

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

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IN THE MATTER OF: )  
 )  
 )  
Old Church Rock Mine Site ) CERCLA Docket No. 2026-06  
Church Rock Chapter, Navajo Nation Indian )  
Reservation )  
McKinley County, New Mexico )  
 )  
NuFuels, Inc., ) **ADMINISTRATIVE SETTLEMENT**  
 ) **AGREEMENT AND ORDER ON**  
 ) **CONSENT FOR INTERIM REMOVAL**  
Respondent ) **ACTION**  
 )  
 )  
Proceeding Under Sections 104, 106(a), 107 and )  
122 of the Comprehensive Environmental )  
Response, Compensation, and Liability Act )  
 )  

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Appendix A: Statement of Work

## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Settlement Agreement and Order on Consent (“Settlement”) is entered into voluntarily by the United States Environmental Protection Agency (“USEPA”) and NuFuels, Inc. (“Respondent”). This Settlement provides for the performance of an interim time-critical removal action by Respondent and the payment by Respondent of certain response costs incurred by the United States at or in connection with the Old Church Rock Mine Site (the “Site”) generally located on the Navajo Nation Indian Reservation within the Church Rock Chapter and in McKinley County, New Mexico.

2. This Settlement is issued under the authority vested in the President of the United States by sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). This authority was delegated to the Administrator of USEPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by USEPA Delegation Nos. 14-14A (Determinations of Imminent and Substantial Endangerment, Jan. 31, 2017), 14-14C (Administrative Actions through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). This authority was further redelegated by the Regional Administrator of USEPA Region 9 to the director, deputy director, and branch chiefs or equivalent of the Superfund Division (now the “Superfund & Emergency Management Division”) by Region 9 Delegation Nos. R9 14-14A (May 9, 2018), R9 14-14C (May 1, 2019) and R9 14-14D (May 9, 2018).

3. USEPA has notified the State of New Mexico (the “State”) and the Navajo Nation of this action pursuant to section 106(a) of CERCLA.

4. USEPA and Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, and conclusions of law and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and agrees not to contest the basis or validity of this Settlement or its terms.

## **II. PARTIES BOUND**

5. This Settlement is binding upon USEPA and upon Respondent and its successors. Unless USEPA otherwise consents, (a) any change in ownership or corporate or other legal status of Respondent, including any transfer of assets, or (b) any Transfer of the Site or any portion thereof, does not alter any of Respondent’s obligations under this Settlement.

6. Respondent shall provide notice of this Settlement to officers, directors, employees, agents, contractors, subcontractors, or any person representing Respondent with respect to the Site or the Work. Respondent is responsible for ensuring that such parties act in

accordance with the terms of this Settlement. Under this Settlement, a person performing a treatment technology (such as high-pressure slurry ablation) as described in the Statement of Work, will be considered Respondent's contractor with respect to the Site or the Work.

### III. DEFINITIONS

7. Terms not otherwise defined in this Settlement have the meanings assigned in CERCLA or in regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Settlement, the following definitions apply:

"Affected Property" means any real property, including the Site, where USEPA determines, at any time, that access, land, water, or other resource use restrictions, Institutional Controls, or any combination thereof, are needed to implement the Removal Action, including the following properties: Section 17, T16N, R16W, New Mexico ("Section 17"); SE ¼ Section 8, T16N, R16W, New Mexico ("Section 8").

"Agencies" means, collectively, USEPA and NNEPA.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" means a calendar day. In computing any period under this Settlement, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. "Working Day" means any day other than a Saturday, Sunday, or federal, State, or Navajo Nation holiday.

"Effective Date" means the effective date of this Settlement as provided in Section XXV (Effective Date).

"Fund" means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 I.R.C. § 9507.

"Future Response Costs" means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States pays after the Effective Date in implementing, overseeing, or enforcing this Settlement, including: (i) in developing, reviewing and approving deliverables generated under this Settlement; (ii) in overseeing Respondent's performance of the Work; (iii) in implementing community involvement activities under ¶ 39 (Community Involvement); (iv) in assisting or taking action to obtain access or use restrictions under ¶ 54; (v) in taking action under ¶ 60 (Access to Financial Assurance); (vi) in taking response action because of Respondent's failure to take emergency action under ¶ 43 (Emergency Response); (vii) in implementing a Work Takeover under ¶ 50 (Work Takeover); and (viii) in enforcing this Settlement, including all costs paid under Section XIV (Dispute Resolution) and all litigation costs. Future Response Costs also includes all Interest accrued after the Effective Date, on USEPA's unreimbursed costs under section 107(a) of CERCLA.

“Including” or “including” means “including but not limited to.”

“Interest” means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest will be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. As of the date USEPA signs this Settlement, rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Institutional Controls” or “ICs” means Proprietary Controls and state, tribal or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land or resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Removal Action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site, to the extent that such governmental controls or notices are allowed by law.

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

“Navajo Lands” means all lands of the Navajo Nation as described in 7 N.N.C. § 254(A).

“Navajo Nation” means the federally recognized Native American indigenous tribe formerly known as the Navajo Tribe of Indians, and each department, agency, and instrumentality of the Navajo Nation, including NNEPA but not including Navajo tribal entities.

“Navajo Nation EPA” or “NNEPA” means the Navajo Nation Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“Navajo Nation DOJ” or “NNDOJ” means the Navajo Nation Department of Justice and its successor departments, agencies, or instrumentalities.

“NNCERCLA” means the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 4 N.N.C. §§ 2401 *et seq.*

“Non-Settling Owner” means any person, other than Respondent, the United States, and the Navajo Nation, who owns, controls, or has other rights or interests in any Affected Property. The clause “Non-Settling Owner’s Affected Property” means Affected Property owned or controlled by Non-Settling Owner or in which the Non-Settling Owner has other rights or interests.

“Paragraph” or “¶” means a portion of this Settlement identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” means USEPA and Respondent.

“Post-Removal Site Control” means actions necessary to ensure the effectiveness and integrity of the Removal Action consistent with sections 300.415(I) and 300.5 of the NCP and “Policy on Management of Post-Removal Site Control” (OSWER 9360.2-02, Dec. 3, 1990).

“Proprietary Controls” means easements, covenants, or other controls on land use that run with the land and: (a) limit land or resource use and/or provide access rights, and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office, to the extent that they are allowed by law.

“RCRA” means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k (also known as the Resource Conservation and Recovery Act).

“Removal Action” means the removal action required under this Settlement.

“Respondent” means NuFuels, Inc. (“NuFuels”).

“Section” means a portion of this Settlement identified by a Roman numeral.

