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EPA REGION VIII
HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:

Fourmile Watershed Coalition
Four Mile Fire Protection District

Good Samaritan.

Proceeding Under Sections 104, 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended,
42 U.S.C. §§ 9604,
9607 and 9622.

)
) U.S. EPA Docket No. _____

) CERCLA Docket No. **CERCLA-08-2018-0008**

)
) **ADMINISTRATIVE SETTLEMENT**
) **AGREEMENT AND ORDER ON**
) **CONSENT FOR REMOVAL ACTION**
) **AT ORPHAN MINE SITE**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Good Samaritan Settlement Agreement and Order on Consent for Removal Action (the "Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") the Fourmile Watershed Coalition ("FWC") and the Four Mile Fire Protection District ("FMFPD") (FWC and FMFPD are hereinafter collectively referred to as "Good Samaritan"). This Settlement Agreement provides for the performance of a removal action by Good Samaritan in connection with the Site, as defined below, located along Fourmile Creek in Boulder County, Colorado. This Settlement Agreement requires Good Samaritan to conduct the removal action described herein to abate an actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Site.

2. This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606, 9607 and 9622, as amended (CERCLA), and delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the undersigned Regional official, and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. EPA has notified the State of Colorado of this action.

4. Good Samaritan's participation in this Settlement Agreement shall not constitute or be construed as an admission of liability, nor of EPA's findings or determinations contained in this Settlement Agreement. Good Samaritan agrees to comply with and be bound by the terms of this Settlement Agreement. Good Samaritan further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

5. EPA and Good Samaritan agree that Good Samaritan's performance of the Work at the Property in accordance with this Settlement Agreement will constitute "rendering care or advice" at the Site in accordance with Section 107(d)(1) of CERCLA, 42 U.S.C § 9607(d)(1). In view of the nature and extent of the Work to be performed, however, and the risk of claims being asserted against Good Samaritan for costs or damages notwithstanding Section 107(d)(1) as a consequence of Good Samaritan's activities at the Site pursuant to this Settlement Agreement, one of the purposes of this Settlement Agreement is to resolve, subject to the reservations and limitations contained in Section XVIII (United States Reservation of Rights), any potential liability of Good Samaritan under CERCLA for the Existing Contamination at the Site.

6. The resolution of this potential liability, in exchange for Good Samaritan's performance of the Work, is in the public interest.

II. PARTIES BOUND

7. This Settlement Agreement applies to and is binding upon EPA and upon Good Samaritan. Good Samaritan shall ensure that its contractor, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Good Samaritan shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Effective Date" means the date upon which EPA issues written notice to the Good Samaritan that EPA has fully executed the Settlement Agreement after review of and response to any public comments received.

b. "Existing Contamination" means any hazardous substances, pollutants or contaminants present or existing on or under the Site as of the Effective Date; any hazardous substances, pollutants or contaminants that migrated from the Site prior to the Effective Date; and any hazardous substances, pollutants or contaminants presently at the Site that migrate from, onto or under or from the Site after the Effective Date.

c. "Matters Addressed" shall mean the Work and all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination.

d. "Orphan Mine Site" means an abandoned, inactive hardrock mine or primary metal processing mill site for which, despite reasonable and diligent efforts, no financially viable party (except, for purposes of this Settlement Agreement, the owner of the site who did not cause, contribute to, or exacerbate the Existing Contamination) is potentially liable to perform or pay for, or has been required to perform or pay for, environmental cleanup actions under applicable law.

e. "Parties" means EPA and Good Samaritan.

f. "Site" means the site encompassing approximately 3 acres, located along Fourmile Creek. The Black Swan Restoration Reach is approximately 4 miles upstream from the confluence of Fourmile Creek and Boulder Creek in Boulder Canyon. The coordinates (NAD83) for the upstream limits of the study reach are 40.0499 N latitude, 105.3696 W longitude, and the coordinates for the downstream limits of the study are 40.0410 N latitude, 105.3640 W longitude. The project reach is located in Township 1N, Range 71W, Sections 17 and 20 of the 6th Principal Meridian. The Black Swan Restoration Reach begins at the upstream property of 4726 Fourmile Canyon Drive and continues through the downstream property of 11 Logan Mill Road. Known mine tailings are located on the west side of Fourmile Creek on property 4389 Fourmile Canyon Drive in Boulder County, Colorado, and depicted generally on the map attached as Appendix 1. The Site shall include all the areas to which hazardous substances and/or pollutants or contaminants, have come to be located.

g. "Work" means all activities Good Samaritan is required to perform under this Settlement Agreement, except those required by Section X (Record Retention, Documentation, and Availability of Information).

