



**INTERAGENCY AGREEMENT**  
**BETWEEN EPA AND THE DEPARTMENT OF THE INTERIOR**  
**LEE ACRES LANDFILL SUPERFUND SITE,**  
**FARMINGTON, NEW MEXICO**

**U.S. Environment Protection Agency**  
**Region 6 Superfund Division**

**MAY 2004**

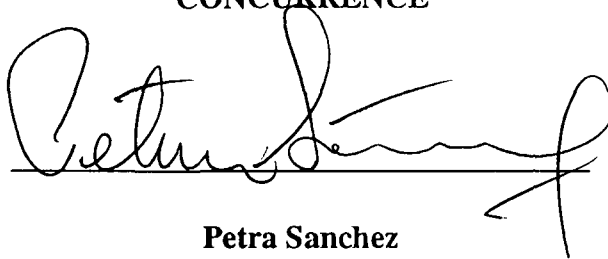
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**LEE ACRES LANDFILL SUPERFUND SITE**

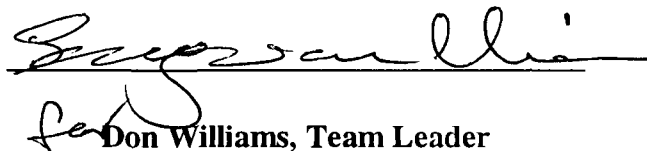
**INTERAGENCY AGREEMENT BETWEEN EPA AND THE DEPARTMENT OF THE INTERIOR**

**CONCURRENCE**

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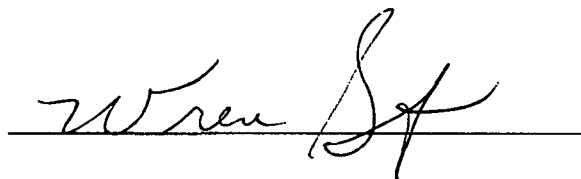
**Petra Sanchez**

**Remedial Project Manager**

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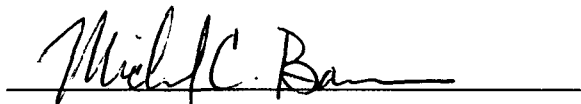
**Don Williams, Team Leader**

**New Mexico/ Technical Section**

A handwritten signature in black ink, appearing to read 'Wren Stenger', written over a horizontal line.

**Wren Stenger, Branch Chief**

**Louisiana / New Mexico/Oklahoma Branch**

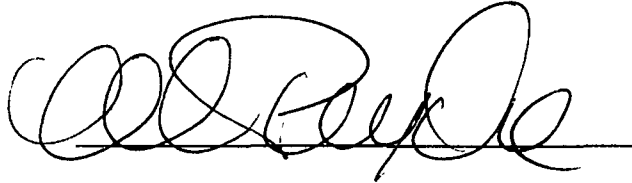
A handwritten signature in black ink, appearing to read 'Michael C. Barra', written over a horizontal line.

**Michael C. Barra**

**Site Attorney, Office of Regional Counsel**

**LEE ACRES LANDFILL SUPERFUND SITE**

**INTERAGENCY AGREEMENT BETWEEN EPA AND THE DEPARTMENT OF THE INTERIOR**

A handwritten signature in black ink, appearing to read 'Mark A. Peycke', written over a horizontal line.

**Mark A. Peycke, Chief Superfund Branch**

**Office of Regional Counsel**

A handwritten signature in black ink, appearing to read 'Pam Phillips', written over a horizontal line.

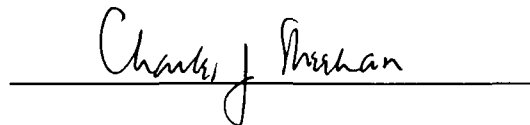
**Pam Phillips**

**Deputy Director, Superfund Division**

A handwritten signature in black ink, appearing to read 'Samuel Coleman P.E.', written over a horizontal line.

**Samuel Coleman P.E.**

**Director, Superfund Division**

A handwritten signature in black ink, appearing to read 'Charles Sheehan', written over a horizontal line.

**Charles Sheehan**

**Regional Counsel**

THE UNITED STATES DEPARTMENT OF THE INTERIOR, BY THE  
BUREAU OF LAND MANAGEMENT

AND

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
REGION 6

IN THE MATTER OF:

LEE ACRES LANDFILL, SAN JUAN COUNTY,	)	Interagency Agreement
NEW MEXICO	)	EPA Docket No. 6-08-04

**LEE ACRES INTERAGENCY AGREEMENT**

The Lee Acres Interagency Agreement (“Agreement”) is a legally binding agreement between the United States Department of the Interior, Bureau of Land Management (“DOI”), and the United States Environmental Protection Agency (“EPA”) (collectively hereinafter referred to as the “Agencies”) to accomplish the cleanup of hazardous substances contamination at and from the Lee Acres Landfill National Priorities List Site (“Site” or “Lee Acres Site”) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601, *et seq.*, the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), 40 C.F.R. Part 300, and Executive Order 12580 (January 23, 1987), as amended by Executive Order 13016 (August 29, 1996) (together, the “Executive Orders”). Based on the information available to the Agencies on the effective date of this Agreement and without trial or adjudication of any issues of fact or law, the Agencies have exercised good faith and due diligence in establishing both the procedural and substantive requirements of this Agreement.

The Agencies believe, at the time this Agreement is executed, that the requirements of this Agreement are achievable. Therefore the Agencies agree as follows.

## **PART ONE LEGAL FOUNDATION**

### **1. GENERAL**

1.1 This Agreement serves as the Interagency Agreement required by Section 120(e) of CERCLA, 42 U.S.C. § 9620(e). This Agreement is divided into three Parts: Part One contains introductory provisions which apply in Parts Two and Three; Part Two contains provisions governing remedial action activities and provisions which delineate in part the respective roles and interrelationships between DOI and EPA with regard to the Site; Part Three contains general provisions applicable to this Agreement.

1.2 This Agreement governs response action as that term is defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), to be taken by the Agencies at the Lee Acres Site.

1.3 Nothing in this Agreement shall affect the obligations or liability of any entity that is not a party to this Agreement, and nothing shall affect the rights of any Agency against a non-party.

### **2. AUTHORITY**

2.1 EPA enters into this Agreement pursuant to Section 120(e) and (f) of CERCLA, 42 U.S.C. § 9620(e) and (f), and the Executive Orders.

2.2 DOI enters into this Agreement pursuant to Section 120(e) and (f) of CERCLA, 42 U.S.C. § 9620(e) and (f), and the Executive Orders. DOI maintains jurisdiction, custody, or control of the property on which the Lee Acres Site rests. Accordingly DOI is the lead agency

under the NCP responsible for planning and implementing remedial actions and removal actions other than emergencies necessary to protect public health or welfare or the environment from the release or threatened release of hazardous substances at or solely from the Site.

2.3 The Lee Acres Site has been listed by EPA on the Federal Agency Hazardous Waste Compliance Docket, 52 Fed. Reg. 280 (February 12, 1988). The Lee Acres Site has been placed on the National Priorities List ("NPL"). This Agreement serves as the Interagency Agreement required by Section 120(e) of CERCLA, 42 U.S.C. § 9620(e).

2.4 The Agencies agree that they are bound by this Agreement and that the requirements of this Agreement may be enforced pursuant to the terms of this Agreement or as otherwise provided by law. The Agencies consent to and will not contest each Agency's jurisdiction for the purposes of executing and enforcing this Agreement or its requirements. This Agreement shall not confer jurisdiction on EPA or DOI that they do not otherwise have.

### **3. PARTIES BOUND**

3.1 The Parties to this agreement are EPA and DOI.

3.2 DOI shall provide a copy of this Agreement and relevant attachments to each of its prime contractors. A copy of this Agreement shall be made available to all other contractors and subcontractors retained to perform work under this Agreement. DOI shall provide notice of this Agreement to any successor in interest prior to any transfer of ownership or operation.

3.3 DOI shall notify EPA in writing of the identity and assigned tasks of each of its prime contractors and their subcontractors performing work under this Agreement in advance of their involvement in such work. Upon request, DOI shall also provide the identity and scope of work of any other contractors and subcontractors performing work under this Agreement. DOI

shall take all necessary measures to assure that its contractors, subcontractors and consultants performing work under this Agreement act in a manner consistent with the terms of this Agreement.

3.4 This Agreement shall not be construed as indemnifying any person.

3.5 The Agencies remain obligated by this Agreement regardless of whether they carry out the terms through agents, contractors, and/or consultants.