“Settlement” means this Administrative Settlement Agreement and Order on Consent, all appendixes attached hereto (listed in Section XXI (Appendixes)), and all deliverables approved under and incorporated into this Settlement. If there is a conflict between a provision in Sections I (Jurisdiction and General Provisions) through XXV (Effective Date) and a provision in any appendix or deliverable, the provision in Sections I through XXV controls.

“Site” means the Old Church Rock Mine Site generally located on the Navajo Nation Indian Reservation within the Church Rock Chapter and in McKinley County, New Mexico, including an approximately 75-acre fenced area and all proximate areas where hazardous substances associated with the Site have been deposited, stored, disposed of, placed, or otherwise come to be located. The Old Church Rock Mine Site is situated primarily within Section 17 (Tribal trust land), with a small portion of the Site in the Southeast Quarter of Section 8 (privately-owned land), and is generally depicted on the maps included as Attachments 1 and 2 to the Statement of Work (Appendix A).

“Special Account” means the Old Church Rock Mine Site special account, within the Fund, established for the Site by USEPA pursuant to section 122(b)(3) of CERCLA and this Settlement.

“State” means the State of New Mexico.

“Statement of Work” or “SOW” means the document attached as Appendix A, which describes the activities Respondent shall perform to implement and maintain the effectiveness of the Removal Action, and any modifications made thereto in accordance with this Settlement.

“Transfer” means to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including USEPA.

“USEPA” means the United States Environmental Protection Agency.

“Waste Material” means (a) any “hazardous substance” under section 101(14) of CERCLA; (b) any pollutant or contaminant under section 101(33) of CERCLA; (c) any “solid waste” under section 1004(27) of RCRA; (d) any toxic pollutant or water contaminant as defined by Title 20, Chapter 6, Part 2 of the New Mexico Administrative Code or any constituent identified in Table A-1 of the New Mexico Environment Department’s *Risk Assessment Guidance for Site Investigation and Remediation*; and (e) any “hazardous substance” under section 2104.Q of NNCERCLA.

“Work” means all obligations of Respondent under Sections VII (Coordination and Supervision) through XI (Indemnification and Insurance).

“Work Takeover” means USEPA’s assumption of the performance of any of the Work in accordance with ¶ 50 (Work Takeover).

#### **IV. FINDINGS OF FACT**

USEPA hereby finds the following facts, which Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement:

8. The Site, generally located on the Navajo Nation Indian Reservation within the Church Rock Chapter and in McKinley County, New Mexico, encompasses an approximately 75-acre fenced area and associated areas of contamination. The geographic coordinates for the approximate center of the Site are 35.620705 North latitude and -108.555226 West longitude. The Site is situated primarily on Section 17 (Tribal trust land), with a small portion of the Site in the Southeast Quarter of Section 8 (on privately-owned land).

9. The Site was explored, developed, and operated as a conventional, underground uranium mine from approximately 1957 to 1982 and produced over 293,000 tons of uranium ore. There were two phases of conventional uranium mining and production at the Site. The first phase of mining produced over 77,900 tons of uranium ore between 1960 and 1962. The second phase produced over 215,100 tons of uranium ore between 1976 and 1982. The Site closed as a conventional uranium mine in 1982 at the end of the second phase of historic mining.

10. Uranium ore produced at the Site was transported to surrounding mills, including to the United Nuclear Corporation (“UNC”) uranium mill at Northeast Church Rock, approximately 3 miles northeast of the Site along State Route 566.

11. Features at the Site associated with the former mining operations include: five surface settling ponds and an ion-exchange building, used to store and treat groundwater that was pumped from the mine and discharged to the adjacent arroyo; former stockpile areas; concrete pads; and closed vertical mine shafts, including a concrete-lined shaft drilled at a depth of approximately 865 feet.

12. The Site has had various owners and operators since 1957. One of the entities that operated and produced uranium ore at the Site is Quinta Corporation (“Quinta”). Quinta was a mining company that leased mineral rights at the Site from 1957 to 1963 and produced over 22,670 tons of uranium ore between 1961 and 1962. Phillips Petroleum Company (now known as ConocoPhillips Company or “ConocoPhillips”) also operated the Site during the first phase of historic mining through assignment of lease agreements and produced over 55,280 tons of uranium ore between 1960 and 1961.

13. In 1963, Quinta’s business, properties, assets, liabilities, and obligations, including its mineral rights at the Site, were acquired by United Nuclear Corporation (“UNC”). UNC operated the Site during the second phase of historic mining and produced over 215,100 tons of uranium ore between 1976 and 1982.

14. In 1991, UNC performed reclamation work at the Site, which involved removing mine waste from the Site’s settling ponds and transporting the waste to the Northeast Church Rock Mine, and transferred its mineral rights, interest, liabilities, and obligations at the Site to Hydro Resources, Inc. (or “HRI”) (a wholly-owned subsidiary of Uranium Resources, Inc. (“URI”)) through a Supplemental Purchase Agreement (the “1991 SPA”).

15. At the time of historic uranium mining at the Site, Santa Fe Pacific Railroad Company (“SFPR”) owned mineral rights to the Site and entered into lease agreements with Quinta, Phillips Petroleum Company (n/k/a ConocoPhillips), and UNC for uranium exploration and mining. In 1983, SFPR transferred mineral rights to the Site through a special warranty deed to Cerrillos Land Company. Subsequently, Cerrillos Land Company’s corporate successor, Santa Fe Pacific Gold Corporation, transferred mineral rights to the Site to URI in 1997.

16. In 2017, URI transferred HRI and its mineral rights, interest, liabilities, and obligations at the Site to Laramide Resources Ltd. (“Laramide”), a Canadian corporation. In 2018, Laramide renamed HRI to NuFuels, Inc.

17. NuFuels owns and holds mineral rights, interest, liabilities, and obligations at the Site. NuFuels also has a combined source and 11e.(2) byproduct material license (SUA-1580) that was issued by the Nuclear Regulatory Commission (“NRC”) on January 5, 1998, and is in timely renewal with the NRC. SUA-1580 includes Section 17 and Section 8 of the Old Church Rock Mine Site. Between 2022 and 2023, NuFuels conducted limited uranium exploration-related activities at the Site, including drilling boreholes.

18. Site investigations have found elevated readings of gamma radiation and concentrations of uranium and the radionuclide, radium-226 (or “Ra-226”), in some surface and sub-surface soils at the Site.

19. In 2006, NNEPA conducted a radiological survey at the Site, following a flood event and a report of exposed mine waste that was made in connection with a 2003–2007 environmental assessment of the area led by the Church Rock Chapter of the Navajo Nation. The survey identified gamma rates exceeding background levels at up to 460  $\mu\text{R/hr}$  (microrentgen per hour) at the Site, approximately 50 times background for the area.

