long term treatment.”

g. “Given the pushback from the Tribes the DEQ decided to require us to complete an Environmental Impact Statement for our second exploration permit location that is a trench 35 feet long by 10 feet wide. This action by the DEQ is extreme as well as tactical in order to slow our exploration to a standstill.”

h. “While pursuing our Mineral exploration and due to the amount of time that it will take I decided to begin developing the recreational potential of our surface private property.”

i. “I have cleaned up several portal entries that I intend to secure with doors to prevent damage and trespassing for safety that could potentially be used as part of the mine tours as well.”
j. “Several of the areas they have claimed are in violation were existing old mine tunnels from over 60 to 80 years ago that the DEQ did not cover in reclamation but now trying to claim that I am in violation of cleaning up the entry to add doors to secure for safety and access.”

50. DEQ reviewed satellite images, captured September 20, 2021, of the eight disturbance locations on the Properties. These images showed that disturbances at the eight locations had occurred prior to September 20, 2021.

51. From at least September 20, 2021, until the effective date of this Consent Order, the eight disturbed locations on the Properties have remained un-reclaimed. Each day that the sites remain un-reclaimed is another day that infiltration impacts and ARD are heightened. The lack of cover and vegetative growth over the disturbances allows water to infiltrate and the corresponding exposure to air increases impacts from ARD. Impacted water infiltrating to the groundwater is a risk to the surrounding communities of Zortman and Landusky. Based upon water quality concerns, groundwater monitoring has previously been conducted near the Badger King Portal. The operator’s disturbance of the adit, without review/approval from DEQ, was ill-advised as it potentially damaged the groundwater monitoring well, increased water leaving the adit and infiltrating into groundwater, and created significant safety concerns.

52. DEQ was not made aware of Luke Ployhar’s/Blue Arc’s plans for developing the Blue Arc Properties until DEQ issued its April 1, 2022 violation letters to Respondents. Subsequent to the issuance of the April 1, 2022 violation letters, Luke Ployhar/Blue Arc has communicated plans to: (1) develop several campground site with a mix of cabin/RV/tent sites (VRBO); (2) build several home sites; (3) build a visitors center; (4) build a mining museum/mining tour center; (5) build an Imax theater complex; (6) establish underground tunnel tours; (7) establish opportunities for day trips & picnicking; and (8) build hunting cabins.
53. All of the disturbances created by Respondents appear to be on or near historic mining features. DEQ has not identified other disturbances that fall outside of the historic mining features.

**B. Disturbance Location Information**

55. **Location 1** is located approximately 885' to the northwest of the Zortman water treatment plant, immediately adjacent (potentially above) the Ruby Adit Drain completed as part of the CERCLA remedy. This disturbance is approximately 0.42 acres in size. Cross-sections taken from the DEQ UAV flight revealed that the deepest point of the disturbance was 23’ and the average depth was between 17’-20’ across the disturbance. The site is located approximately 53’ from the Zortman Lined Remedial Areas where liners were placed to reduce acid mine drainage from occurring. Maps created by Spectrum Engineering in July 1999 show the location of two underground adits that meet directly below the disturbance. Prior DEQ reclamation of the area of this site included the placement of 18” of topsoil over the region. Disturbance at Location 1 impacted the soil cap placed as part of the remedy. Further, the topsoil was not salvaged as a separate stockpile and was co-mingled with subsurface material, making it inadequate for reuse for topsoil reclamation. The location of the disturbance coincides directly above the two historic adits shown on the maps provided by Spectrum Engineering.

56. **Location 2** is located within the Zortman lined remedial areas where a protective liner was placed. The disturbance is approximately 747' northwest of the Zortman water treatment plant. The Ruby Adit Drain is located approximately 84’ to the east of the disturbance. As measured with DEQ's UAV imagery, the disturbance is approximately 0.03 acres and 4' deep. Prior DEQ reclamation of the area of this site included the
placement of 18" of topsoil over the region. Disturbance at Location 2 impacted the soil
cap placed as part of the remedy. Further, the topsoil was not salvaged as a separate
stockpile and was co-mingled with subsurface material, making it inadequate to reuse for
topsoil reclamation.