IV. FINDINGS OF FACT

9. Good Samaritan Fourmile Watershed Coalition (FWC) is a non-governmental organization comprised of local landowners, community members, and other stakeholders focused on stream restoration and disaster recovery efforts in Fourmile Canyon and the surrounding watershed. Good Samaritan Four Mile Fire Protection District (“FMFPD”) is a Special District organized under the Colorado Special District Act, C.R.S. § 32-1-101 et. seq., which provides fire protection and emergency response services throughout the Four Mile Fire Protection District in Boulder County. FMFPD is the fiscal agent for FWC. All project development and project management for FWC projects is solely the responsibility of the FWC. Good Samaritan will be responsible and is voluntarily agreeing, pursuant to this Settlement Agreement, to perform a removal action at the Site, which is an Orphan Mine Site.

10. Pursuant to Section XXVI (Certifications), Good Samaritan certifies that it is not an owner or operator, generator, or transporter, or otherwise a liable party for this Site pursuant to CERCLA §§ 106 and 107. Good Samaritan also certifies that it is not a past or current owner of the Property, and that it does not intend to acquire ownership of the Property.

11. FMFPD has been awarded funding for the Work as the fiscal agent for the FWC through a grant of \$1,509,640 provided by the United States Department of Housing and Urban Development, Office of Community Planning and Development. The grant is administered by the Colorado Department of Local Affairs (“DOLA”), and was approved on August 18, 2017 (HUD/State Identification No. B-13-DS-08-0001). These funds are held by DOLA, which will provide payments to FMFPD/FWC on a rolling basis as costs are incurred in carrying out the Work.

12. The Fourmile Creek watershed has been adversely affected by historic mining activity. Mine tailings from inactive or abandoned milling operations and waste rock from the development of the mines are located upstream from the Site, and along and in close proximity to the Site and Fourmile Creek. The property at 4389 Fourmile Canyon Drive, located downstream from Salina, Colorado where mine tailings are located is within the project Site and is currently owned by Boulder County.

13. Fourmile Creek, including the Site and areas upstream from the Site, has been impacted by historic mining and milling operations. In 2014, EPA conducted a removal action upstream from the Site at a location designated as the Emancipation Mine, EPA Site Number A8E6, CERCLIS ID No. CON000801923. This removal action was initiated in response to a flash flood which changed the course of the creek resulting in erosion and the mass slumping of soil and mine waste contaminated with heavy metals. The Emancipation Mine removal action involved the excavation and disposal of mine waste, stabilization of certain tailings in-place and actions to stabilize and enhance the stream channel. Prior to undertaking its removal action at the Emancipation Site, EPA conducted soil, surface and groundwater sampling. The results of that sampling indicted that soil, sediment groundwater and surface water in Fourmile Creek have been impacted by historic mining activities and by the presence of tailings and other mine waste in the watershed.

14. The Site is located downstream from several historic Orphan Mine Sites, and is itself an Orphan Mine Site. Mine waste rock and/or tailings at the Site are at risk of being eroded into Fourmile Creek. As set forth in the Work Plan, some of these materials will require removal in

order to complete additional stream restoration and stabilization activities necessitated by flood and fire events. These waste rock piles and/or tailings contribute metals such as arsenic and cadmium to the river. These metals have a potentially harmful effect on water quality and may pose risks to human health or the environment.

15. The actual or threatened release of one or more hazardous substances from the facility may present an imminent and substantial endangerment to public health or welfare or the environment.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

16. Based on the Findings of Fact set forth above and the Administrative Record supporting this removal action, EPA has determined that:

a. The Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Arsenic and other heavy metals found at the Site are “hazardous substances, pollutants or contaminants” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Good Samaritan is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance, pollutant or contaminant from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

e. The Work required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment, and if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

f. Good Samaritan has submitted information to EPA demonstrating its qualifications to perform the Work.

g. As set forth in the Administrative Record, considering the exigencies of the situation and the limited scope of the removal action to be conducted, EPA has determined that attainment of water quality standards under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., as a result of the Work is not practicable as provided in 40 CFR § 300.415(j). Given that attainment of water quality standards as a result of the Work is not practicable, Good Samaritan will comply with Section 1.2.1 of the Work Plan that address water quality issues in order to ensure environmental improvement at the Property.

VI. AGREEMENT

17. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, and in consideration and exchange for the United States’ covenant not to sue in Section XVII (United States Covenant Not to Sue), it is hereby ordered and agreed that Good Samaritan shall comply with the following provisions, including but not limited to, all attachments to this Settlement Agreement, and all documents

incorporated by reference into this Settlement Agreement, and perform the actions specified in Section VIII (Work to Be Performed).