#### **4. PURPOSE**

4.1 The general purposes of this Agreement are to:

4.1.1 Provide for a review of alternative remedial actions and selection of a remedial action by DOI and EPA or, if DOI and EPA are unable to reach agreement on selection of a remedial action, selection by EPA, as required by Section 120(e)(4)(A) of CERCLA, 42 U.S.C. § 9620(e)(4)(A), and Section 300.430(f)(4)(iii) of the NCP, 40 C.F.R. § 300.430(f)(4)(iii);

4.1.2 Provide for a schedule for the completion of the remedial action as expeditiously as possible as required by Section 120(e)(3) and (4)(B) of CERCLA, 42 U.S.C. § 9620(e)(3) and (4)(B);

4.1.3 Provide for the long-term operation and maintenance of the facility as required by Section 120(e)(4)(C) of CERCLA, 42 U.S.C. § 9620(e)(4)(C);

4.1.4 Provide for compliance with the public participation requirements of Section 117 of CERCLA, 42 U.S.C. § 9617, as required by Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2);

4.1.5 Provide for design and implementation of remedial action to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site in accordance with CERCLA and identified ARARS; and

4.1.6 Satisfy the requirements of Section 120(e) of CERCLA, 42 U.S.C. § 9620(e), for an Interagency Agreement.

## **5. DEFINITIONS**

5.1 For purposes of this Agreement, any term used in this Agreement that is defined in Section 101 of CERCLA, 42 U.S.C. § 9601, or Section 300.5 of the NCP, 40 C.F.R. § 300.5, shall have the meaning established by such definition. When a term is defined in CERCLA or the NCP and also is defined in this Article, the definition provided by CERCLA or the NCP shall control in the event there is any inconsistency between such definition and any definition provided in this Article.

5.2 “Administrative Record” shall mean all documents that form the basis for the selection of a response action, consistent with CERCLA Section 113(k), 42 U.S.C. § 9613(k), and the NCP.

5.3 “Agencies” shall mean DOI and EPA.

5.4 “Agreement” shall mean this document and includes all attachments, addenda and modifications to this document, which are required to be written and to be incorporated into or appended to this document.

5.5 “ARAR” or “ARARs” shall mean any legally applicable or relevant and appropriate standard, requirement, criteria or limitation of Federal environmental law or State



environmental or facility siting law as provided in Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), and defined in 40 CFR § 300.5.

5.6 “Authorized Representative” shall mean any person, including a contractor, who is specifically designated by an Agency to act on behalf of that Agency in any capacity, including an advisory capacity.

5.7 “DOI” shall mean, except as expressly provided elsewhere in this Agreement, the Bureau of Land Management and any successors or assigns, and its employees and Authorized Representatives.

5.8 “Days” shall mean calendar days, unless otherwise specified.

5.9 “Deadline” shall mean the time limitation applicable to the submission or completion of a primary document.

5.10 “Documents” shall mean any records, reports, correspondence, or retrievable information of any kind, including electronic information, relating to the treatment, storage, disposal, investigation, and remediation of hazardous substances, pollutants, or contaminants at or migrating from the Site. Such terms shall be construed broadly to reflect a clear preference to share and disclose information concerning this Agreement between the Agencies.

5.11 “EPA” shall mean the United States Environmental Protection Agency, its successors or assigns, and its employees and Authorized Representatives.

5.12 “Feasibility Study” or “FS” shall mean the evaluation, development, and recommendation of remedial alternatives for the Site as defined in 40 C.F.R. Part 300.

5.13 “Lead Agency” shall mean the agency that provides the On Scene Coordinator/Remedial Project Manager to plan and implement response actions under the NCP.

In this case, because the release is on, or the sole source of the release is from, a facility under the jurisdiction, custody, or control of DOI, DOI is the lead agency for remedial actions and removal actions other than emergencies. DOI will maintain its lead agency responsibilities whether the remedy is selected by EPA and DOI or by EPA alone under Section 120 of CERCLA, 42 U.S.C. § 9620.

5.14 “Lee Acres Landfill” shall mean the approximately 60 acres of property located in the W/2 NW1/4 SW1/4 of Section 22, T29N, R12W, NMPM, San Juan County, New Mexico, and in the S/2 SW/4 NW/4, NW/4 NE/4 SW/4, and NE/4 NW/4 SW/4, Section 22, T29N, R12W, NMPM, San Juan County, New Mexico. (See Attachment A).

5.15 “Proposed Plan” shall mean the document which describes the evaluation of proposed remedial action alternatives and the preferred-alternative

5.16 “Record of Decision” or “ROD” shall mean the public document that explains which remedial alternatives will be implemented for the final remedial action for the Site, and includes the basis for the selection of the remedy. The basis for the selection of the remedy shall include information and technical analysis generated during the RI and FS and consideration of public comment and community concerns.

5.17 “Remedial Investigation” or “RI” shall mean that investigation, as defined in 40 C.F.R. Part 300, conducted to determine the nature and extent of contamination in and from the Site, and to gather necessary data to support the Feasibility study.

5.18 “Site” or “Lee Acres Site” shall mean the approximately 60 acres that are commonly known as Lee Acres Landfill (See Attachment A) and includes any other areas where a hazardous substance, pollutant, or contaminant from the Lee Acres Landfill has come to be

located. The term “Site,” as used herein, shall have the same meaning as “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

5.19 “Schedule” shall mean the deadlines and timetables established by this Agreement.

5.20 “State” shall mean the State of New Mexico.

5.21 “Timetables” shall mean the time frames within or by which work and actions will be conducted, as set forth in this Agreement and delineated in the supporting work plans (including performance of actions established pursuant to the Dispute Resolution procedures set forth in this Agreement).

5.22 “Pre-Design Technical Summary” or “PDTs” shall mean a document that is developed to establish a clear understanding of the technical objectives of the remedial action providing a smooth transition from the Record of Decision to the design process.

## **6. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

6.1 The following Paragraphs of this Article 6 constitute a summary of the findings and determinations upon which the Agencies have entered into this Agreement. Except for purposes of enforcing the terms of this Agreement, none of the facts related or conclusions of law herein shall be considered admissions by any Agency.

6.2 DOI leased the land on which the Lee Acres Landfill is located to San Juan County, New Mexico from 1962 to 1993. Pursuant to the terms of two leases entered between DOI and the County, San Juan County was authorized to operate a “garbage disposal site” and a “sanitary landfill” for garbage produced by the residents of the County. San Juan County operated the Lee Acres Landfill from May 21, 1962 until sometime in 1986.

6.3 Beginning sometime in 1975 and continuing until 1985, San Juan County constructed on the landfill and operated at least two and as many as four unlined liquid waste lagoons or pits for the disposal of liquid wastes. Although not authorized to do so by the two leases, San Juan County allowed liquid wastes to be disposed of in these lagoons, including produced waters and other wastes from oil and gas production facilities, septage, and other materials. Samples collected by the State from these waste lagoons in February 1985 contained aromatic organic compounds including benzene, toluene, ethylbenzene, and xylene, halogenated organic hydrocarbon compounds, methylene chloride, 1,1,1-trichloroethane, elevated chlorides, and manganese. Additional soil and water samples taken from the lagoons and other locations at the Site by the State and by DOI during the RI contained aromatic organic compounds, chlorinated volatile organic compounds (VOCs), and chlorinated semi-VOCs. Trichloroethylene; 1,1-dichloroethane; 1,1-dichloroethylene; 1,2-dichloroethylene; tetrachloroethylene; manganese; and other organic and inorganic compounds listed in the RI report have been detected in the groundwater at the Site.

6.4 The substances found at the Site identified in Paragraphs 6.3 and 6.4 above are “hazardous substances” as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14)

6.5 The Site, as defined in this Agreement, is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and 40 CFR § 300.5.

6.6 The presence of the hazardous substances identified above at the Site and in the groundwater constitutes a “release” or “threat of release” as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). The release or threat of release is on, or the sole

source of the release or threat of release is from, a facility under the jurisdiction, custody, or control of DOI.

6.7 On June 24, 1988, EPA proposed the Site for inclusion on the NPL, 55 Fed. Reg. 23998 (June 24, 1988). EPA listed the Site on the NPL in a final rule published at 55 Fed. Reg. 35509 (August 30, 1990).

6.8 Pursuant to the authorities delegated to it in the Executive Orders and as Lead Agency under the NCP, in consultation with EPA, DOI has conducted “removal actions,” as that term is defined by CERCLA, to abate any immediate risks to public health, welfare, and the environment, has conducted and completed additional “response action” as defined by CERCLA, including the remedial investigation and feasibility study (“RI/FS”) for the Site, and has prepared and provided an opportunity for public comment on a Proposed Plan. Such response actions have been conducted in a manner not inconsistent with the NCP.

6.10 The human health and ecological risk assessment completed at the Site in September, 1994, identified seven contaminants of concern (“COCs”). The carcinogenic health risks associated with these COCs have been determined to be below acceptable risk ranges. A non-carcinogenic health risk above the acceptable risk range was identified with respect to the potential for exposure to manganese contamination in the alluvial aquifer below the landfill. This risk will be addressed by the remedial action selected by the ROD.

## **PART TWO REMEDIAL PROVISIONS**

### **7. SCHEDULE FOR COMPLETION**

7.1 The EPA and DOI are signing the ROD simultaneously with this Agreement.

7.2 Within forty-five (45) days of issuance of the ROD, DOI shall propose schedules with deadlines and timetables for completion of the following primary documents:

- Remedial Design Work Plan;
- Remedial Design Submittal Package.