57. **Location 3** is located on a bench to the north of the originally proposed
exploration site (Original Application). As measured with DEQ’s UAV imagery, the
disturbance is approximately 0.02 acres in size and 5.5‘ deep. Prior DEQ reclamation of
the Zortman mine site involved the placement of 12" of topsoil over the region where
Location 3 exists. Disturbance at Location 3 impacted the soil cap placed as part of the
remedy. Further, the topsoil was not salvaged as a separate stockpile and is co-mingled
with subsurface material, making it inadequate to use for topsoil reclamation at this
location.

58. **Location 4** is located on a bench to the north of the originally proposed
exploration site (Original Application). As measured with DEQ’s UAV imagery, the
disturbance is approximately 0.04 acres in size and 3‘ deep. Prior DEQ reclamation of the
Zortman mine site involved the placement of 12" of topsoil over the region where
Location 4 exists. Disturbance at Location 4 impacted the soil cap placed as part of the
remedy. Further, the topsoil was not salvaged as a separate stockpile and is co-mingled
with subsurface material, making it inadequate to use for topsoil reclamation at this
location.

59. **Location 5** is located on a bench to the north of the originally proposed
exploration site (Original Application). As measured with DEQ’s UAV imagery, the
disturbance is approximately 0.03 acres in size. The depth of the disturbance was not able
to be accurately measured due to snow in the trench. Prior DEQ Reclamation of the
Zortman mine site involved the placement of 12" of topsoil over the region where Location 5 exists. Disturbance at Location 5 impacted the soil cap placed as part of the remedy. Further, the topsoil was not salvaged as a separate stockpile and is co-mingled with subsurface material, making it inadequate to use for topsoil reclamation at this location.

60. Location 6 is located on a bench to the north of the originally proposed exploration site (Original Application). As measured with DEQ’s UAV imagery, the disturbance is approximately 0.03 acres in size and 6' deep. Prior DEQ Reclamation of the Zortman mine site involved the placement of 12" of topsoil over the region where Location 6 exists. Disturbance at Location 6 impacted the soil cap placed as part of the remedy. Further, the topsoil was not salvaged as a separate stockpile and is co-mingled with subsurface material, making it inadequate to use for topsoil reclamation at this location.

61. Location 7 (known as Badger King Portal #1) is a previously plugged portal entry that is located to the north of the originally proposed exploration site (Original Application). In a Draft Plan of Operation submitted by Legacy Mining, on behalf of Luke Ployhar/Blue Arc, the applicant was proposing two additional locations aside from their original exploration proposal. The applicant states, "Any rock will be placed on the existing historical waste rock pile." Further, the application states, "Both portals require basic maintenance to open access for operations. Portals must meet Mining Safety and Health Administration standards for worker safety. A small amount of historical sluff material must be moved to assure safety of workers and to properly secure the portal entry." Location 7 is located off the northern edge of the bench. The adit was previously plugged as part of the remedy and a groundwater monitoring well was installed as part of
the remedy and is located immediately adjacent the portal. The well is still intact based on recent inspection but was at risk for damage when the portal material was removed and stockpiled near the well-head.

62. **Location 8** (known as Pink Eye Portal) is located to the Northwest of the Ross Pit proposal (3rd Application). The Pink Eye Portal was included in the 2nd Application that was later withdrawn by Respondents. The 2nd Application proposed to remove the material in front of the portal and take samples to assess mining this portal.

**Violation 1 – Mining without a permit**

63. A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from DEQ. Section 82-4-335(1), MCA.

64. Respondents violated Section 82-4-335(1), MCA, eight times by engaging in mining operations at eight locations without first obtaining an operating permit from DEQ, as described in the preceding findings of fact and conclusions of law.

65. The facts stated above – especially the location of the disturbances in relation to the historic mining at Zortman and applications Respondents previously submitted, Respondents’ statements and correspondence with DEQ, and general nature of exploring and mining – indicate that the disturbances were made with the intent to mine the disturbed areas within the meaning of Section 82-4-335(1).

**Violation 2 – Exploration without an exploration license**

66. “Exploration” is defined in Section 82-4-303(12), MCA, as: (a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of
the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and (b) all roads made for the purpose of facilitating exploration, except for the exemptions noted in Section 82-4-310, MCA.