20. In 2007, NNEPA performed a subsequent scoping survey that measured gamma rates of up to 460  $\mu\text{R/hr}$ , exceeding background levels for the area. NNEPA's scoping survey report recommended that a more detailed characterization be conducted at the Site. Following this recommendation, URI conducted site characterizations in 2009 and 2013.

21. In 2022, USEPA conducted investigations at the Site. In May 2022, USEPA performed preliminary gamma radiation scanning at the Site and detected elevated surface gamma activity. Subsequently, in November 2022, USEPA, in coordination with NNEPA, initiated a removal assessment to determine whether the Site poses an imminent and substantial danger to the surrounding community and a Time-Critical Removal Action ("TCRA") or other response action would be required. The removal assessment included gamma scans of surface soils and surface soil sampling. A summary of the uranium and Ra-226 analytical data for gamma scanning and sampling of surface soil is presented in a removal assessment report dated August 25, 2023. As described in the report, elevated gamma levels and concentrations of uranium and Ra-226 in surface soil were found at certain locations throughout the Site.

22. As described above, elevated levels of uranium and Ra-226 have been documented in soils at the Site. Analytical results indicate that concentrations of uranium and Ra-226 identified in soils at the Site exceed background levels and may pose a potential threat to human health and the environment.

23. Uranium is a naturally occurring radioactive element. Natural uranium is a mixture of three isotopes: uranium-234, uranium-235, and uranium-238. The most common isotope is  $^{238}\text{U}$ ; it makes up about 99% of natural uranium by mass. All three isotopes behave the same chemically, but they have different radioactive properties. Kidney damage has been observed in humans and animals after inhaling or ingesting uranium compounds. Uranium-234, uranium-235, and uranium-238 are each a "hazardous substance" as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. Radium is formed when uranium and thorium break down in the environment. Two of the main radium isotopes found in the environment are radium-226 and radium-228. During the decay process, alpha, beta, and gamma ionizing radiation are released. Radium may be found in air and water. Radium in the soil may be absorbed by plants. Radium-226 is a known human carcinogen, and exposure may be a precursor to bone, liver and breast cancers and other health conditions. Radium-226 is a "hazardous substance" as defined by section 101(14) of CERCLA.

25. Conditions at the Site include direct human exposure and ongoing erosion, posing a threat of ongoing and future releases of hazardous substances including uranium and

Ra-226 and its progeny and associated gamma radiation. Persons occupying or traversing the Site, including nearby residents and future potential residents, may be directly exposed via ingestion of soil, inhalation of particulates, ingestion of local foods, and/or exposure when in proximity to hazardous substances. Navajo lifeway uses at the Site include residing, hunting, grazing livestock and gathering herbs and plants, and may also put persons at risk.

26. Contamination documented in soils at the Site may migrate off-site via wind and water transport mechanisms. Analytical results indicate that off-site migration of contaminants by both water and wind has occurred. Contaminants may migrate during heavy rainfall and high wind events due to the propensity for uranium and Ra-226 and associated contaminants to adhere to small particles. In addition, high soil erosion rates may indicate future transport of contamination from the Site.

27. Under a 1991 Memorandum of Agreement between the Navajo Nation and USEPA Regions 6, 8, and 9, USEPA Region 9 is the lead region for any USEPA response action on Navajo Lands.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

28. Based on the Findings of Fact in Section IV and the administrative record, USEPA has determined that:

- a. The Site is a “facility” as defined by section 101(9) of CERCLA.
- b. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined by section 101(14) of CERCLA.
- c. Respondent is a “person” as defined by section 101(21) of CERCLA.
- d. Respondent is a responsible party under section 107(a) of CERCLA. Respondent is an “owner” and/or “operator” of the facility, as defined by section 101(20) of CERCLA and within the meaning of section 107(a)(1) of CERCLA.
- e. The conditions described in ¶¶ 18-26 of the Findings of Fact constitute an actual or threatened “release” of a hazardous substance from the facility as defined by section 101(22) of CERCLA.
- f. The conditions described in the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of section 106(a) of CERCLA.
- g. The Removal Action is necessary to protect the public health, welfare, or the environment.

## VI. ORDER AND AGREEMENT

29. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement as follows:

## VII. COORDINATION AND SUPERVISION

### 30. Respondent's Project Coordinator

a. Respondent shall designate and notify USEPA, within thirty (30) days after the Effective Date, of the name, title, contact information, and qualifications of the Respondent's proposed Project Coordinator. Respondent's Project Coordinator will be responsible for administration of all actions by Respondent required by this Settlement.

b. Respondent's Project Coordinator must have sufficient technical expertise to coordinate the Work. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work.

c. Notice or communication relating to this Settlement from USEPA to Respondent's Project Coordinator constitutes notice or communication to Respondent.

d. Respondent may change its Project Coordinator by following the procedures under ¶ 31.

### 31. Procedures for Notice and Disapproval

a. Respondent shall notify USEPA of the names, titles, contact information, and qualifications of any contractors or subcontractors retained to perform the Work at least thirty (30) days prior to commencement of such Work.

b. USEPA may issue notices of disapproval regarding any proposed Project Coordinator, contractor, or subcontractor, as applicable. If USEPA issues a notice of disapproval, Respondent shall, within fifteen (15) days, submit to USEPA a list of supplemental proposed Project Coordinators, contractors, or subcontractors, as applicable, including a description of the qualifications of each.

c. USEPA may disapprove the proposed Project Coordinator, contractor, or subcontractor, based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise), if they have a conflict of interest regarding the project, or any combination of these factors.

32. **USEPA Project Coordinator.** USEPA designates Kenyon Larsen, Remedial Project Manager in the Superfund & Emergency Management Division, Region 9, as its Project Coordinator. The USEPA Project Coordinator has the authorities described in the NCP, including oversight of Respondent's implementation of the Work, authority to halt, conduct, or direct any

Work, or to direct any other removal action undertaken at the Site. The USEPA Project Coordinator's absence from the Site is not a cause for stoppage of work. USEPA may change its Project Coordinator and will notify Respondent of any such change.

## VIII. PERFORMANCE OF THE WORK

33. Respondent shall perform the Work in accordance with this Settlement, including all USEPA-approved, conditionally approved, or modified deliverables as required by this Settlement. The Work includes all actions necessary to implement the Statement of Work (attached as Appendix A), including the following: site preparation (*e.g.*, installing erosion and sediment controls) and implementing site security and safety measures; obtaining required permits and approvals for off-site activity; excavation, transportation, and on-site consolidation of contaminated soils and sediments; covering and stabilizing contaminated soils and sediments to prevent migration; implementing dust controls and monitoring for excavation and construction activities; post-excavation and construction surveys and confirmation scanning, sampling, and analysis; restoration, including regrading, revegetation, and installation of temporary and permanent water runoff and erosion controls; and Post-Removal Site Controls, including periodic site inspections, maintenance (as needed), and submission of inspection and maintenance reports.

34. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from USEPA of the modification, amendment, or replacement.

35. **Removal Action Work Plan.** Within seventy-five (75) days after the Effective Date, Respondent shall submit to USEPA for approval in accordance with ¶ 40 (Deliverables: Specifications and Approval) a work plan for performing the Work (the "Removal Action Work Plan" or "RAWP") as described in ¶ 33. The Removal Action Work Plan must include a description of, and an expeditious schedule for, the actions required by this Settlement, and conform to the requirements set forth in the SOW.

36. **Health and Safety Plan.** Within seventy-five (75) days after the Effective Date, Respondent shall submit for USEPA review and comment a Health and Safety Plan ("HASP") that meets the requirements of 29 C.F.R. § 1910.120 for developing the HASP, that describes all activities to be performed to protect on-site personnel and area residents from physical, chemical, biological and all other hazards related to performance of Work under this Settlement. This HASP shall be prepared in accordance with EPA's *Emergency Responder Health and Safety Manual*, OSWER 9285.3-12 (July 2005 and updates), available on USEPA's website at <https://www.epaossc.org/HealthSafetyManual/manual-index.htm>. In addition, the Respondent shall ensure that the HASP complies with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. part 1910. If USEPA determines that it is appropriate, the HASP shall also include contingency planning. Respondent shall

incorporate all changes to the HASP recommended by USEPA and shall implement the HASP during the pendency of the Work.

**37. Quality Assurance, Sampling, and Data Analysis**

a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with USEPA's *Environmental Information Quality Policy*, CIO 2105.1) (Mar. 2021) at <https://www.epa.gov/irmpoli8/environmental-information-quality-policy>, the most recent version of *Quality Management Systems for Environmental Information and Technology Programs – Requirements with Guidance for Use*, ASQ/ANSI E-4 (Feb. 2014), and *EPA Requirements for Quality Assurance Project Plans*, EPA QA/G-5 (EPA/240/B-01/02) (Mar. 2001) at <https://www.epa.gov/quality/epa-qar-5-epa-requirements-quality-assurance-project-plans>.

b. Respondent shall ensure that USEPA personnel and its authorized representatives are allowed access at reasonable times to laboratories used by Respondent in implementing this Settlement. In addition, Respondent shall ensure that such laboratories analyze all samples submitted by USEPA pursuant to the Quality Assurance Project Plan for quality assurance monitoring, and that sampling and field activities are conducted in accordance with the *EPA QA Field Activities Procedure*, CIO 2105-P-02.1 (Sept. 23, 2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in the *Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions* (Directive No. FEM-2011-01) (Nov. 2016) available at <http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to USEPA-accepted methods. Accepted USEPA methods are documented in the USEPA's Contract Laboratory Program (<http://www.epa.gov/clp>), *SW 846 Test Methods for Evaluating Solid Waste, Physical/Chemical Methods* (<https://www.epa.gov/hw-sw846>), *Standard Methods for the Examination of Water and Wastewater* (<http://www.standardmethods.org/>), 40 C.F.R. part 136, *Air Toxics - Monitoring Methods* (<http://www3.epa.gov/ttnamti1/airtox.html>).

c. Upon request, Respondent shall provide split samples to USEPA or its authorized representatives or allow for collection of duplicate samples. Respondent shall notify USEPA not less than seven (7) days prior to any sample collection activity unless shorter notice is agreed to by USEPA. In addition, USEPA has the right to take any additional samples that USEPA deems necessary. Upon request, USEPA may provide to Respondent split and/or duplicate samples in connection with USEPA's oversight sampling.

d. Respondent shall submit to USEPA all sampling and test results and other data obtained or generated by or on behalf of Respondent or in connection with the implementation of this Settlement. Respondent shall expedite all data generation and validation for residential sampling activities.

38. **Post-Removal Site Control.** Respondent shall submit for approval a Post-Removal Site Control Plan to develop controls to ensure the effectiveness and integrity of the Removal Action after its completion, and shall implement the Post-Removal Site Control Plan and provide verification of any controls put in place.

39. **Community Involvement.** USEPA has the lead responsibility for implementing community involvement activities at the Site in accordance with the NCP and USEPA guidance. As requested by USEPA, Respondent shall participate in community involvement activities, including participation in (a) the preparation of information regarding the Work for dissemination to the public (including compliance schedules and progress reports), with consideration given to the specific needs of the community, including translated materials and mass media and/or Internet notification and (b) public meetings that may be held or sponsored by USEPA to explain activities at or relating to the Site (with interpreters present for community members with limited English proficiency).

40. **Deliverables: Specifications and Approval**

a. **General Requirements for Deliverables.** Respondent shall submit all deliverables to USEPA, with copies to NNEPA at the same time, in electronic form, unless otherwise specified by the USEPA Project Coordinator. NNEPA may review and comment on such deliverables within a reasonable time.

b. **Technical Specifications for Deliverables.** Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (“EDD”) format. The specific Electronic Data Deliverables shall be aligned with USEPA’s Navajo Abandoned Uranium Mine (“NAUM”) Data Submission Guidelines provided as Attachment 3 to the SOW (Appendix A). Other delivery methods may be allowed by the USEPA Project Coordinator if electronic direct submission presents a significant burden or as technology changes.

(1) Unless otherwise approved by USEPA, spatial data, including spatially-referenced data and geospatial data, should be submitted in alignment with USEPA’s NAUM Data Submission Guidelines provided as Attachment 3 to the SOW (Appendix A).

(2) Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

c. **Approval of Deliverables.** After review of the Removal Action Work Plan and any other deliverable required to be submitted for USEPA approval under the Settlement, USEPA shall: (1) approve, in whole or in part, the deliverable; (2) approve the submission upon specified conditions or required revisions to the deliverable; (3) disapprove, in whole or in part, the deliverable; or (4) any combination of the foregoing. If USEPA requires revisions, USEPA will provide a reasonable deadline for the resubmission, and Respondent shall submit the revised deliverable by the required deadline. Once approved or approved with conditions or required revisions, Respondent shall implement the Removal Action Work Plan or other deliverable in

accordance with the USEPA-approved schedule. Upon approval, or subsequent modification, by USEPA of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, and any subsequent modifications, will be incorporated into and enforceable under the Settlement; and (2) Respondent shall take any action required by such deliverable, or portion thereof. Respondent shall not commence or perform any Work except in conformance with the terms of this Settlement.