These schedules shall be proposed, finalized and published using the procedures set forth in Paragraph 7.3.

7.3 Within twenty-one (21) days of receipt of DOI's proposal under Paragraph 7.2, EPA shall review and provide comments to DOI regarding the proposed schedules. Within twenty-one (21) days following receipt of the comments, DOI shall, as appropriate, make revisions and reissue the proposal. After such re-issuance, the Agencies shall meet as necessary to discuss and finalize the proposed schedules. If the Agencies agree on schedules, the finalized schedules shall be incorporated into this Agreement and the appropriate Work Plans, and become an enforceable part of this Agreement. If the Agencies fail to agree on the proposed schedule within thirty (30) days of DOI's response to the comments, the matter shall immediately be submitted for dispute resolution in accordance with and within the time provided by Article 11 (Resolution of Disputes).

7.4 The schedules established pursuant to this Article may be extended pursuant to Article 23 (Extensions) of this Agreement.

## **8. WORK TO BE PERFORMED**

8.1 Subject to the appropriation of sufficient funds, the Agencies agree to perform the tasks, obligations and responsibilities described in this Agreement and otherwise comply with this Agreement in accordance with CERCLA, the NCP, and the Executive Orders.

8.2 All work performed under this Agreement shall be under the direction and supervision of qualified personnel. DOI shall notify EPA in writing of the names, titles and qualifications of the personnel that will direct and supervise the work.

8.3 Following the issuance of the ROD, DOI shall prepare in accordance with the schedules established pursuant to Article 7 (Schedule for Completion), the draft, draft final, and final Remedial Design (“RD”) Work Plan for review and comment by EPA in accordance with Article 9 (Consultation). The RD Work Plan shall include, as applicable, but not be limited to:

- Site Health and Safety Plan
- Spill/Volatile Emissions Contingency Plan
- Quality Assurance Project Plan
- Sampling and Analysis Plan
- Preliminary Inspection, Maintenance, and Monitoring Plan
- Pre-Design Technical Summary or Conceptual Design Report
- Surface Water Management Report
- Requirements for additional field data collection
- A schedule for completion of the Remedial Design
- Design criteria and assumptions

8.4 After consultation with EPA for the RD Work Plan, DOI will implement the RD Work Plan according to the schedule for completion of the Remedial Design contained therein. DOI shall submit for review and comment by EPA in accordance with Article 9 (Consultation) a draft, draft final, and final Remedial Design submittal package in accordance with the schedule established under Paragraph 7.2.

8.5 The draft Remedial Design submittal package shall include, as applicable, the following elements:

- 8.5.1 Design criteria
- 8.5.2 Project delivery strategy
- 8.5.3 Results of treatability studies and additional field sampling
- 8.5.4 Preliminary plans, drawings, and sketches
- 8.5.5 Outline of required specifications
- 8.5.6 Preliminary construction schedule
- 8.5.7 Preliminary cost calculations

8.6 The draft final Remedial Design submittal package shall include the following:

- 8.6.1 Final design plans and specifications
- 8.6.2 Operation and Maintenance (“O&M”) Plan
- 8.6.3 Field Sampling Plan (“FSP”)
- 8.6.4 Construction Quality Assurance Plan
- 8.6.5 Contingency Plan



8.6.6 RA Work Plan, including the implementation plans and schedule for the remedial action. The schedule shall provide that DOI shall implement substantial, continuous, physical onsite remedial action within 15 months of the finalization of the ROD.

8.7 After consultation with EPA for the final Remedial Design submittal package, DOI will implement the remedial action in accordance with the plans and schedule for the remedial action established in the final Remedial Design submittal package.

8.8 When DOI determines that all physical construction activities required for the remedial action have been completed in accordance with the requirements of the Agreement, it shall prepare an Interim Remedial Action Report and submit copies to EPA for review and comment in accordance with Article 9 (Consultation). The Interim Remedial Action Report will include: all data collected during the physical construction relevant to the design and implementation of the remedial action; and a narrative description summarizing major activities conducted and problems addressed during the construction.

8.9 When DOI determines that the remedial action has been completed in accordance with the requirements of this Agreement, including meeting all performance standards, including ground water cleanup levels, it shall prepare a Final Remedial Action Report and submit copies to EPA for review and comment in accordance with Article 9 (Consultation). The Final Remedial Action Report will include: all data collected during the Site remediation relevant to the design and implementation of the remedial action; and a narrative description summarizing major activities conducted and problems addressed during the remediation.

8.10 Notwithstanding Paragraph 8.9 above, DOI will remain responsible for performing the long-term operation and maintenance for the selected remedial action(s), as

specified by the ROD and consistent with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c). In fulfilling this responsibility, DOI may enter into agreements with responsible parties to prepare or implement all or a portion of the RD and RA Workplan or conduct all or some operation and maintenance activities, subject to the requirements of this Agreement. Notwithstanding any such agreements, DOI will remain responsible for the implementation of and compliance with this Agreement. If the agreements are in the form of administrative orders or consent decrees, EPA shall participate in the negotiation of the administrative orders or consent decrees and may elect to participate as a party to the administrative order or consent decree.

## **9. CONSULTATION**

9.1 The provisions of this Article establish the procedures that shall be used by DOI and EPA to provide the Agencies with appropriate notice, review, comment, and response to comments regarding the draft, draft final, and final RD Work Plan, Remedial Design submittal package, Interim Remedial Action Report, Final Remedial Action Report, Five-Year Review Reports, and other documents generated pursuant to this Agreement. In accordance with Section 120 of CERCLA, 42 U.S.C. § 9620, the Executive Orders, and the NCP, DOI as lead agency will be responsible for issuing such documents. EPA shall be responsible for providing its comments to DOI on all such documents in a timely manner as specified by this Agreement. As of the effective date of this Agreement, all documents generated pursuant to this Agreement shall be prepared, distributed, and subject to dispute resolution in accordance with this Article and Article 11 (Resolution of Disputes).

9.2 Primary documents required by this Agreement are the:

- Remedial Design Work Plan;
- Remedial Design Submittal Package;
- Interim Remedial Action Report;
- Final Remedial Action Report; and
- Five-Year Review Reports.

DOI will initially distribute primary documents in draft form to EPA for review and comment. Following receipt of comments from EPA on a particular draft primary document, DOI will respond to the comments received and issue to EPA a draft final primary document within 60 days of the receipt of EPA's comments.

9.3 Any documents not identified as primary documents in Paragraph 9.2 above are secondary documents. Secondary documents include those documents that are discrete portions of the primary documents. DOI will distribute secondary documents to EPA for review and comment by EPA. Although DOI will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued by DOI.

9.4 DOI shall complete and transmit drafts of primary and secondary documents generated pursuant to this Agreement to EPA for review and comment in accordance with the provisions of this Paragraph 9.4.

9.4.1 Unless the Agencies mutually agree to another time period, all draft and draft final primary documents submitted after the effective date of this Agreement shall be

subject to a thirty (30) day period for review and comment by EPA. Review of any document by EPA may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, this Agreement and any document incorporated herein, and any pertinent guidance or policy identified by EPA. Comments by EPA shall be provided with adequate specificity so that DOI may respond to the comments and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of DOI, EPA shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy documents, EPA may extend the comment period for an additional twenty (20) days by providing written notice to DOI prior to the end of the comment period. On or before the close of the comment period, EPA shall transmit its written comments to DOI.

9.4.2 The DOI Project Manager shall be readily available to EPA during the comment period for purposes of informally responding to questions and comments on draft documents. The Agencies shall meet, as they agree appropriate, for the purpose of informally discussing questions and comments on matters that are subject to comment. Oral comments made during such discussions need not be the subject of a written response by DOI on the close of the comment period.

9.4.3 Following the close of the comment period for a draft document, DOI shall give full consideration to all written comments on the draft document submitted during the comment period. Within sixty (60) days of the close of the comment period on a draft primary document, DOI shall issue to EPA a draft final primary document which shall include DOI's

response to all written comments received within the comment period, including comments concerning draft secondary documents.

9.4.4 DOI may extend the period for issuing a draft final primary document for an additional twenty (20) days by providing written notice to EPA prior to the end of the period. In appropriate circumstances, this time period may be further extended in accordance with Article 23 (Extensions).

9.4.5 The draft final primary document will become the final primary document 30 days after the period established for review of the draft final document, unless DOI agrees to make changes to the draft final document or dispute resolution is invoked by one or both of the Agencies. If dispute resolution is invoked, the draft final document, including any modifications resulting from the dispute resolution process, will become final within 30 days of the conclusion of the dispute resolution process. Only upon DOI's transmittal of the draft final primary document identified in Paragraph 9.2 may dispute resolution as to the content or requirements of the primary document and any associated secondary documents be invoked. The selection of the final remedy is not subject to dispute resolution.

