

1 BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
2 OF THE STATE OF MONTANA

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

ADMINISTRATIVE ORDER  
ON CONSENT

Docket No. MM-22-01 FID 2806

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

16 **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

- 18 1. DEQ is an agency of the executive branch of the State of Montana, created and  
19 existing under the authority of Section 2-15-3501, MCA.
- 20 2. DEQ administers the MMRA.
- 21 3. Respondents are a “person” as defined in Section 82-4-303(22), MCA, and are  
22 subject to the requirements of the MMRA and the administrative rules implementing the  
23 MMRA.
- 24 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).

1 **A. Background Information**

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

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

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

23 8. OU1 facilities include the existing seepage capture systems in Ruby Gulch, Alder  
24 Spur, Carter Gulch, Montana Gulch, Mill Gulch, and Sullivan Gulch; the Zortman and Landusky

1 Acid Rock Drainage (ARD) water treatment plants, areas where treated water leaves the plants,  
2 and the associated infrastructure serving these facilities including roads, power lines, pipelines,  
3 and current or future backup or supplemental power generation equipment.

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

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

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

18 12. On August 12, 2019, DEQ staff met with Owen Voigt about potential projects he  
19 was considering. Owen Voigt stated, "I would like to discuss the exploration permit and  
20 operating permit process with you. I am thinking of the South of Boulder Area. Also, the  
21 Zortman/Landusky Mine." Owen Voigt also stated that, "Secondarily, I would like to discuss  
22 two other items; that being the process of obtaining an operating permit for the Zortman Mine for  
23 an underground operation and issues pertaining to permitting cyanide vat leaching for  
24

1 | underground ore as well as custom ore from historical mining operations.” DEQ staff  
2 | communicated to Owen Voigt the concerns and problems with such a proposal at Zortman Mine.

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

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

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

19 |         16.     Since 2020, Respondents have applied three times for exploration licenses from  
20 | DEQ for activities in and around Zortman/Landusky. The applications have been submitted for  
21 | exploration at three different sites on Properties owned by Blue Arc. Disturbances have been  
22 | created on the Properties at eight locations in the general vicinity of the locations for the three  
23 | exploration license applications.

1           17.     On March 6, 2020, DEQ received an Application for Exploration License  
2 (Original Application) for the extraction of up to a 1,000-ton bulk sample from a single site at the  
3 former Zortman Mine for shipment and metallurgical testing at a facility in Nevada. The Original  
4 Application stated that it would employ the use of an excavator with a hammer attachment to  
5 remove the bulk sample from an exposed highwall left behind from the previous mine operation.  
6 The licensee name identified on the Original Application form was "Owen Voigt" whereas the  
7 licensee name identified on the License Amendment Supplemental Information form included  
8 with the Original Application was "Blue Arc LLC."

9           18.     DEQ assigned the Original Application with Exploration License Application No.  
10 00846.

11           19.     On October 23, 2020, DEQ sent Blue Arc and Luke Ployhar a *Notice of Risk*  
12 *Assumed with Exploration Activities Conducted at Zortman Mine and the Regulatory Timeline*  
13 *for Proposed Exploration.*

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

21           21.     On February 19, 2021, DEQ sent Owen Voigt the bond amount required for  
22 the exploration activities associated with the Original Application.

23           22.     The bond was not posted; therefore, a license for the Original Application  
24 (Exploration License Application No. 00846) was not issued.

1           23.     On March 10, 2021, DEQ received a second Application for Exploration License  
2 (2<sup>nd</sup> Application) for mineral exploration at the Properties. The 2<sup>nd</sup> Application was submitted by  
3 Legacy Mining, on behalf of Blue Arc, and proposed to add two new sites, Badger King Portal  
4 #1 and Pink Eye Portal, to the Original Application. The 2<sup>nd</sup> Application indicated that all  
5 exploration activities would be underground, with no new disturbance to the surface. The 2<sup>nd</sup>  
6 Application noted the gold and silver bearing structure and geology inside the adit and stated the  
7 applicant's intention to open the adit and look for viable material containing gold and silver for  
8 processing.