#### 41. Off-Site Shipments

a. Respondent may ship hazardous substances, pollutants and contaminants from the Site to an off-site facility only if it complies with section 121(d)(3) of CERCLA and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with section 121(d)(3) of CERCLA and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from USEPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, Respondent provides written notice to the appropriate state or tribal environmental official in the receiving facility's state or territory and to the USEPA Project Coordinator. This written notice requirement will not apply to any off-site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state or tribal environmental official referenced above and the USEPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the Removal Action and before the Waste Material is shipped.

c. Respondent may ship Investigation Derived Waste ("IDW") from the Site to an off-site facility only if they comply with section 121(d)(3) of CERCLA, 40 C.F.R. § 300.440, USEPA's *Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992) (<https://semspub.epa.gov/work/03/136166.pdf>), and any IDW-specific requirements contained in the Removal Action Work Plan. Wastes shipped off-site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-site for treatability studies, are not subject to 40 C.F.R. § 300.440.

#### 42. Permits

a. As provided in CERCLA § 121(e), and section 300.400(e) of the NCP, no permit is required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a

federal or state or tribal permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Respondent may seek relief under the provisions of Section XIII (Force Majeure) of the Settlement for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 42.a and required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. Nothing in the Settlement constitutes a permit issued under any federal or state or tribal statute or regulation.

43. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall: (a) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (b) immediately notify the USEPA Project Coordinator or, in the event of their unavailability, the Regional Duty Officer at (415) 947-8120 of the incident or Site conditions; and (c) take such actions in consultation with the USEPA Project Coordinator or authorized USEPA officer and in accordance with all applicable provisions of this Settlement, including, the Health and Safety Plan, and any other applicable deliverable approved by USEPA.

44. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondent is required to report under CERCLA § 103 or section 304 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11004, Respondent shall immediately orally notify the USEPA Project Coordinator or, in the event of their unavailability, the Regional Duty Officer at (415) 947-8120, and the National Response Center at (800) 424-8802. Respondent shall also submit a written report to USEPA within seven (7) days after the onset of such event, (a) describing the event, and (b) all measures taken and to be taken: (1) to mitigate any release or threat of release, (2) to mitigate any endangerment caused or threatened by the release; and (3) to prevent the reoccurrence of any such a release or threat of release. The reporting requirements under this Paragraph are in addition to the reporting required by CERCLA §§ 103 and 111(g) or EPCRA § 304.

45. **Progress Reports.** Commencing upon USEPA’s approval of the Removal Action Work Plan and until issuance of Notice of Completion of Work under ¶ 48, Respondent shall submit written progress reports to USEPA on a weekly basis during fieldwork, and monthly at all other times, or as otherwise directed in writing by the USEPA Project Coordinator. These reports must describe all significant developments during the preceding 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.

46. **Additional Activities.** If USEPA determines that additional actions not included in the Removal Action Work Plan or other approved plan(s) are necessary to protect public health or welfare or the environment, and such additional activities are consistent with and do not materially modify any Work set forth in the SOW, USEPA will notify Respondent of that determination. Respondent also may request modification of the approved Removal Action Work Plan or other deliverables. USEPA may notify Respondent of any modification needed under the foregoing two sentences. Respondent shall, within seventy-five (75) days thereafter, submit a revised work plan and other deliverables as necessary to USEPA for approval. Respondent shall implement the revised Removal Action Work Plan and any other deliverables upon USEPA's approval in accordance with the procedures of ¶ 40 in accordance with the approved provisions and schedule. This Paragraph does not limit the USEPA Project Coordinator's authority to make oral modifications to any plan or schedule pursuant to Section XXII.

47. **Final Removal Action Report**

a. Within sixty (60) days after completion of all Work required by this Settlement other than the continuing obligations listed in ¶ 48.a, Respondent shall submit for USEPA review and approval a Final Removal Action Report regarding the Work.

b. In addition to the requirements set forth in ¶ 47.a and the SOW, the Final Removal Action Report must also include the following certification signed by a responsible corporate official of the Respondent or Respondent's Project Coordinator: "I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

48. **Notice of Completion of Work**

a. If after reviewing the Final Removal Action Report under ¶ 47, USEPA determines that all Work, other than the continuing obligations, has been fully performed in accordance with this Settlement, USEPA will provide notice to Respondent. A notice of completion of work is not a protectiveness determination and does not affect the following continuing obligations:

- (1) implementing and maintaining the requirements of the Post-Removal Site Control Plan;
- (2) obligations under Section IX (Property Requirements);

- (3) payment of Future Response Costs; and
- (4) obligations under Section XIX (Records).

b. If USEPA determines that any Work other than the continuing obligations has not been completed in accordance with this Settlement, USEPA will so notify Respondent and provide a list of deficiencies to be corrected and a schedule for correcting them. Respondent shall promptly correct all identified deficiencies in accordance with the schedule provided and shall submit a modified Final Removal Action Report following completion of such work. Subsequent determinations by USEPA regarding completion of Work shall be handled in accordance with this Paragraph.

49. **Compliance with Applicable Law.** Nothing in this Settlement affects Respondent's obligations to comply with all applicable state, tribal, and federal laws and regulations, except as provided in section 121(e) of CERCLA, and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by USEPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state or tribal environmental or facility siting laws. Respondent shall include ARARs selected by USEPA in the Removal Action Work Plan. The activities conducted in accordance with this Settlement, if approved by USEPA, will be deemed to be consistent with the NCP as provided under section 300.700(c)(3)(ii).

50. **Work Takeover**

a. If USEPA determines that Respondent: (1) has ceased implementation of any portion of the Work required under this Section; (2) is seriously or repeatedly deficient or late in performing the Work required under this Section; or (3) is implementing the Work required under this Section in a manner that may cause an endangerment to public health or welfare or the environment, USEPA may issue a notice of Work Takeover to Respondent, including a description of the grounds for the notice and a period of time ("Remedy Period") within which Respondent shall remedy the circumstances giving rise to the notice. The Remedy Period will be twenty (20) days, unless USEPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be ten (10) days.

b. If, by the end of the Remedy Period, Respondent does not remedy to USEPA's satisfaction the circumstances giving rise to the notice of Work Takeover, USEPA may notify Respondent and, as it deems necessary, commence a Work Takeover.

c. USEPA may conduct the Work Takeover during the pendency of any dispute under Section XIV but shall terminate the Work Takeover if and when: (1) Respondent remedies, to USEPA's satisfaction, the circumstances giving rise to the notice of Work Takeover; or (2) upon the issuance of a final determination under Section XIV that USEPA is required to terminate the Work Takeover.

