

**United State Department of the Interior
Bureau of Land Management
Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301-7000**

**Finding of No Significant Impact
Environmental Assessment DOI-BLM-MT-C020-2010-281-EA**

Introduction and Summary of Proposal:

The American Colloid Company (ACC) has submitted a proposal to the Bureau of Land Management (BLM) Miles City Field Office and the Montana Department of Environmental Quality (MDEQ) to amend its mine plan for bentonite mining, near Alzada in Carter County, Montana. The amendment (Amendment No.12) includes 1,327.4 acres, of which 819.5 acres are federal (BLM) surface and 507.9 acres are private surface. The proposed area of disturbance associated with Amendment No.12 would total approximately 617.5 acres of which 331.6 acres are BLM surface and 285.9 acres are private surface.

The BLM completed an Environmental Assessment MT-DOI-BLM-MT-020-2010-281 for the American Colloid Company Amendment No.12 to Plan of Operations MTM 77811. The Environmental Assessment (EA) analyzed the potential environmental impacts from the mining activities and mitigation measures proposed in Amendment No. 12.

ACC is headquartered in Belle Fourche, South Dakota and has been mining bentonite in the Alzada area since 1977 Under MDEQ Permit No. 00297 that currently contains 5,631.46 acres. Approximately 2,792.1 acres have been disturbed by mining within the current permit boundaries; of these, 1,909.7 acres have been reclaimed through the seeding stage and about 825.1 acres are currently under some phase of mining. In addition, 1,466 acres have been fully released from bond liability and removed from the permit; of which, 323 acres were disturbed and reclaimed and 1,143 acres were never affected.

Background:

The permit area includes both private and federal lands; therefore, the mining is regulated by both the BLM and the MDEQ. BLM and MDEQ have determined that one EA would be prepared to satisfy requirements of both the National Environmental Policy Act (NEPA) and Montana Environmental Policy Act (MEPA).

The preparation of the EA was done by both the BLM and MDEQ acting as co-leads. As co-leads, the agencies were responsible for developing the alternatives, coordinating with the proponent, conducting the analysis, and conducting consultations. The co-lead also ensured that

the analysis and resulting document fulfills each agency's needs as required by the various Federal and State acts, laws, and regulations that pertain to the project.

ACC proposed to amend both the Federal Plan of Operations MTM 77811 and the State of Montana Mined Land Reclamation Permit No. 00297 for mining bentonite in southeast Carter County, Montana. However, the Decisions are being issued separately by each agency. Therefore, this decision applies only to the Federal lands managed by BLM which are included in Amendment No. 12. This is because the Federal authority for locatable minerals, under the surface management regulations, extends only to Federally owned surface or to some split estate lands, obtained under the Stock Raising Homestead Act.

Finding Of No Significant Impact (FONSI):

On the basis of the information contained in the Environmental Assessment and all other information available to me, I have determined that Alternative A – *American Colloid's Proposed Action*, with mitigation identified in the attached EA and in ACC's amended Plan of Operations submittal, which I have selected, will not have significant effects on the human environment, individually or cumulatively with other actions in the general area. No environmental effects meet the definition of significance in context or intensity, as defined in 40 CFR 1508.27, and do not exceed those effects in the Powder River RMP. Therefore, preparation of an environmental impact statement is not warranted, as it would not further inform my decision, or the public, with respect to the significance or lack thereof, of the proposed action.

The proposed actions have been reviewed and found to be in conformance with the following:

- Powder River Resource Area Resource Management Plan of 1985 (PRRA RMP). This EA is in conformance with and tiered to the PRRA RMP FEIS.
- The federal regulations at 43 CFR 3809 "Surface Management of Mining Claims Under the General Mining Laws". The BLM generally does not have authority to regulate locatable mineral mining on private surface.

This determination is based on the context and intensity of the project as described:

Context:

The proposed action analyzed in this document is within the geographic area covered by the Powder River Resource Area Resource Management Plan (RMP), approved March 15, 1985, and is in conformance with this plan. The Powder River RMP Record of Decision of 1985, states on page 3 "(Locatable Minerals) Mineral exploration and development in the Resource Area will continue to be administered through existing surface and mineral management regulations (43 CFR 3800 and 43 CFR 3809)."