9.4.6 If dispute resolution is invoked regarding a document, work may be stopped in accordance with procedures set forth in Article 11 (Resolution of Disputes).

9.4.7 A draft final document shall serve as the final document if no Agency invokes dispute resolution regarding the document or, if dispute resolution is invoked, if no changes are required as a result of the dispute resolution process. If the outcome of the dispute resolution process makes revision of the draft final document necessary, DOI shall prepare, within thirty (30) days of the completion of the dispute resolution process, a revision of the draft

final document which conforms to the results of the dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Article 23 (Extensions).

9.4.8 Final documents, including all requirements contained therein, are incorporated herein by reference.

9.5 Following finalization of any document pursuant to Paragraph 9.4 above, DOI or EPA may seek to modify the document including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in this Paragraph 9.5.

9.5.1 DOI or EPA may seek to modify a primary document after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary. EPA or DOI may seek such a modification by submitting a concise written request to the Project Manager of the other Agency. The request shall specify the nature of the requested modification and how the request is based on new information.

9.5.2 In the event that there is not agreement by the Project Managers on the need for a modification, either EPA or DOI may invoke dispute resolution under Article 11 (Resolution of Disputes) to determine if the modification shall be conducted. Modification of a document shall be required only upon a showing that the requested modification is based on significant new information and the requested modification could be of significant assistance in implementing a selected remedy, or in protecting human health and the environment.

9.5.3 Nothing in this Article shall alter EPA's ability to request the performance of additional work pursuant to Article 14 (Additional Work) of this Agreement which does not constitute modification of a final document.

9.5.4 Nothing in this Article shall be construed to permit any person to modify or amend a Record of Decision other than as provided in CERCLA, the NCP, and the Executive Orders.

## **10. PERMITS**

10.1 Under Section 121(e) of CERCLA, 42 U. S. C. § 9621 (e), and the NCP, response actions called for by this Agreement and conducted entirely on-Site are exempt from the procedural requirements to obtain Federal, State, or local permits, but must satisfy all ARARs which would have been included in any such permit.

10.2 If DOI proposes a response action to be conducted entirely on-Site, which in the absence of Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the NCP would require DOI to obtain a Federal or State permit, DOI shall include in the proposal:

10.2.1 Identification of each permit which would otherwise be required;

10.2.2 Identification of the standards, requirements, criteria, or limitations which are ARARs and which would be required pursuant to each such permit;

10.2.3 Explanation of how the response action proposed will meet the standard, requirements, criteria or limitations identified in Subparagraph 10.2.2 above.

10.3 Within thirty (30) days of a request from DOI for information pertaining to Subparagraphs 10.2.1, 10.2.2 and 10.2.3 above, EPA will provide such information.

10.4 DOI will submit timely applications for any required permits for off-Site activity. EPA will promptly consider any permit applications made to it by DOI.

10.5 If a permit which is necessary for implementation of off-Site activities under this Agreement is not issued, or is issued or renewed containing terms or conditions inconsistent with the requirements of this Agreement or a document generated pursuant to this Agreement, DOI shall notify EPA of its intention to propose modifications to this Agreement or a document to make this Agreement or the document consistent with the outcome of the permit action. DOI will provide such notification within fourteen (14) days of receipt by DOI of notification that: (1) a permit will not be issued; (2) a permit has been issued or reissued; or (3) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within thirty (30) days from the date it submits its notice of intention to propose modifications, DOI shall submit to EPA its proposed modifications with an explanation of its reasons in support thereof. EPA may provide its written position on the proposed modification with twenty one (21) days after receipt of DOI's explanation of the proposed modifications.

10.6 If DOI submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, EPA may elect to delay review of the proposed modifications until after such final determination is entered. If EPA elects to delay review, DOI shall proceed with those portions of the response action or those portions of preparations for the response action which are not the subject of the permit appeal or which are not subject to DOI's proposed modifications to this Agreement pending final resolution of the permit appeal or modification of this Agreement. Modification to this Agreement shall be made pursuant to Article 22 (Amendment or Subsequent Modification of Agreement). Modification to



documents shall be made pursuant to Paragraph 9.5 of Article 9 (Consultation) of this Agreement.

## **11. RESOLUTION OF DISPUTES**

11.1 The procedures of this Article shall apply to disputes arising under this Agreement.

11.2 Disputes arising under this Agreement shall be considered at the following levels in accordance with the procedures set forth in this Article.

11.2.1 Informal Dispute Resolution - Informal resolution of all disputes shall be pursued at the Project Manager and Project Manager Supervisor level.

11.2.2 Dispute Resolution Committee (“DRC”) - The DRC will serve as a forum for resolution of disputes that are not resolved through informal dispute resolution. The EPA’s designated representative on the DRC is the Superfund Division Director of EPA Region 6. The DOI’s designated representative on the DRC is the Bureau of Land Management New Mexico Deputy State Director, Division of Resources. Written notice of any delegation of authority from an Agency’s designated representative on the DRC shall be provided to the other Agency pursuant to the procedures of Article 33 (Notification).

11.2.3 Senior Executive Committee (“SEC”) - The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA Region 6 or his or her delegatee. The DOI representative on the SEC is the Bureau of Land Management New Mexico State Director or his or her delegatee. In the event of a delegation, the positions presented by the delegates shall represent the positions of the Regional Administrator of EPA Region 6 and the

Bureau of Land Management New Mexico State Director. Notice of a delegation of authority from an Agency's designated representative on the SEC shall be provided to the other Agency in writing pursuant to the procedures of Article 33 (Notification) before the delegation takes effect.

### 11.3 Dispute Resolution Procedures:

11.3.1 Informal Dispute Resolution - Within thirty (30) days after: (1) the period established for review of a draft final primary document pursuant to Article 9 (Consultation), or (2) any action which leads to or generates a dispute, the Project Manager for the disputing Agency shall notify the other Project Manager in writing of the existence of the dispute and the commencement of a thirty (30) day period of informal dispute resolution. During the thirty day period, the Project Managers and their immediate supervisors shall meet at least once to attempt to resolve the dispute.

11.3.2 Elevation to the DRC - If, after the conclusion of the thirty (30) day period for informal dispute resolution, an Agency wishes to elevate some or all of the dispute to the DRC, within seven (7) days of the conclusion of the informal dispute resolution period, the Project Manager for the Agency seeking elevation shall submit to the DRC a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the elevating Agency's position with respect to the dispute, and the technical, legal or factual information the elevating Agency is relying upon to support its position. The other Agency shall have seven (7) days to provide a written response. Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to resolve unanimously the dispute and issue a written decision signed by each Agency.

11.3.3 Elevation to the SEC - If the DRC is unable to resolve unanimously the dispute within its twenty-one (21) day period, the written statement of dispute and the other Agency's written response thereto shall be forwarded to the SEC within seven (7) days after the close of the twenty-one (21) day dispute resolution period. The SEC members shall, as appropriate, confer, meet, and exert their best efforts to resolve the dispute and issue a unanimous written decision signed by each Agency. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the Regional Administrator of EPA Region 6 shall issue a written position on the dispute. The Regional Administrator's written position shall constitute the final resolution of the dispute unless DOI elects to elevate the dispute to the EPA Administrator.

11.3.4 Elevation to the EPA Administrator - The Assistant Secretary, Policy Management and Budget, Department of the Interior may, within fourteen (14) days of the Regional Administrator's issuance of his written position, issue a written notice elevating the dispute to the Administrator of EPA for resolution. Upon elevation of a dispute to the Administrator of EPA, the Administrator will review and resolve the dispute within twenty-one (21) days. Prior to resolving the dispute, the EPA Administrator shall, upon request of the Assistant Secretary, Policy, Management, and Budget, Department of the Interior, meet and confer with the Assistant Secretary, Policy, Management, and Budget, Department of the Interior, to discuss and resolve the issue(s) under dispute. Upon resolution, the Administrator shall provide DOI with a written final decision setting forth resolution of the dispute.

11.4 The pendency of any dispute under this Article shall not affect any Agency's responsibility for timely performance of the work required by this Agreement, except that the

schedule for completion of work affected by such dispute shall be extended for a period of time at least as long as the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement that are not affected by the dispute shall continue and be completed in accordance with the applicable schedule.

11.5 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Superfund Division Director of EPA Region 6 requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective and such inadequacy or defect is likely to cause adverse effects on human health or the environment, or is likely to have a substantial adverse affect on the selection or implementation of response actions. To the extent possible, EPA shall consult with DOI prior to initiating a work stoppage request. After stoppage of work, if DOI believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Agencies will meet to discuss the work stoppage. Following this meeting, and further consideration of the issues, the work stoppage request may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of DOI.

11.6 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures of this Article, DOI shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

11.7 Resolution of a dispute pursuant to this Article constitutes a final resolution of the dispute. The Agencies shall abide by, and shall not contest in any forum, the terms and conditions of any final resolution of dispute obtained pursuant to this Article.