67. A person may not engage in exploration in the state without first obtaining an exploration license from DEQ. A license must be issued for a period of one year from the date of issue and is renewable from year to year on application. Section 82-4-331(1), MCA.

68. Respondents violated Section 82-4-331(1), MCA, eight times by engaging in mineral exploration activities at eight locations without first obtaining an exploration license from DEQ, as described in the preceding findings of fact and conclusions of law.

69. The facts stated above – especially the location of the disturbances in relation to the historic mining at Zortman and applications Respondents previously submitted, Respondents’ statements and correspondence with DEQ, and general nature of exploring and mining – indicate that the disturbances were made with the intent to explore the disturbed areas within the meaning of Section 82-4-331(1).

**Violation 3 – Failure to post bond**

70. An applicant for an exploration license or operating permit shall file with DEQ a bond payable to the state of Montana with surety satisfactory to DEQ in the sum to be determined by DEQ of not less than $200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of the MMRA, the rules of the board, and the permit. In lieu of a bond, the applicant may file with DEQ a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to DEQ. The bond may not be less than the estimated
cost to the state to ensure compliance with Title 75, chapters 2 and 5, the MMRA, the rules, and the permit, including the potential cost of DEQ management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected. Section 82-4-338, MCA.

71. Respondents violated Section 82-4-338, MCA, eight times by failing to file a performance bond prior to conducting exploration and mining activities at eight locations at the Properties, as described in the preceding findings of fact and conclusions of law.

**Administrative penalty**

72. Pursuant to Section 82-4-361(2), MCA, DEQ may assess an administrative penalty of not less than $100 or more than $1,000 for each violation and an additional administrative penalty of not less than $100 or more than $1,000 for each day during which the violation continues.

73. DEQ has calculated, and Respondents is assessed, an administrative penalty in the amount of $516,567 for the violations described in Paragraphs 66 and 68, using factors set forth in Section 82-4-1001, MCA, and ARM 17.4.301 through 17.4.308. The enclosed Penalty Calculation Worksheet is incorporated by reference herein.

**II. ADMINISTRATIVE ORDER**

This Consent Order is issued to Respondents pursuant to the authority vested in the State of Montana, acting by and through DEQ under the MMRA and its implementing rules. Based on the foregoing Findings of Fact and Conclusions of Law and the authority cited above, DEQ orders and Respondents agree to take the following actions:

74. Upon the effective date of this Consent Order, Respondents shall cease any exploration and mining activities at the Properties until the appropriate exploration license(s) and/or operating permit(s) have been issued and an adequate performance bond
has been filed.

75. No later than 30 days from the effective date of this Consent Order, Respondents shall submit a reclamation plan and schedule (Plan) for the eight locations of disturbance identified on the Properties. The Plan must include:

   a. A description of actions that will be implemented to reclaim each of the eight locations of disturbance. The description should include:

      i. The equipment that will be used for reclamation.

      ii. Methods employed to ensure that the removal and replacement of excavated materials does not impact underlying soils where excavated materials had been stockpiled.

      iii. The placement of 18 inches of soil on the surface of the disturbances at Locations 1 and 2.

      iv. The placement of 12 inches of soil on the surface of the disturbances at Locations 3-6.

      v. Method employed to reclaim the portals at Locations 7 and 8. The portals may be reclaimed by: (1) placement of soil over the disturbed areas; (2) backfill of the excavated material into/against the portal area, followed by placement of soil over the backfill; or (3) installing a portal gate to prevent unauthorized entry.

   b. The name of the contractor that will perform the reclamation. If Respondents choose to perform their own reclamation of the Properties, reclamation activities must be performed under the oversight of DEQ, and the dates for reclamation must be agreed upon by Respondents and DEQ.

   c. The source of soil to be used for reclamation. During its inspections, DEQ found
no evidence that soil was stockpiled separately. Therefore, DEQ assumes that soil
for remediation will need to be purchased and imported to the disturbance
locations.

d. Identification of the seed mix to be used for reclamation after soil placement.
e. The dates by which reclamation will commence and be completed.