9           24.     On July 12, 2021, DEQ received a third Application for Exploration License (3<sup>rd</sup>  
10 Application) for mineral exploration at the Properties. The 3<sup>rd</sup> Application was submitted by  
11 Owen Voigt and named Blue Arc as the licensee. The 3<sup>rd</sup> Application proposed exploration of  
12 the Ross Pit to include a trench approximately 35 feet long, 10 feet wide and 25 feet deep to  
13 extract a 125-ton bulk sample for metallurgical testing. The 3<sup>rd</sup> Application also included roads  
14 850 feet long, 10 feet wide, and 1 foot deep, with overland travel 330 feet long by 8 feet wide.

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

19           26.     On August 6, 2021, DEQ issued a deficiency letter for the 3<sup>rd</sup> Application. In the  
20 deficiency letter, DEQ requested clarification from the applicant about the licensee, as several  
21 different names had been used to date. In addition, DEQ requested additional information, such  
22 as information to support the stated application request to construct a trench to collect a sample  
23 and construct an underground portal to collect a sample, details on a reclamation plan, etc.

1 27. On August 26, 2021, in response to a DEQ deficiency letter, the 3<sup>rd</sup> Application  
2 was resubmitted with the licensee name as "Luke Ployhar" and the primary contact person as  
3 "Owen P Voigt Legacy Mining LLC."

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

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

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

16 31. On November 29, 2021, DEQ issued a draft Environmental Assessment for the 3<sup>rd</sup>  
17 Application.

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

21 33. On January 4, 2022, DEQ held a public meeting on the proposed 3<sup>rd</sup> Application.  
22 DEQ received significant public comment/input on the project. Many of the commenters  
23 indicated that the affected area, including all the areas previously disturbed, has significant  
24 cultural importance to the tribes.

1           34.     On February 16, 2022, DEQ received a proposal from Owen Voigt/Legacy  
2 Mining regarding removal and reprocessing of carbon waste material from the water treatment  
3 tank/carbon facility at Landusky. In the application, the applicant states, "*Attachment 10 Legacy*  
4 *Mining sludge assays* show a concentration of approximately 3 ounces of arsenic to the ton and  
5 concentrations of nearly 5.5% iron and 5.34% sulfur, meaning for every ton of sludge material  
6 placed in the North Alabama pit, there is 110 pounds of iron and 107 pounds of sulfur. Legacy  
7 Mining sludge assays show that through 2014, approximately 1,100,000 pounds of iron and  
8 1,068,000 pounds of sulfur have been removed from the water treatment plants and placed in the  
9 North Alabama pit. We are conducting further volume and content analysis of the sludge  
10 material and hope to come up with a suggestion for removing or neutralizing the sludge soon."  
11 Attachment 4 of the proposal is the Legacy Mining Assays received by the lab on 2019-2-28 and  
12 finalized 2019-03-12, indicating that Owen Voigt/Legacy Mining had already taken material  
13 from the site to perform the analysis.

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

23           36.     On March 13, 2022, DEQ received a response from Legacy Mining/Owen Voigt  
24 regarding the annual bond overview process. The response stated, "We appreciate the fact DEQ



1 will be taking that into consideration as the bond amount required should be reduced to reflect  
2 use of the road by the State of Montana, Forest Service and others from historic use, such as  
3 when hauling material with semi's during reclamation, to driving a D9 cat on the road for  
4 firefighting efforts." While DEQ requested a confirmation from the operators of their  
5 understanding of the CERCLA implications for disturbance at the site, no such  
6 acknowledgement was made.

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

11         38. On March 28, 2022, DEQ's Hard Rock Mining personnel conducted a site  
12 inspection at the Properties owned by Blue Arc to assess the current site conditions as they  
13 related to a recently received carbon removal proposal and the existing Exploration License  
14 applications (Original Application and 3<sup>rd</sup> Application). During the inspection, DEQ made on-  
15 site observations and deployed an Unmanned Aerial System (UAS) for aerial imagery. Through  
16 its on-site observations and aerial imagery, DEQ documented that Respondents had conducted  
17 mining activities without an operating permit and engaged in mineral exploration without an  
18 exploration license at seven locations within the Properties. DEQ also attempted to inspect the Pink  
19 Eye Portal, but the location was not visible from the aerial flight and snowpack prevented  
20 accessing the adit by foot. The UAS was flown between 200-300 feet on a double grid for photo  
21 clarity. The imagery was later processed in Pix4D Software to provide calculations for the  
22 disturbance sizes as well as material removed at each disturbance. Location 7 was noted as  
23 disturbed from the UAS imagery due to the material stockpile located adjacent to the site that  
24 appeared with a fresh/different coloration than surrounding soil. DEQ identified the seven