## IX. PROPERTY REQUIREMENTS

### 51. Agreements Regarding Access and Non-Interference

a. If the Site, or any other property where access is needed to implement this Settlement, is owned or controlled by the Respondent, Respondent shall, commencing on the Effective Date, provide USEPA, NNEPA, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement. Where any action under this Settlement is to be performed in areas owned or controlled by the Navajo Nation and/or someone other than Respondent, including any Non-Settling Owner's Affected Property, Respondent shall use best efforts to obtain all necessary agreements for access, enforceable by Respondent, USEPA, and NNEPA, within forty-five (45) days after the Effective Date, or as otherwise specified in writing by the USEPA Project Coordinator. For a Non-Settling Owner, such agreement for access will be entered on the consent form or acknowledgement form, as appropriate, provided by USEPA in consultation with NNEPA and NNDOJ.

b. The following is a non-exclusive list of activities for which access is required:

- (1) Performing, implementing, and monitoring the Work and overseeing compliance with the Settlement;
- (2) Conducting investigations regarding contamination at or near the Site;
- (3) Verifying any data or information submitted to USEPA or NNEPA;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plan ("QAPP");
- (7) Implementing the Work pursuant to the conditions set forth in ¶ 50 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section XIX (Records);
- (9) Determining whether the property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and

(10) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the property.

c. Respondent shall provide notice of the Work to all affected grazing committees and chapters of the Navajo Nation, including the Church Rock Chapter, and other interested entities, if any, using the notice form that will be provided by USEPA in consultation with NNEPA and NNDOJ.

d. Respondent shall provide copies of all executed access and/or use restriction agreements and forms to USEPA and NNEPA.

52. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Respondent would use to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access or use restriction agreements and forms, as required by this Section. If Respondent cannot accomplish what is required through “best efforts” in a timely manner, they shall notify USEPA, and include a description of the steps taken to achieve the requirements. If USEPA deems it appropriate, it may assist Respondent, or take independent action, to obtain such access and/or use restrictions.

53. If Respondent owns or controls any property at the Site, Respondent shall, prior to entering into a contract to Transfer any of its property that is part of the Site, or sixty (60) days prior to a Transfer of such property, whichever is earlier, (a) give written notice to the proposed transferee that the property is subject to this Settlement; and (b) give written notice to USEPA, NNEPA, and the State, of the proposed Transfer, including the name and address of the transferee. Respondent also agrees to require that its successors comply with this Section IX and Section XIX (Records).

54. Notwithstanding any provision of the Settlement, USEPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions, including related enforcement authorities under CERCLA, RCRA, and any other applicable statute or regulations.

## **X. FINANCIAL ASSURANCE**

55. If the Work required under Section VIII (Performance of the Work) is not completed by December 31, 2027, Respondent shall secure financial assurance, in an amount determined by USEPA based on the cost of the Work that remains to be completed (“Estimated Cost of the Work”), for the benefit of USEPA, on or before January 31, 2028. Notwithstanding any other provision of this Section, USEPA may, in its unreviewable discretion, waive the financial assurance requirement if the Estimated Cost of the Work is minimal.

56. The financial assurance must: (a) be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from USEPA; and (b) be satisfactory to USEPA. As of the date of signing this Settlement, the sample

documents can be found under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at <http://cfpub.epa.gov/compliance/models/>. Respondent may use multiple mechanisms if it is limited to surety bonds guaranteeing payment, letters of credit, trust funds, insurance policies, or some combination thereof. The following are acceptable mechanisms:

- a. a surety bond guaranteeing payment, performance of the Work, or both, that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. an irrevocable letter of credit, payable to USEPA or at the direction of USEPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;
- c. a trust fund established for the benefit of USEPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;
- d. a policy of insurance that provides USEPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;
- e. a demonstration by Respondent that it meets the relevant financial test criteria of ¶ 57, accompanied by a standby funding commitment, that requires the affected Respondent to pay funds to or at the direction of USEPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or
- f. a guarantee to fund or perform the Work executed in favor of USEPA by a company: (1) that is a direct or indirect parent company of Respondent or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with Respondent; and (2) demonstrates to USEPA’s satisfaction that it meets the financial test criteria of ¶ 58.

57. Respondent seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 56.e or ¶ 56.f shall, within thirty (30) days of USEPA’s approval of Respondent’s form of financial assurance:

- a. Demonstrate that:
  - (1) the affected Respondent or guarantor has:
    - i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

- ii. net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. tangible net worth of at least \$10 million; and
- iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected Respondent or guarantor has:

- i. a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii. tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. tangible net worth of at least \$10 million; and
- iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to USEPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from USEPA. As of the date of signature of this Settlement, a sample letter and report are available under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

58. Respondent providing financial assurance by means of a demonstration or guarantee under ¶ 56.e or ¶ 56.f shall also:

- a. annually resubmit the documents described in ¶ 57.b within ninety (90) days after the close of the affected Respondent's or guarantor's fiscal year;
- b. notify USEPA within thirty (30) days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and
- c. provide to USEPA, within thirty (30) days of USEPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in ¶ 57.b; USEPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

59. If USEPA has not issued a Notice of Completion of Work pursuant to ¶ 48 by December 31, 2027, Respondent shall, on or before January 31, 2028, seek USEPA's approval of the form of Respondent's financial assurance. Within thirty (30) days after USEPA's approval, Respondent shall secure all executed or otherwise finalized mechanisms or other documents consistent with the USEPA-approved form of financial assurance and shall submit such mechanisms and documents to USEPA in accordance with ¶ 102.

60. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify USEPA of such information within seven (7) days. If USEPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, USEPA will notify the affected Respondent of such determination. Respondent shall, within thirty (30) days after notifying USEPA or receiving notice from USEPA under this Paragraph, secure and submit to USEPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. USEPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to USEPA a proposal for a revised or alternative financial assurance mechanism, not to exceed sixty (60) days. Respondent shall follow the procedures of ¶ 62 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Settlement.

**61. Access to Financial Assurance**

a. If USEPA issues a notice of a Work Takeover under ¶ 50.b, then, in accordance with any applicable financial assurance mechanism, including the related standby funding commitment, USEPA may require: (1) the performance of the Work; and/or (2) that any funds guaranteed be paid in accordance with ¶ 61.d.

b. If USEPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least thirty (30) days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 61.d.

c. If, upon issuance of a notice of a Work Takeover under ¶ 50, either: (1) USEPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, including the related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶ 56.e or 56.f, then USEPA is entitled to demand an amount, as determined by USEPA, sufficient to cover the cost of the remaining Work to be performed. Respondent shall, within fifteen (15) days after such demand, pay the amount demanded as directed by USEPA.

d. Any amounts required to be paid under this ¶ 61 must be, as directed by USEPA: (i) paid to USEPA in order to facilitate the completion of the Work by USEPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to USEPA, USEPA may deposit the payment into the Fund or into the Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by USEPA to the Fund.