## **12. STIPULATED PENALTIES**

12.1 Civil penalties may be assessed by EPA, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, in the case of violations of agreements under Section 120 of CERCLA, 42 U.S.C. § 9620. In lieu of such civil penalties, commencing with the effective date of this Agreement, Stipulated Penalties may be assessed for DOI's failure to comply with this Agreement, as specified in this Article.

12.2 In the event that DOI fails to submit a Primary Document to EPA pursuant to the appropriate timetable or deadline developed pursuant to Article 7 (Deadlines) of this Agreement or fails to comply with any other term or condition of this Agreement or any document incorporated by reference in this Agreement which relates to an interim or final remedial action, EPA may assess a stipulated penalty against DOI. A stipulated penalty may be assessed in an amount up to \$5,000 for the first week (or part thereof), and up to \$10,000 for each additional week (or part thereof) for which a failure set forth in this Article occurs.

12.3 Upon determining that DOI has failed in a manner set forth in Paragraph 12.2 above, EPA shall so notify DOI in writing. If the failure in question is not or has not already been subject to Dispute Resolution at the time such notice is received, DOI shall have fifteen (15) days after receipt of the notice to invoke Dispute Resolution on the question of whether the failure did in fact occur. DOI shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the Dispute Resolution process, not to have occurred. No

assessment of a stipulated penalty shall be final until DOI's time to invoke dispute resolution has passed, or until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

12.4 Within thirty (30) days of receipt of the penalty assessment from EPA, or the conclusion of dispute resolution related thereto, DOI may petition EPA, in writing, for approval to perform a Supplemental Environmental Project ("SEP") in lieu of part of the penalty. The Petition shall include a detailed description, justification, and estimated cost of the proposed SEP. The proposed SEP shall not consist of a project which DOI is otherwise required to complete, and it must be related to the Lee Acres Site or located in the State of New Mexico. EPA shall respond with a written determination. Within fifteen (15) days of receipt of EPA's determination, DOI may submit the matter for dispute, in accordance with Article 11 (Resolution of Disputes) of this Agreement. If DOI does not dispute the determination within the fifteen (15) days, EPA's determination shall be final. If DOI does dispute the determination, the dispute shall be submitted immediately to the DRC and the dispute resolution process.

12.5 The annual reports required by Section 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with respect to each final assessment of a stipulated penalty against DOI under this Agreement, a detailed description of the enforcement status, including the amount of penalties assessed and a statement of the facts and circumstances giving rise to the enforcement action.

12.6 In the event that monetary stipulated penalties become payable by DOI pursuant to this Article, DOI will seek Congressional approval and authorization to pay such penalties to the Hazardous Substance Response Trust Fund. Any requirement for the payment of monetary

stipulated penalties under this Agreement will be subject to the availability of funds approved and authorized by Congress to pay such penalties, and no provision of this Agreement shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. Any monetary stipulated penalty will be paid by check made out to the Hazardous Substance Superfund and mailed or delivered to EPA at the following address:

United States Environmental Protection Agency  
Superfund Accounting, Region 6  
P.O. Box 360582M  
Pittsburgh, Pennsylvania 15251  
Hazardous Substance Superfund  
Attn: Superfund Collection Officer

12.7 In no event shall this Article give rise to a stipulated penalty in excess of the amount set forth in Section 109 of CERCLA, 42 U.S.C. § 9609.

12.8 This Article shall not affect DOI's ability to obtain an extension of a timetable, deadline or schedule pursuant to Article 23 (Extensions).

12.9 Nothing in this Agreement shall be construed to render an employee or Authorized Representative of DOI personally liable for the payment of any stipulated penalty assessed pursuant to this Article.

### **13. ENFORCEABILITY**

13.1 Section 310 of CERCLA, 42 U.S.C. § 9659, provides that, except as specified in Section 310, any person may commence a civil action to enforce any provision of this Agreement. Such provisions include those established by the Agencies pursuant to Article 11 (Resolution of Disputes).

13.2 Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

#### **14. ADDITIONAL WORK OR MODIFICATION TO WORK**

14.1 In the event that EPA determines that additional work or modification to work, including remedial investigatory work and/or engineering evaluation, is necessary to accomplish the objectives of this Agreement, EPA shall provide notification and description of such additional work or modification to work to the other Agencies. DOI will evaluate the request and notify EPA within twenty-one (21) days of the receipt of such request of its intent and ability to perform such work, including the impact such additional work will have on budgets and schedules. If DOI does not agree that such additional work is required by this Agreement or if DOI asserts such additional work is otherwise inappropriate, the matter shall be resolved by the dispute resolution procedures of Article 11 (Resolution of Disputes).

14.2 Any additional work or modification to work determined to be necessary by DOI shall be proposed to EPA by DOI. EPA shall have twenty one (21) days to consider DOI's request and notify DOI whether it agrees or disagrees with the request. If EPA does not agree that such additional work or modification to work is appropriate, the matter shall be resolved in accordance with the Dispute Resolution procedures of Article 11 (Resolution of Disputes) of this Agreement.

14.3 In the event any additional work or modification to work is agreed to or required under this Agreement, the Agencies agree to extend any affected schedules pursuant to Article 23 (Extensions).



## **15. QUALITY ASSURANCE**

15.1 Throughout all sample collection, transportation, and analysis activities conducted in connection with this Agreement, the Agencies shall use procedures for quality assurance, and for quality control, and for chain of custody in accordance with approved EPA methods, including "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," QAM-005/80, "Data Quality Objective Guidance," EPA 540/G87/003 and 004, and subsequent amendments to such guidelines. Each Agency shall require each laboratory it uses to perform analyses according to approved EPA methods. Each laboratory shall be required to participate in a quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. DOI shall submit QA/QC plans to EPA for approval prior to use and in accordance with the RA Workplan. If an Agency elects to conduct preliminary sampling and analyses without following the specified QA/QC procedures, the documentation of analyses shall indicate that the specified QA/QC procedures were not followed.

## **PART THREE GENERAL PROVISIONS**

## **16. PROJECT MANAGERS**

16.1 On or before the effective date of this Agreement, each Agency shall designate a Project Manager. The Project Managers shall be responsible on a daily basis for assuring proper implementation of the RD/RA in accordance with the terms of this Agreement. In addition to the formal notice provisions set forth in Article 33 (Notification) hereof, communications between DOI and EPA on all documents, including reports, comments, and other correspondence

concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers.

16.2 DOI and EPA may change their respective Project Managers. Such change shall be accomplished by notifying the other Agencies in writing within five (5) days of the change.

16.3 The Project Managers shall meet or, by mutual agreement, confer by telephone conference call, approximately every thirty (30) days, except as otherwise agreed by the Agencies, to review and discuss the progress of work being performed at the Site and the primary and secondary documents. Prior to preparing any draft document specified in Paragraphs 9.2 and 9.3 above, the Project Managers shall meet to discuss the document in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft document.

16.4 DOI agrees to prepare quarterly written progress reports which describe the actions which DOI has taken during the previous quarter to implement the requirements of this Agreement, including all results of sampling or other monitoring results obtained during the previous quarter. The reports will also describe the activities scheduled to be taken during the upcoming quarter. Progress reports will be prepared by DOI and submitted to EPA by the thirtieth (30th) day of each third month following the effective date of this Agreement. The progress reports will also include a detailed statement of how the requirements and time schedules set out in the attachments to this Agreement are being met, identify any anticipated delays in meeting time schedules, including the reason(s) for each delay and actions taken to prevent or mitigate the delay, and identify any potential problems that may result in a departure from the requirements and time schedules.

16.5 The authority of the EPA Project Manager shall include, but is not limited to:

16.5.1 Taking samples and advising DOI on the type, quantity, and location of the samples taken by DOI;

16.5.2 Observing, taking photographs, and making such other reports on the progress of the work as the EPA Project Manager deems appropriate, subject to the limitations set forth in Article 20 (Access) of this Agreement; and

16.5.3 Reviewing records, files, and documents relevant to the work performed.

16.6 Each Agency's Project Manager shall be responsible for assuring that all communications received from the other Agency's Project Manager is appropriately disseminated to and processed by the Agency that such Project Manager represents.

## **17. EMERGENCIES AND REMOVAL**

### **17.1 Work Stoppage**

17.1.1 In the event EPA determines that activities conducted pursuant to this Agreement, or any other circumstances or activities, are creating an emergency situation or an immediate threat to human health or welfare or to the environment, EPA may require DOI to stop further implementation of this Agreement for twenty-four (24) hours or, upon agreement of the Agencies, such period of time as needed to abate the danger.

17.1.2 In the event that DOI determines that activities undertaken in furtherance of this Agreement, or any other circumstances or activities, are creating an emergency situation or an immediate threat to human health or welfare or to the environment, DOI may stop implementation of this Agreement for such periods of time as are necessary for the Director of the Superfund Division, EPA Region 6, to evaluate the situation and determine whether DOI

should proceed with implementation of the Agreement or whether the work stoppage should be continued until the emergency situation or immediate threat is abated. DOI shall notify the Project Manager for EPA as soon as possible, but not later than twenty-four (24) hours after such stoppage of work, and provide EPA with documentation of its analysis in reaching its determination. If the Director of the Superfund Division, EPA Region 6, disagrees with DOI's determination, DOI shall resume implementation of this Agreement.