1 locations of disturbance as follows:

2	Location	Latitude	Longitude	Property Geocode
3	1	47.931448	-108.556501	11-3639-07-4-03-02-0000
4	2	47.931379	-108.555757	11-3639-07-4-03-02-0000
5	3	47.939496	-108.563672	11-3639-07-2-02-04-0000
6	4	47.939464	-108.562900	11-3639-07-2-02-01-0000
7	5	47.939570	-108.562005	11-3639-07-2-02-01-0000
8	6	47.939393	-108.561931	11-3639-07-2-02-01-0000
9	7	47.940916	-108.562027	11-3639-07-2-02-01-0000

10  
11 39. The disturbances created by Respondents damaged reclamation work that had been  
12 completed at the Zortman Mine. The backfilling and capping were compromised by the mining  
13 activity undertaken at the site, with vegetation removed, soil removed, capping material  
14 removed, and no corresponding salvage of the topsoil or protective steps to address water  
15 impacts. Disturbances at Locations 1 and 2 are located in an area where 18" of soil was  
16 previously placed as a cap to ensure groundwater protection. The location (Zortman  
17 Underground Workings, Spectrum, 1999) of Location 1 is immediately overtop two adits,  
18 running north/south and east/west, that were buried and capped as part of the bankruptcy remedy.  
19 At the Zortman Mine, the majority of the treated water seeps into the bedrock beneath Ruby  
20 Gulch and does not appear as surface water downstream of the town of Zortman except during  
21 major run-off events. The treated water infiltrates to the Madison Formation, an important  
22 aquifer, where it outcrops in Ruby Gulch near Zortman. Disturbances at Locations 3-6 are  
23 located in an area where 12" of soil was previously placed as a cap to ensure groundwater  
24 protection.

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

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

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

1 subject to regulatory oversight as prescribed by the MMRA. Further, DEQ cannot issue Legacy a  
2 Hard Rock Mine Operating permit until the alleged violations have been resolved and/or  
3 addressed. With the extensive reclamation activities performed at the Zortman and Landusky  
4 mine sites to date, Legacy should be fully aware of the potential liability it would incur by  
5 conducting any type of mining activity at the mine sites. Finally, DEQ notes that Legacy's  
6 proposal inaccurately characterizes the Zortman and Landusky mine site facilities, reclamation  
7 history, material characterizations, water treatment processes, and other technical site  
8 characteristics."

9 43. On April 15, 2022, Blue Arc sent DEQ an email response to Violation Letter  
10 #VLHRM20220330-00071. The response informed DEQ that Blue Arc was not exploring the  
11 Properties for mining or extracting material for mining, but rather was developing several  
12 campground sites that will contain cabin, recreation vehicle, and tent sites. In the email, Blue Arc  
13 denied that alleged sites were mining, but went on to state, "Yes, mining is of great interest to me  
14 but Zortman/Landusky hold many opportunities that I will be exploring over the next several  
15 years. Our interest in mining is in the locations that we have applied for exploration permits and  
16 following the law. When I purchased the property in 2001 it came with all mining records. These  
17 included over 2000 drill holes as well as extensive geological reports. The areas that the DEQ are  
18 claiming we are pursuing exploration and mining have NO value to mining. I know exactly  
19 where the gold mineralization is and these areas are not it." DEQ staff noted that the sites  
20 selected for disturbance by Respondents align very closely with previous mining features at  
21 Zortman.

22 44. On May 5, 2022, Luke Ployhar sent an e-mail to DEQ stating, "following up  
23 on our phone conversation last Friday reg. Owen [Voigt] being listed on that violation. I  
24 think that he shouldn't be implicated since I'm the one that is digging around on my property

1 for my other projects that don't include Mining. Owen helps with application paperwork etc.  
2 for the exploration permits we have been pursuing not any of these other projects I'm  
3 working on for camp sites etc.. Just thought I would send this email just to have a record of  
4 my opinion on the matter.”