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

18. EPA has designated Duc Nguyen as its On-Scene Coordinator (OSC). Good Samaritan shall direct all submissions required by this Settlement Agreement to Mr. Duc Nguyen, U.S. EPA Region 8, 1595 Wynkoop Street (Mailstop: 8EPR-ERPP-RU), Denver, CO 80202. A copy of all submissions required under this Settlement Agreement shall be sent to Mr. Doug Jamison, Colorado Department of Health and Environment, 4300 Cherry Creek Drive South (Mailstop: HMWMD-B2), Denver, CO 80246.

19. Good Samaritan shall perform the Work required by this Settlement Agreement or retain contractors and/or subcontractors to perform the Work. Good Samaritan shall notify EPA of the names, titles, contact information, and qualifications of such contractor(s) or subcontractor(s) not more than 20 business days after the Effective Date. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Good Samaritan. If EPA disapproves of a selected contractor or subcontractor, Good Samaritan shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within 20 days after EPA's disapproval. The qualifications of the persons undertaking the Work for Good Samaritan shall be subject to EPA's review for verification that such persons meet minimum technical background and experience requirements based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

20. Good Samaritan has designated, and EPA does not disapprove, Maya MacHamer as its Project Coordinator who shall be responsible for administration of all Good Samaritan's actions required by the Settlement Agreement. Ms. MacHamer's address is Fourmile Watershed Coalition, 1740 Fourmile Canyon Drive, Boulder, CO 80302, her email address is fourmilewatershed@gmail.com, and her telephone number is 303-449-3333. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. Receipt by Good Samaritan's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Good Samaritan.

21. EPA shall have the right to change its designation of OSC. Good Samaritan shall have the right to change its designated Project Coordinator. Good Samaritan's initial notification of its intention to change its Project Coordinator designation may be orally made but it shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

22. Good Samaritan shall perform the following activities as more fully described in the Work Plan, which has been approved by EPA and is attached hereto as Exhibit 1: excavate an estimated 1,400 cubic yards of mine waste material and haul it to Front Range Landfill in Erie, Colorado, for off-site disposal.

23. **Work Plan and Implementation.** The OSC may make minor modifications to any plan or schedule orally or in writing. Any oral modification will be memorialized in writing by

EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may only be modified in writing by mutual agreement of the Parties. The Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Settlement Agreement. Good Samaritan shall notify EPA at least 48 hours prior to performing any on-Site Work pursuant to the EPA-approved Work Plan.

24. **Health and Safety Plan.** The Attached Health and Safety Plan, prepared in accordance with EPA's current Standard Operating Safety Guide, has been approved by EPA, is incorporated by reference, and provides for protection of the public health and safety during performance of on-Site Work under this Settlement Agreement.

25. **Quality Assurance and Sampling**

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Good Samaritan shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate provisions of EPA guidance. Good Samaritan shall follow the following documents, as appropriate, as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; and "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08.

b. Upon request by EPA, Good Samaritan shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Good Samaritan while performing the Work. Good Samaritan shall notify EPA not less than 10 days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

26. **Reporting.** Good Samaritan shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 15th day after the Effective Date until submission of the Final Report pursuant to Paragraph 27, unless otherwise directed in writing by the OSC. These reports, which may be submitted via email to the designated EPA contact, shall describe all significant developments during the reporting period, including the actions performed and any problems encountered, analytical data received during the reporting period; and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems; and planned resolutions of past or anticipated problems.

27. **Final Report.** Not more than 60 days after completion of all Work required under this Settlement Agreement, Good Samaritan shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, to the requirements set forth in 40 CFR § 300.165 of the NCP titled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying

appendices containing all relevant documentation generated during the Work (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete.

28. **Off-Site Shipments.** All hazardous substances, pollutants or contaminants removed off-Site pursuant to this Settlement Agreement for treatment, storage, or disposal shall be treated, stored, or disposed of at an EPA-approved disposal facility in compliance with, as determined by EPA, 42 U.S.C. § 9621(d)(3), and the off-site provisions found at 40 CFR § 300.440, and all applicable laws and regulations. Good Samaritan will provide EPA with prior notification of any out-of-state waste shipments.

IX. SITE ACCESS

29. Good Samaritan shall use its best efforts to obtain and maintain all necessary access agreements for Good Samaritan, as well as for the United States on behalf of EPA and its representatives (including contractors), for the purpose of conducting any activity related to this Settlement Agreement. Good Samaritan shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. Good Samaritan shall describe in writing its efforts to obtain access. EPA may then assist Good Samaritan in gaining access, to the extent necessary to effectuate the Work described herein, using such means as EPA deems appropriate.