17.1.3 In the event work is stopped pursuant to this Article, DOI's obligations shall be suspended and the schedules for performance of that work, as well as the schedules for any other work dependent upon the work which was stopped, shall be extended, pursuant to Article 23 (Extensions), for such period of time as EPA and DOI determine is reasonable under the circumstances. Any disagreements pursuant to this Article shall be resolved through the dispute resolution procedures in Article 11 (Resolution of Disputes) by referral directly to the DRC.

17.2 Removal Actions - The provisions of this Paragraph shall apply to all removal actions as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), including all modifications to, or extensions of, the on-going removal actions, and all new removal actions proposed or commenced following the effective date of this Agreement.

17.2.1 Any removal actions conducted at the Site shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP, and the Executive Orders.

17.2.2 Nothing in this Agreement shall alter DOI authority with respect to removal actions conducted pursuant Section 104 of CERCLA, 42 U.S.C. § 9604, except as provided in Paragraph 17.1 of this Agreement.

17.2.3 Nothing in this Agreement shall alter any authority EPA may have with respect to removal actions at the Site except as provided in Paragraph 17.1 of this Agreement.

17.3 Notice and Opportunity to Comment:

17.3.1 DOI shall provide EPA with timely notice and opportunity to review and comment upon any proposed removal actions for the Site. DOI agrees to provide the information described below pursuant to such obligation.

17.3.1.1 For proposed emergency response removal actions, DOI shall notify the EPA Project Manager as soon as possible, but not later than twenty-four (24) hours after its determination that an emergency response action is necessary, and provide EPA with documentation of its analysis in reaching its determination. Such notification shall, to the extent practicable given the exigencies of the situation, include adequate information concerning the Site background, threat to the public health, welfare, or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of any hazardous substances off-site, and proposed manner of disposal), expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), and important policy issues, and the DOI Project Manager's recommendations. Following receipt of notification from DOI that an emergency removal action may be warranted, consistent with the Executive Orders EPA will evaluate whether an emergency removal action is required and when action is warranted EPA will take such action itself or will authorize DOI to take such action. DOI will take such emergency removal action authorized by EPA. Within forty-five days after its completion of the emergency removal action, DOI will submit to EPA a draft action memorandum addressing the information provided in the

oral notification, and any other information required pursuant to CERCLA and the NCP and in accordance with pertinent EPA policy and guidance for such memoranda and actions. EPA, with assistance from DOI, will be responsible for finalizing the action memorandum. This subparagraph does not restrict EPA's authority to determine that an emergency removal action is necessary or to undertake emergency removal actions at the Site.

17.3.1.2 For removal actions other than emergency removal actions, DOI will provide EPA with any information required by CERCLA, the NCP, and pertinent EPA guidance, such as the action memorandum, the Engineering Evaluation/Cost Analysis (in the case of non-time-critical removals) and, to the extent it is not otherwise included, all information required to be provided in accordance with Subparagraph 17.3.1.1 above. Such information shall be furnished at least forty-five days (45) days before the response action is to begin.

17.3.2 All activities related to on-going removal actions shall be reported by DOI in the progress reports as defined in Paragraph 16.4.

17.3.3 As soon as practicable after the completion of the removal action, but in any event within one (1) year after the completion of the removal action, DOI will prepare and provide to EPA an After-Action report describing the removal action and assessing the efficacy of the removal action in accordance with the NCP and pertinent EPA guidance.

## **18. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

18.1 DOI will make available to EPA within forty-five (45) days of the collection of field testing, quality assured results of sampling, tests or other data generated on its behalf, with respect to the implementation of this Agreement. Preliminary data or results shall be made available upon request by EPA.

18.2 DOI will notify EPA not less than fourteen (14) days in advance of any well drilling, sample collection, or other monitoring activity conducted pursuant to this Agreement.

## **19. PRESERVATION OF RECORDS**

19.1 Each Agency shall preserve for a minimum of fifteen (15) years after termination of this Agreement all of the records in its or its contractors possession related to sampling, analysis, investigations, and monitoring conducted in accordance with this Agreement. After this fifteen year period, DOI shall notify EPA at least forty-five (45) days prior to destruction or disposal of any such records. Upon request, DOI shall make such records or true copies available to EPA, subject to Article 28 (Confidential Information).

## **20. ACCESS**

20.1 Without limitation on any authority conferred on either agency by law, EPA and/or its authorized representatives, shall have authority to enter the Site at all reasonable times for the purposes of, among other things:

20.1.1 inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement, subject to Article 28 (Confidential Information);

20.1.2 reviewing the progress of DOI or its response action contractors in implementing this Agreement;

20.1.3 collecting samples of air, water, soil, and waste material;

20.1.4 conducting such tests as the EPA Project Coordinator deems necessary;

and

20.1.5 verifying the data submitted to EPA by DOI. DOI shall honor all requests for access by EPA, conditioned only upon presentation of proper credentials and conformance

with Site safety and security requirements as set forth in the Site Health and Safety Plan.

20.2 To the extent that response action at the Site requires access to property not owned and controlled by DOI, DOI as the lead agency shall seek to obtain signed voluntary access agreements providing access for itself, its contractors and agents, and EPA and its contractors and agents, from the present owners or lessees. If DOI is unable to obtain voluntary access agreements, DOI will use its authorities under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), to obtain access. DOI will provide EPA with copies of access agreements or other documents authorizing entry onto property.

## **21. FIVE-YEAR REVIEW**

21.1 If a remedial action is selected that results in any hazardous substances, pollutants, or contaminants remaining at the Site, DOI will review the remedial action no less often than every five (5) years after initiation of the remedial action to assure that human health and the environment are being protected by the remedial action being implemented. DOI will conduct the review consistent with the requirements of CERCLA, the NCP, and EPA guidance concerning the conduct of such reviews. DOI submit the draft Five-Year Review Report to EPA for consultation under Article 9 (Consultation) not later than the sixtieth day after each fifth year anniversary of the initiation of the remedial action. If upon completion of the final Five-Year Review Report it is the judgment of EPA that additional action or modification of the remedial action is appropriate in accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. §§ 9604 or 9606, EPA may seek to have DOI implement such additional or modified work through amendment of this Agreement pursuant to Article 22 (Amendment or Subsequent Modification of Agreement).



## **22. AMENDMENT OR SUBSEQUENT MODIFICATION OF AGREEMENT**

22.1 This Agreement may be amended only by agreement of DOI and EPA. Any such amendment shall be in writing, shall have as the effective date that date on which it is signed by both of the Agencies, and shall be incorporated into this Agreement by reference.

## **23. EXTENSIONS**

23.1 A timetable, deadline or schedule shall be extended upon receipt of a timely request for extension and when the Agencies agree that good cause exists for the requested extension. An Agency proposing an extension of a timetable, deadline or schedule shall submit its proposal in writing to the other Agencies and shall specify:

23.1.1 The timetable, deadline or schedule for which the extension is sought;

23.1.2 The length of the extension sought;

23.1.3 The good cause for the extension; and

23.1.4 Any related timetable, deadline or schedule that would be affected if the extension were granted.

23.2 Good cause exists for an extension when sought in regard to:

23.2.1 An event of force majeure as defined in Article 29 (Force Majeure);

23.2.2 A delay caused by another Agency's failure to meet any requirement, timetable, deadline or schedule established pursuant to this Agreement;

23.2.3 A delay caused by the good faith invocation of Dispute Resolution or the initiation of judicial action;

23.2.4 A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable, deadline or schedule;

23.2.5 A delay caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence;

23.2.6 Establishing consistency of timetables, deadlines and schedules in this Agreement and any consent decree entered into by the United States and persons or entities not party to this Agreement for the performance of work at the Site, if EPA is a signatory to the consent decree;

23.2.7 Insufficient availability of appropriated funds, if DOI shall have made timely request for such funds as part of the budgetary process as set forth in Article 30 (Funding); and

23.2.8 Any other event or series of events mutually agreed to by the Agencies as constituting good cause.

23.3 Absent agreement of the Agencies with respect to the existence of good cause, the Agency proposing the extension may seek to obtain a determination through the Dispute Resolution process that good cause exists.

23.4 Within fourteen (14) days of receipt of a request for an extension of a timetable, deadline or schedule, the Agency receiving the request shall advise the requesting Agency in writing of its position on the request. Any failure of an Agency to respond within the fourteen (14) day period shall be deemed to constitute concurrence by that Agency in the request for extension. If an Agency does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

23.5 If the Agencies agree that the requested extension is warranted, the affected timetable, deadline or schedule shall be extended accordingly. If there is no agreement between the Agencies as to whether all or part of the requested extension is warranted, the timetable, deadline or schedule shall not be extended except in accordance with the determination resulting from the Dispute Resolution process.