5 45. On May 27, 2022, DEQ conducted a follow-up inspection at the Properties and  
6 took photographs of each of the seven locations of disturbance identified during the March 28,  
7 2022 inspection. In addition, DEQ inspected the Pink Eye Portal and documented that this site  
8 was an eighth location where Respondents had conducted mining activities without an operating  
9 permit and engaged in mineral exploration without an exploration license. DEQ documented that  
10 the adit entrances at Badger King Portal and Pink Eye Portal (location 8) had been altered and  
11 material had been removed, as had been proposed in the previously withdrawn 2<sup>nd</sup> Application.  
12 DEQ identified the eighth location of disturbance as:

Location	Latitude	Longitude	Property Geocode
8	47.941413	-108.566303	11-3637-01-4-04-01-0000

13  
14  
15  
16 46. DEQ notified Luke Ployhar/Blue Arc of the violations for mining without an  
17 operating permit, engaging in exploration activities without an exploration license, and  
18 conducting exploration and mining activities without a performance bond at the Pink Eye mine  
19 adit through Violation Letter #VLHRM20220602-00075, dated June 6, 2022. The violation letter  
20 informed Luke Ployhar/Blue Arc that it could achieve compliance with the MMRA by ceasing  
21 mining at the Properties and either reclaiming the disturbance or obtaining the necessary  
22 operating permit or exploration license, including filing an adequate performance bond, to cover  
23 the disturbance location.

24 47. DEQ notified Owen Voigt/Legacy Mining of the violations for mining without an

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

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

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

- 18           a.     “We are very aware of the sensitivity of this site and what it will require to  
19                 develop into a successful mine operation.”
- 20           b.     “As part of the property I received extensive mineralogy information from  
21                 Pegasus that included over 2000 drill logs and detailed geological reports that  
22                 located the mineralized zones on both sections for Zortman and Landusky. This  
23                 included the information for over a 1.2 million ounce gold ore reserve on the  
24                 Zortman side alone and significant amounts of silver.”

- 1 c. "After spending the last 15 years extrapolating the data and creating new 3D  
2 models of the mineralized structures I moved my family back to Montana in 2016  
3 (I grew up in Lewistown and am a native Montanan) to pursue the interests in our  
4 land and develop not only the mineral reserves of our property but also the  
5 recreational viability of our property."
- 6 d. "Knowing that our property has vast mining potential that could provide many  
7 long term jobs I have kept pursuing these interests."
- 8 e. "Knowing that our property falls under certain CERCLA authorities we have been  
9 very accommodating over the past 20 years giving total access to the DEQ and  
10 their agents/contractors to do any and all reclamation and water treatment."
- 11 f. "Our goals are to mine the ore, which, in turn will help mitigate water issues that  
12 the DEQ claims will require perpetual treatment costing taxpayers untold millions  
13 over time. By mining out the highly mineralized structures this would vastly  
14 improve the issues with acid rock drainage and assist with long term treatment."
- 15 g. "Given the pushback from the Tribes the DEQ decided to require us to complete  
16 an Environmental Impact Statement for our second exploration permit location  
17 that is a trench 35 feet long by 10 feet wide. This action by the DEQ is extreme as  
18 well as tactical in order to slow our exploration to a standstill."
- 19 h. "While pursuing our Mineral exploration and due to the amount of time that it will  
20 take I decided to begin developing the recreational potential of our surface private  
21 property."
- 22 i. "I have cleaned up several portal entries that I intend to secure with doors to  
23 prevent damage and trespassing for safety that could potentially be used as part of  
24 the mine tours as well."

1 j. “Several of the areas they have claimed are in violation were existing old mine  
2 tunnels from over 60 to 80 years ago that the DEQ did not cover in reclamation  
3 but now trying to claim that I am in violation of cleaning up the entry to add doors  
4 to secure for safety and access.”