**62. Modification of Amount, Form, or Terms of Financial Assurance.** On any anniversary of the Effective Date, or at any other time agreed to by the Parties, Respondent may request to change the form, terms, or amount of the financial assurance mechanism. Respondent shall submit any such request to USEPA in accordance with ¶ 59, and shall include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. USEPA will notify Respondent of its decision regarding the request. Respondent may modify the form, terms, or the amount of the financial assurance mechanism only in accordance with: (a) USEPA's approval; or (b) any resolution of a dispute on the appropriate amount of financial assurance under Section XIV. Any decision made by USEPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum. Respondent shall submit to USEPA, within thirty (30) days after receipt of USEPA's approval, or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

**63. Release, Cancellation, or Discontinuation of Financial Assurance.** Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if USEPA issues a Notice of Completion of Work under ¶ 48; (b) in accordance with USEPA's

approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIV.

## **XI. INDEMNIFICATION AND INSURANCE**

### **64. Indemnification**

a. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as USEPA's authorized representative under section 104(e)(1) of CERCLA. Respondent shall indemnify and save and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Respondent's behalf or under its control, in carrying out activities under this Settlement, including any claims arising from any designation of Respondent as USEPA's authorized representative under section 104(e)(1) of CERCLA. Further, Respondent agrees to pay USEPA all costs it incurs including attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control in carrying out activities under this Settlement. USEPA may not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities under this Settlement. The Respondent and any such contractor may not be considered an agent of USEPA.

b. USEPA shall give Respondent notice of any claim for which USEPA plans to seek indemnification in accordance with this ¶ 64, and shall consult with Respondent prior to settling such claim.

65. Respondent covenants not to sue and shall not assert any claim or cause of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work or other activities on or relating to the Site, including claims on account of construction delays. In addition, Respondent shall indemnify and save and hold harmless the United States with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work at or relating to the Site, including claims on account of construction delays.

66. **Insurance.** Respondent shall secure, by no later than fifteen (15) days before commencing any on-site Work, the following insurance: (a) commercial general liability insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance with limits of liability of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile

liability limits. The insurance policy must name USEPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent under this Settlement. Respondent shall maintain this insurance until the first anniversary after USEPA's issuance of the Notice of Completion of Work under ¶ 48. In addition, for the duration of this Settlement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. Prior to commencement of the Work, Respondent shall provide to USEPA certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Respondent demonstrates by evidence satisfactory to USEPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to USEPA under this Paragraph identify the Old Church Rock Mine Site, Church Rock Chapter, Navajo Nation Indian Reservation, McKinley County, New Mexico and the USEPA docket number of this case.

## **XII. PAYMENTS FOR RESPONSE COSTS**

### **67. Payments by Respondent for Future Response Costs**

a. **Periodic Bills.** On a periodic basis, USEPA will send Respondent a bill for Future Response Costs, including a cost summary, listing direct and indirect costs paid by USEPA, its contractors, and subcontractors. Respondent may initiate a dispute under Section XIV regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (1) whether USEPA has made an arithmetical error; (2) whether USEPA has included a cost item that is not within the definition of Future Response Costs; or (3) whether USEPA has paid excess costs as a direct result of a USEPA action that was inconsistent with a specific provision or provisions of the NCP. Respondent shall specify in the Notice of Dispute the contested costs and the basis for the objection.

b. **Payment of Bill.** Respondent shall pay the bill, or if they initiate dispute resolution under Section XIV, the uncontested portion of the bill, if any, within sixty (60) days after receipt of the bill. Respondent shall pay the contested portion of the bill determined to be owed, if any, within sixty (60) days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late, and; (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Respondent shall make all payments at <https://www.pay.gov> using the "EPA Miscellaneous Payments Cincinnati Finance Center" link, and including references to the Site Name, Docket Number, and Site/Spill ID number and the purpose of the payment. Respondent shall send notices of this payment to USEPA in accordance with ¶ 102 and include these references.

68. **Deposit of Payments.** USEPA may, in its unreviewable discretion, deposit the amounts paid under ¶ 67 in the Fund, in the Special Account, or both. USEPA may, in its unreviewable discretion, retain and use any amounts deposited in the Special Account to conduct or finance response actions at or in connection with the Site, or transfer those amounts to the Fund.

### **XIII. FORCE MAJEURE**

69. “Force majeure,” for purposes of this Settlement, means any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent’s contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent’s best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Respondent exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work or increased cost of performance.

70. If any event occurs for which Respondent will or may claim a force majeure, Respondent shall notify the USEPA Project Coordinator by email. The deadline for the initial notice is within seven (7) days after the date Respondent first knew or should have known that the event would likely delay performance. Respondent shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Respondent knew or should have known. Within five (5) days thereafter, Respondent shall send a further notice to USEPA that includes: (a) a description of the event and its effect on Respondent’s completion of the requirements of the Settlement; (b) a description of all actions taken or to be taken to prevent or minimize the adverse effects or delay; (c) the proposed extension of time for Respondent to complete the requirements of the Settlement; (d) a statement as to whether, in the opinion of the Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment; and (e) all available proof supporting its claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Respondent from asserting any claim of force majeure regarding that event, provided, however, that if USEPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 69 and whether Respondent has exercised best efforts under ¶ 69, USEPA may, in its unreviewable discretion, excuse in writing Respondent’s failure to submit timely or complete notices under this Paragraph.

71. USEPA will notify Respondent of its determination whether Respondent is entitled to relief under ¶ 69, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. Respondent may initiate dispute resolution under Section XIV regarding

USEPA's determination within fifteen (15) days after receipt of the determination. In any such proceeding, Respondent has the burden of proving that it is entitled to relief under ¶ 69 and that its proposed extension was or will be warranted under the circumstances.

72. The failure by USEPA to timely complete any activity under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondent from timely completing a requirement of the Settlement, Respondent may seek relief under this Section.

#### **XIV. DISPUTE RESOLUTION**

73. Unless otherwise provided in this Settlement, Respondent shall use the dispute resolution procedures of this Section to resolve any dispute arising under this Settlement.

74. A dispute will be considered to have arisen when Respondent sends a written notice of dispute ("Notice of Dispute") to USEPA. Disputes arising under this Settlement must in the first instance be the subject of informal negotiations between the Parties. If Respondent objects to any USEPA action taken pursuant to this Settlement, it shall send USEPA a Notice of Dispute describing the objection(s) within seven (7) days after such action. The period for informal negotiations may not exceed twenty (20) days after the dispute arises, unless USEPA otherwise agrees. If the Parties cannot resolve the dispute by informal negotiations, the position advanced by USEPA is binding unless Respondent initiates formal dispute resolution under ¶ 75. By agreement of the parties, mediation may be used during this informal negotiation period to assist the parties in reaching a voluntary resolution or narrowing of the matters in dispute.