Intensity:

The following discussion is organized around the Ten Significance Criteria described in 40 CFR 1508.27 and incorporated into resources and issues considered (includes supplemental authorities Appendix 1 H-1790-1) and supplemental Instruction Memorandum, Acts, regulations and Executive Orders. The following have been considered in evaluating intensity for this proposal:

1. Impacts may be both beneficial and adverse. Beneficial, adverse, direct, indirect and cumulative environmental impacts have been disclosed in the EA. Mitigating measures and stipulations to reduce impacts to the various resources were incorporated in the design of the proposed action. In addition to mitigation measures included in the project design, BLM developed additional mitigation measures to further minimize or eliminate adverse impacts to other resources and land uses. These additional mitigation measures are included in the Proposed Action Alternative. The mitigation measures in the Proposed Action Alternative have been developed in close cooperation with the Montana Department of Fish, Wildlife and Parks, and the Montana Department of Environmental Quality, and U.S. Fish and Wildlife Service and are designed to minimize or eliminate adverse impacts. None of the environmental effects discussed in detail in the EA are considered significant. The EA also disclosed beneficial impacts from the proposed project to the local economy and to local and state tax revenues.

2. The degree to which the selected alternative will affect public health or safety. The selected alternative will minimize or eliminate adverse impacts to public health and safety. American Colloid Company currently possesses or will obtain all necessary permits from appropriate State and Federal agencies for protection of the environment and human health and safety from permitted mining activities.

3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wild and scenic rivers, or ecologically critical areas. The mine permit area does not include any unique characteristics. No cultural resources, isolated artifacts, or historic values were discovered during the inventory of the Amendment No. 12 area as shown in EA section 3.9. This cultural inventory has been reviewed by BLM, the State Historic and Preservation Office, and affected Tribes and they concurred that no cultural values would be affected by the proposed action. Unanticipated discoveries of buried cultural resources would be dealt with through application of standard cultural resource stipulations attached to the mine permit. Implementation of the proposed action (the selected alternative) would not have effects on park lands, prime farm lands, wetlands, wild and scenic rivers, or ecologically critical areas.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial. The effects on the quality of the human environment are not likely to be highly controversial. The proposed action would take place within the mine permit boundary area where ACC has been mining bentonite since 1977 and close to the bentonite mining operations conducted by the Bentonite Performance Minerals Company. The bentonite mining

area is located in a sparsely populated, rural area where the mining and livestock grazing are the two major land uses. The proposed action is not unique to the area.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks. The proposed action is not unique or unusual because BLM and the State of Montana have approved similar actions in the same geographic area. The proposed action, including construction, mining, operating and reclaiming activities, is similar to past mining activities in the area, and the potential impacts from the proposed project are reasonably expected to be similar. The effects of these past mining activities are known and have not led to any significant effects. The analyses showed that the proposed action does not involve highly uncertain, unique or unknown risks.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration. The proposed action would not establish a precedent. The proposed action would amend the existing Plan of Operations and continue the various bentonite mining activities within the larger permit area where mining has been occurring since 1977. The effects of these past mining activities are known and have not led to any significant effects. It is reasonable to expect similar impacts from any future bentonite mining activities in this area. The decision does not constitute a decision in principle concerning a future action or consideration.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. The BLM evaluated the proposed actions in context of past, present and reasonably foreseeable actions. The environmental analysis did not show significant effects from the proposed actions by themselves or in addition to past, present and reasonably foreseeable future actions in the general area. No significant cumulative effects were identified or predicted.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources. The cultural resources survey conducted in 2008 did not discover any sites eligible for the National Register of Historic Places. The project will not adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places, nor will it cause loss or destruction of significant scientific, cultural, or historical resources. Unanticipated discoveries of buried cultural resources would be dealt with through application of standard cultural resource stipulations attached to the mine permit.

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973. No endangered or threatened species or their habitat are known to exist within or adjacent to the project area.

10. Whether the action threatens a violation of a Federal, State, Local, or Tribal law, regulation or policy imposed for the protection of the environment, where non-Federal requirements are consistent with Federal requirements. The proposed action and the selected alternative do not violate any Federal, State, Local or Tribal law or requirement imposed for the protection of the environment. The proposed action is consistent with applicable land management plan, policies and program guidance. Project design features help assure compliance with applicable laws. The EA also meets National Environmental Policy Act disclosure requirements.

Approved By: /s/ Deborah K. Johnson Date: March 22, 2011

Deborah K. Johnson
Field Manager
Miles City Field Office

**United State Department of the Interior
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Miles City, Montana 59301-7000**

**Decision Record
Environmental Assessment DOI-BLM-MT-C020-2010-281-EA**

Decision:

Based upon the analysis of potential environmental impacts described in the Environmental Assessment, it is my decision to select Alternative A – American Colloid’s Proposed Action. This decision includes mitigation identified in the attached EA, the Habitat Recovery and Replacement Plan, existing Plan of Operations, and American Colloid’s Amendment No. 12 mine plan submittal. The Selected alternative is in conformance with the Powder River Resource Management Plan, approved March 15, 1985.

This decision does not include the privately owned lands as those lands are not subject to the federal mining regulation (Surface Management Regulations, 43 CFR 3809).