23.6 Within fourteen (14) days of receipt of one or more statements of nonconcurrence with the requested extension, the requesting Agency may invoke the Dispute Resolution process.

23.7 A timely and good faith request for an extension shall toll any assessment of penalties pursuant to Article 12 (Stipulated Penalties) or any application for penalties or judicial enforcement of the affected timetable, deadline or schedule until a decision is reached on whether the requested extension will be approved. If Dispute Resolution is invoked and the requested extension is denied, penalties may be sought pursuant to Article 12 (Stipulated Penalties) and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of penalties pursuant to Article 12 (Stipulated Penalties) or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

## **24. TRANSFER OF PROPERTY**

24.1 A transfer of the Site by DOI shall not terminate DOI's responsibility to continue to conduct response actions in accordance with this Agreement. Any such transfer shall be conducted in accordance with Section 120(h) of CERCLA, 42 U.S.C. § 9620(h).

## **25. PUBLIC COMMENT**

25.1 Any plan(s) for response action at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA, including Sections 117 and 113(k) of CERCLA, 42 U.S.C. §§ 9617 and 9613(k), the NCP, and EPA guidance on public participation and administrative records, to the extent they are applicable.

25.2 DOI shall develop and implement a Community Relations Plan (“CRP”) that is consistent with Section 117 of CERCLA, 42 U.S.C. § 9617, the NCP, EPA guidelines set forth in EPA's Community Relations Handbook, and any modifications thereto.

25.3 The EPA and DOI will coordinate any statements to the press with respect to the Site, other than statements regarding civil or criminal enforcement actions, to the extent practicable. Except in case of an emergency requiring the release of necessary information or in cases of civil or criminal enforcement actions, if either EPA or DOI plans to issue a press release with reference to any of the work required by this Agreement it will advise the other Agency of such press release and the contents thereof at least forty-eight (48) hours before the issuance of such press release.

## **26. ADMINISTRATIVE RECORD**

26.1 DOI will establish and maintain an Administrative Record at or near the Site in accordance with Section 113 (k) of CERCLA, 42 U.S.C. § 9613 (k) and Subpart I of the NCP, 40 C.F.R. §§ 300.800, *et seq.* DOI will maintain the record in a manner consistent with relevant current and future EPA policy and guidelines. Upon request, DOI will provide a copy of each

document placed in the Administrative Record to EPA. DOI will provide a copy of the index for the Administrative Record to EPA.

## **27. DURATION/TERMINATION**

27.1 Once the remedial action has been completed, DOI, in consultation with EPA, will request that a Notice of Completion of the remedial action be issued by EPA. Any decision by EPA in response to such a request from DOI shall be subject to dispute resolution in accordance with Article 11 (Resolution of Disputes).

27.2 This Agreement shall terminate when all work provided for in this Agreement has been completed or when the Agencies agree in writing to termination.

27.3 Due to the long-term commitments contained in this Agreement, this Agreement will be reviewed by the Agencies five (5) years from the date of execution of this Agreement, and at the conclusion of every five (5) year period thereafter. The purposes of this review will be to determine:

27.3.1 Whether each Agency has performed its commitments under this Agreement; and whether there has been substantial compliance with the terms of the Agreement, and

27.3.2 Whether there is need to modify the Agreement.

27.4 This review will be made by a committee composed of representatives from each Agency. Amendments to the Agreement will be made in accordance with Article 22 (Amendment or Subsequent Modification of Agreement).

27.5 Issuance of any Notice of Completion shall not relieve DOI of its obligation to continue operation and maintenance pursuant to Article 8 (Work to be Performed), unless such Notice explicitly states that all required operation and maintenance has been completed.

## **28. CONFIDENTIAL INFORMATION**

28.1 EPA or DOI may assert on its own behalf or on behalf of a contractor, subcontractor or consultant, a business confidentiality claim or privilege covering all or any part of information requested by this Agreement, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and any other applicable law. Analytical data shall not be claimed as business confidential or privileged. EPA and DOI are not required to provide legally privileged information to each other. Since EPA and DOI may conduct joint enforcement actions concerning matters covered by this Agreement, the provision of privileged information by one Agency to the other shall not be considered a waiver of any privilege or any claim of business confidentiality, or of any exemption under FOIA. At the time any information is furnished which is claimed to be privileged or business confidential, EPA and DOI shall afford it the maximum protection allowed by law. If no claim of privilege, business confidentiality, or exemption under FOIA accompanies the information, it may be made available to the public without further notice. This Agreement shall not be construed to limit in any way the right provided by law to the public or any citizen to obtain public information about the work to be performed under this Agreement

## **29. FORCE MAJEURE**

29.1 Force Majeure shall mean any event arising from causes beyond the control of a Agency that causes a delay in or prevents the performance of any obligation under this Agreement, including but not limited to:

29.1.1 Acts of God; fire; war; insurrection; civil disturbance; or explosion;

29.1.2 Unanticipated breakage or accident to machinery, equipment, or lines of pipe, despite reasonably diligent maintenance;

29.1.3 Adverse weather conditions that could not be reasonably anticipated, or unusual delay in transportation;

29.1.4 Restraint by court order or order of public authority;

29.1.5 Inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than DOI; and

29.1.6 Any strike or other labor dispute.

29.2 Force Majeure shall not include increased cost or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

### **30. FUNDING**

30.1 It is the expectation of the Agencies that all obligations of DOI and EPA arising under this Agreement will be fully funded. Each Agency agrees to use its best efforts to seek sufficient funding through the budgetary process to fulfill its obligations under this Agreement. Any requirement of DOI for the payment or obligation of funds, including but not limited to civil penalties, or as required under other terms of this Agreement, shall be subject to the availability of appropriated funds. No provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341, *et seq.* In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, or would exceed the available appropriated funds, the Agencies agree that the deadlines, schedules,

or other commitments requiring the payment or obligation of such funds shall be appropriately adjusted.

30.2 If requested, EPA agrees to assist DOI in determining the funding level estimates needed to support the corresponding negotiated work schedule for each fiscal year. This assistance will be provided at the project manager levels. This participation by EPA in this funding estimate determination is limited solely to the aforementioned, and in no way is to be construed to allow EPA to become involved with the internal DOI budget process, nor to become involved in the Federal budget process as it proceeds from DOI to OMB and ultimately to Congress through the President's submittal. Nothing herein shall affect DOI's authority over its budgets and funding level submissions. Nothing herein shall affect EPA's enforcement authority if DOI does not request sufficient funding.

### **31. COMPLIANCE WITH APPLICABLE LAWS**

31.1 All actions required to be taken pursuant to this Agreement shall be taken in accordance with the requirements of all applicable Federal and State laws and regulations. Each Agency acknowledges that such compliance may impact schedules to be performed under this Agreement. Extensions of schedules shall be provided in accordance with Article 23 (Extensions).

31.2 Where the law governing this Agreement has been amended or clarified, any provision of this Agreement that is inconsistent with such amendment or clarification will be modified to conform with such change or clarification.



## **32. RESERVATION OF RIGHTS**

32.1 The Agencies have determined that the activities to be performed under this Agreement are in the public interest. EPA agrees that compliance with this Agreement shall stand in lieu of any administrative and civil judicial remedies against DOI and its contractors, which may be available to EPA under CERCLA regarding the currently known release or threat of release of hazardous substances, pollutants or contaminants at the Lee Acres Site which are the subject of the activities being performed by DOI under Article 8 (Work to be Performed). Notwithstanding anything in this Agreement, EPA may initiate any administrative, legal or equitable remedies available to it, including requiring additional response actions by the DOI, in the event that: (a) information about or conditions at the Site previously unknown or undetected by EPA arise or are discovered, and EPA determines that these previously unknown conditions or information, together with any other relevant information, indicate that the response actions implemented at the Site are not protective of human health or the environment; or (b) the implementation of the requirements of this Agreement are no longer protective of human health and the environment; or (c) EPA discovers the presence of conditions on the Site which may constitute an imminent and substantial endangerment to the public health, welfare, or the environment and which are not the subject of the activities being performed by DOI under Article 8 (Work to be Performed); or (d) the DOI fails to meet any of its obligations under this Agreement, as determined by the final resolution of a dispute under Article 11 (Resolution of Disputes), except that EPA may not seek civil penalties for any failure for which a stipulated penalty has been assessed and paid or satisfied with a SEP; or (e) the DOI fails or refuses to

comply with any applicable requirement of CERCLA or the Solid Waste Disposal Act, 42 U.S.C. §§ 6901, *et seq.*, or State laws or related regulations.

32.2 In the event of any action by EPA under Subparagraph 32.1, DOI reserves all rights and defenses available under law.

### **33. NOTIFICATION**

33.1 Each Agency shall transmit primary and secondary documents, and all notices required herein by certified mail, return receipt requested; next day mail; hand delivery; or within twenty-four hours by any other method of sending notice which provides proof of delivery. Any relevant time limitations for the sending Agency shall be met upon dispatch of the document or notice in accordance with this Paragraph. Any relevant time limitations for the receiving Agency shall commence upon receipt of the document or notice by the receiving Agency.