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

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

18 52. DEQ was not made aware of Luke Ployhar’s/Blue Arc’s plans for developing the  
19 Blue Arc Properties until DEQ issued its April 1, 2022 violation letters to Respondents.  
20 Subsequent to the issuance of the April 1, 2022 violation letters, Luke Ployhar/Blue Arc has  
21 communicated plans to: (1) develop several campground site with a mix of cabin/RV/tent sites  
22 (VRBO); (2) build several home sites; (3) build a visitors center; (4) build a mining  
23 museum/mining tour center; (5) build an Imax theater complex; (6) establish underground tunnel  
24 tours; (7) establish opportunities for day trips & picnicking; and (8) build hunting cabins.



1 53. All of the disturbances created by Respondents appear to be on or near historic  
2 mining features. DEQ has not identified other disturbances that fall outside of the historic mining  
3 features.

#### 4 **B. Disturbance Location Information**

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

20 **56. Location 2** is located within the Zortman lined remedial areas where a protective  
21 liner was placed. The disturbance is approximately 747' northwest of the Zortman water  
22 treatment plant. The Ruby Adit Drain is located approximately 84' to the east of the  
23 disturbance. As measured with DEQ's UAV imagery, the disturbance is approximately  
24 0.03 acres and 4' deep. Prior DEQ reclamation of the area of this site included the

1 placement of 18" of topsoil over the region. Disturbance at Location 2 impacted the soil  
2 cap placed as part of the remedy. Further, the topsoil was not salvaged as a separate  
3 stockpile and was co-mingled with subsurface material, making it inadequate to reuse for  
4 topsoil reclamation.

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

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

21 **59. Location 5** is located on a bench to the north of the originally proposed  
22 exploration site (Original Application). As measured with DEQ's UAV imagery, the  
23 disturbance is approximately 0.03 acres in size. The depth of the disturbance was not able  
24 to be accurately measured due to snow in the trench. Prior DEQ Reclamation of the

1 Zortman mine site involved the placement of 12" of topsoil over the region where  
2 Location 5 exists. Disturbance at Location 5 impacted the soil cap placed as part of the  
3 remedy. Further, the topsoil was not salvaged as a separate stockpile and is co-mingled  
4 with subsurface material, making it inadequate to use for topsoil reclamation at this  
5 location.

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

14 **61. Location 7** (known as Badger King Portal #1) is a previously plugged portal entry  
15 that is located to the north of the originally proposed exploration site (Original  
16 Application). In a Draft Plan of Operation submitted by Legacy Mining, on behalf of  
17 Luke Ployhar/Blue Arc, the applicant was proposing two additional locations aside from  
18 their original exploration proposal. The applicant states, "Any rock will be placed on the  
19 existing historical waste rock pile." Further, the application states, "Both portals require  
20 basic maintenance to open access for operations. Portals must meet Mining Safety and  
21 Health Administration standards for worker safety. A small amount of historical sluff  
22 material must be moved to assure safety of workers and to properly secure the portal  
23 entry." Location 7 is located off the northern edge of the bench. The adit was previously  
24 plugged as part of the remedy and a groundwater monitoring well was installed as part of

1 the remedy and is located immediately adjacent the portal. The well is still intact based  
2 on recent inspection but was at risk for damage when the portal material was removed  
3 and stockpiled near the well-head.

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

8 ***Violation 1 – Mining without a permit***

9 63. A person may not engage in mining, ore processing, or reprocessing of tailings or  
10 waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents  
11 or other metal leaching solvents or reagents, or disturb land in anticipation of those  
12 activities in the state without first obtaining an operating permit from DEQ. Section 82-4-  
13 335(1), MCA.

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

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

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

23 66. “Exploration” is defined in Section 82-4-303(12), MCA, as: (a) all activities that  
24 are conducted on or beneath the surface of lands and that result in material disturbance of

1 the surface for the purpose of determining the presence, location, extent, depth, grade,  
2 and economic viability of mineralization in those lands, if any, other than mining for  
3 production and economic exploitation; and (b) all roads made for the purpose of  
4 facilitating exploration, except for the exemptions noted in Section 82-4-310, MCA.