Approved project components include:

- Adding 819.5 acres of federal lands managed by the BLM to the Plan of Operations of which, 331.6 acres will be disturbed by mining.
- Mining and reclaiming those lands in accordance with the mine plans, 43 CFR 3809 regulations and the Montana Opencut Act.
- 2.4 miles of haul road constructed from Section 14, T. 9 S., R. 57 E., to the Ridge Road and a 0.5 mile haul road constructed in the south half of Section 11, T. 9 S., R. 57 E.
- Measures to avoid or minimize environmental harm including the Habitat Recovery and Replacement Plan.

Authorities:

The authority for this decision is contained in 43 CFR 3809.

Compliance and Monitoring:

BLM will conduct compliance and monitoring inspections during the different phases of operations and in accordance with BLM’s inspection policy for locatable mineral operations. Inspections will be conducted to determine whether or not operations are being conducted in compliance with the approved permit. Monitoring inspections will be conducted to determine the effectiveness of mitigation measures, results of reclamation work, and impacts to other

resources. Based upon the results of inspections, BLM could impose requirements to modify operations to minimize or eliminate adverse impacts to other resources.

Terms, Conditions, and Stipulations:

A Habitat Recovery and Replacement Plan (HRRP) was developed to mitigate impacts to wildlife resulting from the proposed action. The HRRP contains special timing, reclamation, seeding and operational requirements and is considered part of the Proposed Action and Plan of Operations for Amendment No. 12. The HRRP was developed through consultation with American Colloid Company (ACC), Bureau of Land Management (BLM), Montana Fish Wildlife and Parks (FWP), U.S. Fish and Wildlife Service (USFWS), and Montana Department of Environmental Quality (MDEQ). The Habitat Recovery and Replacement Plan is located in Appendix C of the EA. In addition, mitigation measures were analyzed in the EA and are included as Conditions of Approval and attached to the document approving Amendment No. 12 to Plan of Operations MTM 77811.

MITIGATION MEASURES/REMARKS:

Conditions of Approval

1. If any cultural values (sites, artifacts, human remains, etc.) are observed during operations, they are to be left intact and the Miles City Field Manager notified. The operator is responsible for informing all persons in the area who are associated with this project that they will be subject to prosecution for knowingly disturbing historic or archaeological sites, or for collecting artifacts. If historic or archaeological materials are uncovered during construction, the operator is immediately to stop work that might further disturb such materials, and contact the authorized officer (AO). Within five working days, the AO will inform the operator as to:
 - A. whether the materials appear eligible for the National Register of Historic Places;
 - B. the mitigation measures the operator will likely have to undertake before the site can be used (assuming in situ preservation is not necessary); and,
 - C. a timeframe for the AO to complete an expedited review under 35 CFR 800.11 to confirm, through the State Historic Preservation Officer, that the findings of the AO are correct and that mitigation is appropriate.

If the operator wishes, at any time, to relocate activities to avoid the expense of mitigation and/or the delays associated with this process, the AO will assume responsibility for whatever recordation and stabilization of the exposed materials may be required. Otherwise, the operator will be responsible for mitigation costs. The AO will provide technical and procedural guidelines for the conduct of mitigation. Upon verification from the AO that the required mitigation has been completed, the operator will then be allowed to resume construction.

2. American Colloid Company will conduct reclamation activities in accordance with regulations found at 43 CFR 3809 and will employ the mining, erosion control and reclamation measures found in the Plan of Operations and the Habitat Recovery and Replacement Plan.
3. The plan of Operations is subject to mitigation measures outlined in the Habitat Recovery and Replacement Plan.
4. Haul roads shall be watered to suppress dust, so that there is no visible dust trail from bentonite hauling, construction, or reclamation.
5. Proper traffic control and safety signs shall be installed on the Ridge Road near the new access point. This shall include signs advising motorists of trucks entering the road as well as a stop sign for the haul trucks at the road entry point.

Alternatives Considered:

Alternative A – Proposed Action. The proposed action would be to approve the addition of the identified BLM lands into the current Plan of Operations with the mitigation measures identified in the attached EA, the Habitat Recovery and Replacement Plan, and American Colloid’s Amendment No. 12 mine plan submittal.

Alternative B – No Action. The No Action Alternative involves rejecting the amendment in its entirety. BLM and/or MDEQ could deny or withhold approval of the amendment application if it is found that the proposal would result in unnecessary or undue degradation of the public and/or private lands, or could not comply with the measures found in the Opencut Act. This alternative represents the status quo. Mining under the current plan would still occur until permitted reserves are exhausted.

Rationale for the Decision:

The decision to approve Alternative A, the proposed action, is based upon a number of factors, including careful consideration of the relevant issues listed in the EA.