X. RECORD RETENTION, DOCUMENTATION, AND AVAILABILITY OF INFORMATION

30. Good Samaritan shall preserve all documents and information relating to the Work, or relating to the hazardous substances, pollutants or contaminants found on or released from the Site, and, subject to any claim of privilege or confidentiality under applicable law, submit them to EPA upon completion of the Work upon request from EPA. Notwithstanding the foregoing, EPA may utilize its information gathering authorities under Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7).

31. Good Samaritan may assert a business confidentiality claim pursuant to 40 CFR § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Settlement Agreement, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by Good Samaritan. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 CFR Part 2 Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Good Samaritan.

XI. COMPLIANCE WITH OTHER LAWS

32. Except as provided below, Good Samaritan shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA § 121(e) and 40 CFR §§ 300.400(e) and

300.415(j). In accordance with 40 CFR § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. As set forth in Paragraph 16.g and documented in the Administrative Record, EPA has determined that attainment of water quality standards under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., as a result of the Work is not practicable. 40 CFR § 300.415(j). Good Samaritan will comply with section 1.2.1 of the Work Plan, addressing water quality issues in order to ensure environmental improvement at the Property.

XII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

33. In the event of any action or occurrence during performance of the Work which causes or threatens a release of a hazardous substance from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Good Samaritan shall immediately take all appropriate action. Good Samaritan shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Good Samaritan shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Emergency Response Branch of the incident or Site conditions.

34. Upon the occurrence of any event during performance of the Work that Good Samaritan is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Good Samaritan shall immediately orally notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at 800-424-8802, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

35. For any event covered under this Section, Good Samaritan shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XIII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

36. The OSC shall be responsible for overseeing Good Samaritan's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct the Work, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of the Work unless specifically directed by the OSC.

XIV. PAYMENT OF OVERSIGHT COSTS

37. Good Samaritan shall pay EPA all response costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent an electronic billing notification to the following email

address: fourmilewatershed@gmail.com. The billing notification will include a standard regionally-prepared cost report with the direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of receipt of the electronic bill. Respondent shall make payments using one of the payment methods set forth in the electronic billing notification.

XV. DISPUTE RESOLUTION

38. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally. To the extent needed, Parties will agree on the selection of a neutral to guide discussions and negotiations consistent with generally accepted mediation/dispute resolution practice. If the Parties are unable to reach an agreement regarding the dispute within a reasonable period, an EPA management official at the Assistant Regional Administrator level or higher will review the dispute and will issue a written decision. EPA's decision shall be incorporated into and become an enforceable part of the Settlement Agreement.

XVI. FORCE MAJEURE

39. Good Samaritan agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Good Samaritan, or of any entity controlled by Good Samaritan, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Good Samaritan's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

40. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Good Samaritan in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Good Samaritan in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVII. UNITED STATES COVENANT NOT TO SUE

41. In consideration of the actions that will be performed and the payments that will be made by Good Samaritan under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the United States covenants not to sue or to take administrative action against Good Samaritan pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Good Samaritan of all obligations under this Settlement Agreement, including, but not limited to, payment of Oversight Costs, pursuant to Section XIV (Payment of Oversight Costs). This covenant not to sue extends only to Good Samaritan and does not extend to any other person.

XVIII. UNITED STATES RESERVATION OF RIGHTS

42. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking any legal or equitable relief necessary to enforce the terms of this Settlement Agreement.

43. The covenant not to sue set forth in Section XVII (United States Covenant Not to Sue) does not pertain to any matters other than those expressly identified therein. The scope of the reservations in this Section is premised on the voluntary nature and narrow scope of the actions to be undertaken pursuant to this Order, the fact that Good Samaritan does not currently own the Property, and on Good Samaritan's certification that it does not intend to own such Property in the future. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against Good Samaritan with respect to the following:

- a. liability resulting from exacerbation of Existing Contamination due to willful, intentional or grossly negligent conduct by Good Samaritan, its successors, contractors, subcontractors, assignees, except to the extent that the conditions constituting or contributing to the exacerbation were disclosed to EPA, or were readily observable by EPA, prior to issuance of the Notice of Completion;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability for violations of federal law or regulations; and
- e. liability for releases of hazardous substances within or outside the Site caused by Good Samaritan's activities not within the scope of this Settlement Agreement.

XIX. WORK TAKEOVER

44. In the event EPA determines that Good Samaritan has ceased implementation of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Prior to taking over the Work, EPA will issue a written notice to Good Samaritan specifying the grounds upon which such notice was issued and providing Good Samaritan with 7 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

45. Good Samaritan may invoke dispute resolution set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is necessary. However, notwithstanding Good Samaritan's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover until the earlier of the date (i) the Parties agree to a resolution of the dispute, or (ii) EPA management renders a written decision.