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

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

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

17 ***Violation 3 – Failure to post bond***

18 70. An applicant for an exploration license or operating permit shall file with DEQ a  
19 bond payable to the state of Montana with surety satisfactory to DEQ in the sum to be  
20 determined by DEQ of not less than \$200 for each acre or fraction of an acre of the  
21 disturbed land, conditioned upon the faithful performance of the requirements of the  
22 MMRA, the rules of the board, and the permit. In lieu of a bond, the applicant may file  
23 with DEQ a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of  
24 credit, or other surety acceptable to DEQ. The bond may not be less than the estimated

1 cost to the state to ensure compliance with Title 75, chapters 2 and 5, the MMRA, the  
2 rules, and the permit, including the potential cost of DEQ management, operation, and  
3 maintenance of the site upon temporary or permanent operator insolvency or  
4 abandonment, until full bond liquidation can be effected. Section 82-4-338, MCA.

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

8 ***Administrative penalty***

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

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

17 **II. ADMINISTRATIVE ORDER**

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

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

1 has been filed.

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

- 5 a. A description of actions that will be implemented to reclaim each of the eight  
6 locations of disturbance. The description should include:
- 7 i. The equipment that will be used for reclamation.
  - 8 ii. Methods employed to ensure that the removal and replacement of excavated  
9 materials does not impact underlying soils where excavated materials had  
10 been stockpiled.
  - 11 iii. The placement of 18 inches of soil on the surface of the disturbances at  
12 Locations 1 and 2.
  - 13 iv. The placement of 12 inches of soil on the surface of the disturbances at  
14 Locations 3-6.
  - 15 v. Method employed to reclaim the portals at Locations 7 and 8. The portals may  
16 be reclaimed by: (1) placement of soil over the disturbed areas; (2) backfill of  
17 the excavated material into/against the portal area, followed by placement of  
18 soil over the backfill; or (3) installing a portal gate to prevent unauthorized  
19 entry.
- 20 b. The name of the contractor that will perform the reclamation. If Respondents  
21 choose to perform their own reclamation of the Properties, reclamation activities  
22 must be performed under the oversight of DEQ, and the dates for reclamation  
23 must be agreed upon by Respondents and DEQ.
- 24 c. The source of soil to be used for reclamation. During its inspections, DEQ found

1 no evidence that soil was stockpiled separately. Therefore, DEQ assumes that soil  
2 for remediation will need to be purchased and imported to the disturbance  
3 locations.

4 d. Identification of the seed mix to be used for reclamation after soil placement.

5 e. The dates by which reclamation will commence and be completed.

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

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

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

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

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

20 b. Demonstrate that the reason and length of the delay are beyond Respondents'  
21 control; and

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

24 79. DEQ may approve, disapprove, or modify the request for extension and will notify



1 Respondents of its decision in writing. Modification of any particular deadline will not affect  
2 any other deadline under this Consent Order unless expressly authorized in writing by DEQ.

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

5 81. Within 60 days from the effective date of this Order, Respondents shall pay to the  
6 DEQ the \$516,567 administrative penalty to resolve the violations herein. To pay the penalty  
7 by electronic check, credit card, or debit card, please contact the Enforcement Program at  
8 406-444-0379. To pay by check or money order, make the payment payable to the “Montana  
9 Department of Environmental Quality,” and send to:

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

13 82. Failure to take the required corrective actions and pay any assessed penalties by  
14 the specified deadlines, as ordered herein, constitutes a violation of Title 82 chapter 4,  
15 part 3, MCA, and may result in DEQ seeking a court order for judicial penalties of up to  
16 \$5,000 per day of violation pursuant to Section 82-4-361, MCA.

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

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

### 23 **III. CONSENT**

24 85. Respondents waives their right to administrative appeal or judicial review of the

1 Findings of Fact and Conclusions of Law and Administrative Order on Consent set forth  
2 herein and agrees that this Consent Order is the final and binding resolution of the issues  
3 raised.

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

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

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

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

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

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

24 92. Each party shall bear its own costs and attorney fees incurred in this

1 matter.

2 93. This Consent Order becomes effective upon signature of DEQ.

3 IT IS SO ORDERED:

4 IS SO ORDERED:

5 STATE OF MONTANA

6 DEPARTMENT OF ENVIRONMENTAL QUALITY

7

8 \_\_\_\_\_  
9 CHAD W. ANDERSON, Program Manager  
Enforcement Program

10 \_\_\_\_\_  
Date

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IT IS SO AGREED:

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

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date