Public Comments:

Copies of the EA and an unsigned FONSI were mailed out to affected landowners, mining companies, County Commissioners, Conservation District Board members and interested individuals for a thirty day review and comment period. A press release was prepared notifying the public of the 30 day comment period and the EA was also posted to the Miles City Field Office internet web page for public availability purposes. No substantive comments were received and the EA remained unchanged.

Consistency with Land Use Plan:

The proposed action analyzed in this document is within the geographic area covered by the Powder River Resource Area Resource Management Plan (RMP), approved March 15, 1985, and is conformance with this plan. The Powder River RMP Record of Decision of 1985, states on page 3 “(Locatable Minerals) Mineral exploration and development in the Resource Area will continue to be administered through existing surface and mineral management regulations (43 CFR 3800 and 43 CFR 3809).”

Surface Water:

BLM’s approval of Amendment No. 12 will not significantly impact water quality. The EA, mine plan, and state and federal regulations contain sufficient mitigative measures, regulatory requirements and enforcement authority to ensure that water quality will not be significantly impaired. Sedimentation prevention and erosion control best management practices, such as culverts, sediment traps, ditches and berms, sediment fences, and concurrent reclamation are all employed at the mine. In addition, the mine is inspected on a regular and routine basis by both federal and state mine inspection officials who are responsible for ensuring appropriate sediment and erosion control practices are followed.

Wildlife:

The approval of Amendment No. 12 is subject to mitigation measures identified in the EA, the existing plan of operations, and those measures specifically designated in the Amendment No. 12 submittal. These mitigation measures as well as the regulations found at 43 CFR 3809 and the State of Montana opencut Act contain all practicable means of avoid or minimize environmental harm. One measure that we wish to highlight in this decision is the Habitat Recovery and Replacement Plan (HRRP) that was developed through consultation with ACC, BLM, Montana Fish Wildlife and Parks, U.S. Fish and Wildlife Service, and MDEQ. Specifically, the HRRP includes habitat analyses, enhancement to the current reclamation plan, and mitigation options for potential impacts to wildlife.

Air Quality:

The air quality impact analysis did not identify any pollutant concentrations that will be in violation of the applicable air quality standards from the existing or proposed mining operations. In addition, dust suppression on haul roads will continue to be employed to reduce fugitive dust sources.

Social and Economic Conditions:

During the course of this analysis, no alternative considered resulted in any identifiable effects or issues specific to any minority or low income population or community. The agency has considered all comments from persons or groups regardless of age, race, income status, or other social or economic characteristics.

Cumulative Impacts:

The analysis in the attached EA did not identify any significant impacts that will result from approval of Amendment No. 12 in combination with the cumulative actions listed in Section 4.2 of the EA.

Cumulative impacts to resources extending outside the project area include air, water quality, and wildlife; however, impacts to these resources would not be considered significant cumulative impacts based on the analysis. The impact analysis in the EA considered these cumulative actions and I have determined that they are not significant.

Implementation:

Once the Environmental Assessment (DOI-BLM-MT-C020-2010-281-EA) FONSI and Decision Record are approved, the Decision will be full force and effect. American Colloid Company may not commence operations until they receive written approval of their Amendment Number 12 to Plan of Operations MTM 77814 from the Authorized Officer. In addition, American Colloids may not begin operations until such time as sufficient bonding is in place and accepted by the BLM as evidenced by an official bond Decision letter to American Colloid Company issued by the BLM Montana State Office.

Administrative Review Opportunities:

If you do not agree and are adversely affected by this decision, you may request that the Montana BLM State Director review this decision. If you request a State Director Review, the request must be received in the Montana BLM State Office at 5001 Southgate Drive, Billings, Montana 59101-4669, no later than 30 calendar days after you receive or have been notified of this decision. The request for State Director Review must be filed in accordance with the provisions in 43 CFR 3809.805. This decision will remain in effect while the State Director Review is pending, unless a Stay is granted by the State Director. If you request a Stay, you have the burden of proof to demonstrate that a Stay should be granted.

If the State Director does not make a decision on your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You may contact the Montana BLM State Office to determine when BLM received the request for State Director Review. You have 30 days from the end of the 21day period in which to file your Notice of Appeal with this office at 111 Garryowen Road Miles City, Montana 59301-7000 which we will forward to IBLA.

If you wish to bypass a State Director Review, this decision may be appealed directly to the IBLA in accordance with the regulations at 43 CFR 3809.801(a)(1). Your Notice of Appeal must be filed in this office at 111 Garryowen Road Miles City, Montana 59301-7000 within 30 days from receipt of this decision.

Approved By: /s/ Deborah K. Johnson Date: March 22, 2011

Deborah K. Johnson
Field Manager
Miles City Field Office