33.2 Notice to the individual Agencies shall be provided to the following addresses:

For DOI: Lee Acres Remedial Project Manager  
Bureau of Land Management  
1235 La Plata Highway  
Farmington, NM 87401

For EPA: Lee Acres Remedial Project Manager (6SF-LT)  
U.S. Environmental Protection Agency  
1445 Ross Avenue  
Dallas, Texas 75202-2733

Any Agency may change its address by providing written notice to the other Agencies.

### **34. PUBLIC COMMENT ON THIS AGREEMENT**

34.1 Within fifteen (15) days after the execution of this Agreement (the date by which both EPA and DOI have signed the Agreement), EPA shall provide the public with notice of the availability of this Agreement for review and comment, including publication of the notice in at least two (2) major local newspapers of general circulation. Such public notices shall include information advising the public as to the availability and location of the administrative record. EPA shall accept comments from the public for thirty (30) days after such announcement. Within fourteen (14) days of completion of the public comment period, EPA shall transmit copies of all comments received within the comment period to DOI. Within thirty (30) days after the transmittal, the Agencies shall review the comments and shall decide either that the Agreement shall be made effective without any modifications or that the Agreement shall be modified prior to being made effective.

34.2 If the Agencies agree that the Agreement shall be made effective without any modifications, and if the Agencies agree on the Response to Comments, EPA shall notify DOI in writing that the Agreement is effective. The Effective Date of the Agreement shall be the date of receipt by DOI of the written notification from EPA.

34.3 If the Agencies agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within sixty (60) days after the expiration of the public comment period, EPA, in consultation with DOI, will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If EPA determines that no additional notice and comment is required, and the Agencies agree on the Response to Comments, EPA shall transmit a copy of the modified

Agreement to DOI and shall notify DOI in writing that the modified Agreement is effective as of the date of the notification. If the Agencies amend the Agreement within the sixty (60) days and EPA determines that additional public notice and comment is required, such additional notice and comment shall be provided consistent with the provisions stated in Paragraph 34.1 above. If the Agencies agree, after such additional notice and comment has been provided, that the modified Agreement does not require any further modification and if the Agencies agree on the Response to Comments, EPA shall send a copy of the mutually agreed upon modified Agreement to DOI and shall notify DOI in writing that the modified Agreement is effective. In either case, the Effective Date of the modified Agreement shall be receipt by DOI from EPA of notification that the modified Agreement is effective.

34.4 In the event that the Agencies cannot agree on the modifications or on the Response to Comments within thirty (30) days after EPA's transmittal of the public comments, the Agencies agree to negotiate in good faith for an additional fifteen (15) days before invoking informal dispute resolution under Paragraph 11.3.1. The Agencies agree to have at least one meeting during that fifteen (15) day period to attempt to reach agreement.

34.5 If, after expiration of the times provided in Paragraph 34.4, the Agencies have not reached agreement on whether modifications to the Agreement are needed; what modifications to the Agreement should be made; any language, any provisions, any Deadlines, any Work to be performed, any content of the Agreement or any Appendices or Attachments to the Agreement; whether additional public notice and comments are required; or the contents of the Response to Comments, then the matters which are in dispute shall be resolved by the dispute resolution procedures of Article 11 (Resolution of Disputes) above. For the purposes of this Article, the

Agreement shall not be effective while the dispute resolution proceedings are underway. Upon the conclusion of dispute resolution, if appropriate, EPA shall send a copy of the final Agreement to DOI and shall notify DOI in writing that the Agreement is effective. The Effective Date of the Agreement shall be the date of DOI's receipt of such notice from EPA.

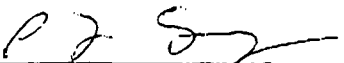
34.6 At the start of the public comment period, DOI will transmit copies of this Agreement to the appropriate federal and State Natural Resource Trustees for review and comment within the time limits set forth in this Section.

34.7 Existing records in the administrative record such as reports, plans, and Schedules, shall be made available by DOI for public review during the public comment period.

IT IS SO AGREED

Each undersigned representative of a an Agency certifies that he or she is fully authorized to enter into this Agreement and to legally bind such Agency to this Agreement.

FOR THE UNITED STATES DEPARTMENT OF THE INTERIOR

  
\_\_\_\_\_  
P. Lynn Scarlett  
Assistant Secretary, Policy, Management, and Budget  
U.S. Department of the Interior

7/23/04  
Date

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
Richard E. Greene  
Regional Administrator  
U.S. Environmental Protection Agency Region 6

\_\_\_\_\_  
Date

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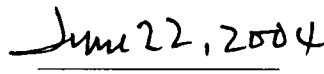
FOR THE UNITED STATES DEPARTMENT OF THE INTERIOR

\_\_\_\_\_  
P. Lynn Scarlett  
Assistant Secretary, Policy, Management, and Budget  
U.S. Department of the Interior

\_\_\_\_\_  
Date

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
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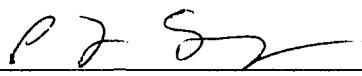
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FOR THE UNITED STATES DEPARTMENT OF THE INTERIOR

  
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Assistant Secretary, Policy, Management, and Budget  
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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

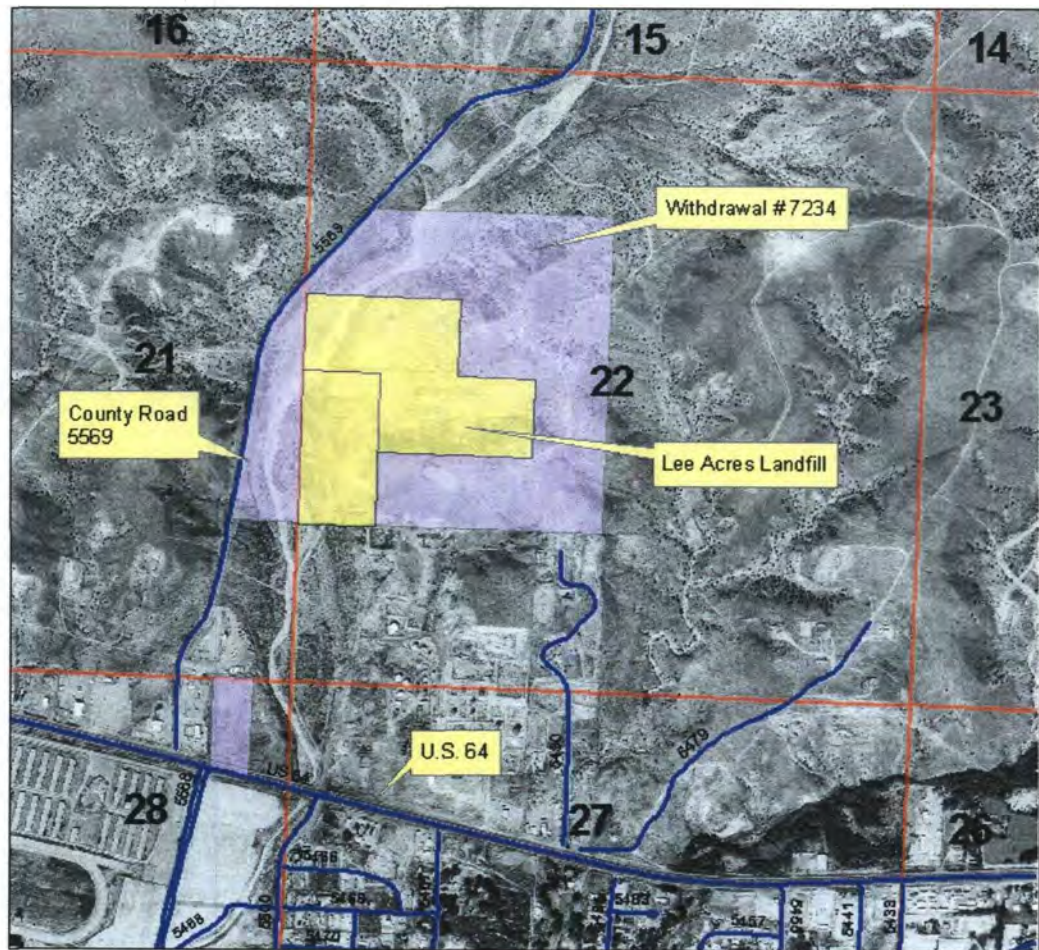
\_\_\_\_\_  
Richard E. Greene  
Regional Administrator  
U.S. Environmental Protection Agency Region 6

\_\_\_\_\_  
Date





## **ATTACHMENT A**



# Lee Acres Landfill



## Legend

-  Road
-  Lee Acres
-  Withdrawal
-  Section

T29N, R12W



0 0.1 0.2 0.3 0.4  
Miles

## Lee Acres Landfill Location

T29N, R12W,  
Section 22,  
S2SWNW, NWNESW,  
NENWSW  
San Juan County,  
New Mexico