The Plan shall be sent to the address provided in Paragraph 81.

76. DEQ will review the Plan for approval and provide written comments to Respondents
based on the reasonability of the remediation actions, the reasonability of the timeline, and
any deficiencies identified in the Plan. Respondents shall respond in writing to any noted
deficiencies and submit a revised Plan by the date specified in DEQ’s review letter.

77. Corrective actions and the reclamation date from the Plan approved by DEQ will be
incorporated by reference into this Consent Order as enforceable requirements.

78. No deadline required by this Consent Order, including those in the approved Plan,
may be extended unless Respondents demonstrate good cause for the reason and the length of
the delay and DEQ has approved the request in writing. To demonstrate good cause,
Respondents shall:

a. Notify DEQ of any delay or anticipated delay within 10 business days after
Respondents become aware, or should have become aware, of the reason for the
delay; and

b. Demonstrate that the reason and length of the delay are beyond Respondents’
control; and

c. Demonstrate that Respondents have taken all reasonable efforts to avoid the
delay.

79. DEQ may approve, disapprove, or modify the request for extension and will notify
Respondents of its decision in writing. Modification of any particular deadline will not affect any other deadline under this Consent Order unless expressly authorized in writing by DEQ.

80. Respondents are hereby assessed an administrative penalty in the amount of $515,567 for the violations cited in this Order.

81. Within 60 days from the effective date of this Order, Respondents shall pay to the DEQ the $516,567 administrative penalty to resolve the violations herein. To pay the penalty by electronic check, credit card, or debit card, please contact the Enforcement Program at 406-444-0379. To pay by check or money order, make the payment payable to the “Montana Department of Environmental Quality,” and send to:

Chad W. Anderson, Program Manager
Enforcement Program
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

82. Failure to take the required corrective actions and pay any assessed penalties by the specified deadlines, as ordered herein, constitutes a violation of Title 82 chapter 4, part 3, MCA, and may result in DEQ seeking a court order for judicial penalties of up to $5,000 per day of violation pursuant to Section 82-4-361, MCA.

83. DEQ may take any additional enforcement actions against Respondents, including the right to seek injunctive relief, judicial penalties, and other available relief for any violation of, or failure or refusal to comply with, this Consent Order.

84. None of the requirements in this Consent Order are intended to relieve Respondents from complying with all applicable state, federal, and local statutes, rules, ordinances, orders, and permit conditions.

III. CONSENT

85. Respondents waives their right to administrative appeal or judicial review of the
Findings of Fact and Conclusions of Law and Administrative Order on Consent set forth herein and agrees that this Consent Order is the final and binding resolution of the issues raised.

86. The terms of this Consent Order constitute the entire agreement between DEQ and Respondents with respect to the issues addressed herein notwithstanding any other oral or written agreements and understandings made and entered into between DEQ and Respondents prior to the effective date of this Consent Order.

87. Except as herein provided, no amendment, alteration, or addition to this Consent Order is binding unless reduced to writing and signed by both parties.

88. Each of the signatories to this Consent Order represents that he or she is authorized to enter into this Consent Order and to bind the parties represented by him or her to the terms of this Consent Order.

89. Respondents agree to waive defenses based upon the statute of limitations for the violations alleged herein and not to challenge DEQ’s right to seek judicial relief in the event Respondents fail to comply fully and satisfactorily with the terms of this Consent Order.

90. Failure to fulfill the requirements of this Consent Order by the specified timeframes, as ordered herein, constitutes a violation of Title 82, chapter 4, part 3, MCA, and may result in DEQ seeking a court order requiring additional corrective action and assessing civil penalties.

91. The terms of this Consent Order are satisfied when DEQ acknowledges, in writing, that all corrective actions required under this Consent Order have been completed.

92. Each party shall bear its own costs and attorney fees incurred in this
93. This Consent Order becomes effective upon signature of DEQ.

IT IS SO ORDERED:

STATE OF MONTANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAD W. ANDERSON, Program Manager

Enforcement Program

______________________________

Date

______________________________

Signature(s)

______________________________

Printed Name

______________________________

Title

______________________________

Date

Luke Ployhar, BLUE ARC, LLC,
Owen Voight, Legacy Mining