XX. GOOD SAMARITAN'S COVENANT NOT TO SUE

46. Except as otherwise specifically provided in this Settlement Agreement, Good Samaritan covenants not to sue or assert any claim or cause of action against the United States, or its contractors or employees, with respect to the Work, this Settlement Agreement, or Existing Contamination, including but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law.

XXI. OTHER CLAIMS

47. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Good Samaritan. The United States or EPA shall not be deemed a party to any contract entered into by Good Samaritan or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement. Except as expressly provided in Section XVII (United States Covenant Not To Sue), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Good Samaritan or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

48. This Settlement Agreement does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Good Samaritan waive(s) any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. § 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Settlement Agreement.

49. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right of judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

50. Good Samaritan is carrying out this agreement for its own benefit and waives all claims for compensation for services rendered to EPA for activities it performs in furtherance of this Settlement Agreement.

XXII. CONTRIBUTION

51. In the event of a suit or claim for contribution brought against Good Samaritan notwithstanding the provisions of Section 107(d)(1) of CERCLA, 42 U.S.C. § 9607(d)(1), with respect to Existing Contamination (including any claim based on the contention that Good Samaritan is not a person rendering care, assistance, or advice pursuant to Section 107(d)(1), or is no longer entitled to protection from liability pursuant to CERCLA § 107(d)(1)) as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the OSC, the Parties agree that this Settlement Agreement shall then constitute an administrative settlement pursuant to which Good Samaritan has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§

9613(f)(2) and (h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the matters addressed in this Settlement Agreement.

52. In the event Good Samaritan were found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a person rendering care, assistance, or advice or acting at the direction of an OSC pursuant to Section 107(d)(1), or to have lost its status as a person rendering care, assistance or advice or acting at the direction of an OSC pursuant to Section 107(d)(1) as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the OSC, the Parties agree that this Settlement Agreement shall then constitute an administrative settlement pursuant to which Good Samaritan has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

53. Good Samaritan agrees that with respect to any suit or claim brought by it for matters related to this Settlement Agreement it will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

54. Good Samaritan also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement it will notify in writing the United States within 15 days of service of the complaint on it.

55. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any person not a party to this Settlement Agreement to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXIII. NOTICE OF COMPLETION

56. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, EPA will provide notice to Good Samaritan. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Good Samaritan, provide a list of the deficiencies, and require that Good Samaritan modify the Work Plan if appropriate in order to correct such deficiencies. Good Samaritan shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice.

XXIV. PUBLIC COMMENT

57. This Settlement Agreement shall be subject to a 30-day public comment period, after which EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

XXV. INTEGRATION/APPENDICES

58. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the matters addressed herein. The Parties acknowledge that there are no representations, agreements or understandings relating to the Settlement Agreement other than those expressly contained herein.

59. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix 1 shall mean the Site map.

Appendix 2 shall mean the Work Plan.

XXVI. CERTIFICATIONS


60. By entering into this Settlement Agreement, Good Samaritan hereby certifies that it is rendering care, assistance, or advice in accordance with the National Contingency Plan at the direction of an On-Scene Coordinator, by voluntarily agreeing to clean up Existing Contamination at an Orphan Mine Site, and further that it (a) is not a past owner or current owner of the Property and has no intention of purchasing the Property in the future; (b) is not potentially liable for the remediation of the Existing Contamination pursuant to Sections 106 or 107 of CERCLA; and (c) is not potentially liable under any other Federal, State or local law for the remediation of the Existing Contamination. If the United States determines that any information provided by Good Samaritan in connection with this Settlement Agreement is not materially accurate and complete, the Settlement Agreement, within the sole discretion of EPA, shall be null and void and EPA reserves all rights it may have.

61. The undersigned representative of Good Samaritan certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party it represents to this document.

AGREED this _____ day of _____, 20__

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:



SUZANNE J. BOHAN
Assistant Regional Administrator
Office of Enforcement, Compliance and Environmental Justice
Region 8

6/18/18

Date

UNITED STATES DEPARTMENT OF JUSTICE


BY:

JEFFREY H. WOOD
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date

FOURMILE WATERSHED COALITION

BY:



MAYA MACHAMER
Watershed Coalition Coordinator

6-5-18

Date

FOUR MILE FIRE PROTECTION DISTRICT

BY:



DOUGLAS RAY
Chairman of the Board

6-5-18

Date

EFFECTIVE DATE: _____