##### **75. Formal Dispute Resolution**

a. **Statements of Position.** Respondent may initiate formal dispute resolution by submitting, within seven (7) days after the conclusion of informal dispute resolution under ¶ 74, an initial Statement of Position regarding the matter in dispute. The USEPA's responsive Statement of Position is due within twenty (20) days after receipt of the initial Statement of Position. All Statements of Position must include supporting factual data, analysis, opinion, and other documentation. If appropriate, USEPA may extend the deadlines for filing statements of position for up to fifteen (15) days and may allow the submission of supplemental statements of position.

b. **Formal Decision.** The Director of the Superfund & Emergency Management Division, USEPA Region 9, will issue a formal decision resolving the dispute ("Formal Decision") based on the statements of position and any replies and supplemental statements of position. The Formal Decision is binding on Respondent, and shall be incorporated into and become an enforceable part of this Settlement.

76. **Escrow Account.** For disputes regarding a Future Response Cost billing, Respondent shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing

escrow account that is insured by the Federal Deposit Insurance Corporation (“FDIC”); (b) remit to that escrow account funds equal to the amount of the contested Future Response Costs; and (c) send to USEPA a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that established and funded the escrow account, including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. USEPA may, in its unreviewable discretion, waive the requirement to establish the escrow account. Respondent shall cause the escrow agent to pay the amounts due to USEPA under ¶ 67, if any, by the deadline for such payment in ¶ 67. Respondent is responsible for any balance due under ¶ 67 after the payment by the escrow agent.

77. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Settlement, except as USEPA agrees. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 80.

### **XV. STIPULATED PENALTIES**

78. Unless the noncompliance is excused under Section XIII (Force Majeure), Respondent is liable to USEPA for the following stipulated penalties:

a. for any failure: (1) to pay any Future Response Costs amount due under Section XII; (2) to establish and maintain financial assurance in accordance with Section X; (3) to establish any escrow account required under ¶ 76; (4) to use best efforts to secure access agreements or consent to access pursuant to ¶ 51; and (5) to submit timely or adequate deliverables, specifically, the following deliverables required under the SOW: Removal Action Work Plan, Field Sampling Plan, Post-Removal Site Control Plan, Work Completion Report, and Final Removal Action Report:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$1,500
15th through 30th day	\$2,000
31st day and beyond	\$3,500

b. for any failure to submit timely or adequate deliverables required by this Settlement other than those specified in ¶ 78.a:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$750
15th through 30th day	\$1,500
31st day and beyond	\$2,500

79. **Work Takeover Penalty.** If USEPA commences a Work Takeover under ¶ 50, Respondent is liable for a stipulated penalty in the amount of \$250,000. This stipulated penalty is in addition to the remedy available to USEPA under ¶ 61 (Access to Financial Assurance).

80. **Accrual of Penalties.** Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Settlement prevents the simultaneous accrual of separate penalties for separate noncompliances with this Settlement. Stipulated penalties accrue regardless of whether Respondent has been notified of its noncompliance, and regardless of whether Respondent has initiated dispute resolution under Section XIV, provided, however, that no penalties will accrue as follows:

a. with respect to a submission that USEPA subsequently determines is deficient, during the period, if any, beginning on the 31st day after USEPA's receipt of such submission until the date that USEPA notifies Respondent of any deficiency; or

b. with respect to a matter that is the subject of dispute resolution under Section XIV, during the period, if any, beginning on the 21st day after USEPA's Statement of Position is received until the date of the Formal Decision under ¶ 75.b.

81. **Demand and Payment of Stipulated Penalties.** USEPA may send Respondent a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. Respondent may initiate dispute resolution under Section XIV within thirty (30) days after receipt of the demand. Respondent shall pay the amount demanded or, if they initiate dispute resolution, the uncontested portion of the amount demanded, within sixty (60) days after receipt of the demand. Respondent shall pay the contested portion of the penalties determined to be owed, if any, within sixty (60) days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late, and; (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment. Respondent shall make payment at <https://www.pay.gov> using the link for "EPA Miscellaneous Payments Cincinnati Finance Center," including references to the Site Name, Docket Number, and Site/Spill ID number and the purpose of the payment. Respondent shall send notices of this payment to USEPA. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Respondent under the Settlement.

82. Nothing in this Settlement limits the authority of the USEPA to seek any other remedies or sanctions available by virtue of Respondent's noncompliances with this Settlement or of the statutes and regulations upon which it is based, including penalties under sections 106(b) and 122(l) of CERCLA, and punitive damages pursuant to section 107(c)(3), provided, however, that the USEPA may not seek civil penalties under section 122(l) of CERCLA for any noncompliance for which a stipulated penalty is provided for in this Settlement, except in the case of a willful noncompliance with this Settlement or in the event that USEPA assumes performance of a portion or all of the Work pursuant to ¶ 50 (Work Takeover).

83. Notwithstanding any other provision of this Section, the USEPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Settlement.

## **XVI. COVENANTS BY USEPA**

84. **Covenants for Respondent.** Subject to ¶ 86, USEPA covenants not to sue or to take administrative action against Respondent under sections 106 and 107(a) of CERCLA regarding the Work and Future Response Costs.

85. The covenants under ¶ 84: (a) take effect upon the Effective Date; (b) are conditioned on the complete and satisfactory performance by Respondent of the requirements of this Settlement; (c) extend to the successors of Respondent but only to the extent that the alleged liability of the successor of the Respondent is based solely on its status as a successor of the Respondent; and (d) do not extend to any other person.

86. **General Reservations.** Notwithstanding any other provision of this Settlement, USEPA reserves, and this Settlement is without prejudice to, all rights against Respondent regarding the following:

- a. liability for failure by Respondent to meet a requirement of this Settlement;
- b. liability for performance of response action other than the Work;
- 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 arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- e. criminal liability.

87. Subject to ¶ 84, nothing in this Settlement limits any authority of USEPA to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or to request a Court to order such action.

## **XVII. COVENANTS BY RESPONDENT**

### **88. Covenants by Respondent**

a. Subject to ¶ 89, Respondent covenants not to sue and shall not assert any claim or cause of action against the United States under CERCLA, section 7002(a) of RCRA, the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the Navajo Nation Code or the common law of the Navajo Nation, the New

Mexico Constitution, New Mexico law, or at common law regarding the Work, Future Response Costs, and this Settlement.

b. Subject to ¶ 89, Respondent covenants not to seek reimbursement from the Fund through CERCLA or any other law for costs of the Work, Future Response Costs, or any claim arising out of response actions at or in connection with the Site.

**89. Respondent's Reservation.** The covenants in ¶ 88 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 86.a through 86.e.

**90. De Micromis Waiver.** Respondent shall not assert any claims and waive all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of CERCLA) that it may have for all matters relating to the Site against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials. This waiver does not apply to any claim or cause of action against any person otherwise covered by such waiver if USEPA determines that: (a) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (b) such person has failed to comply with any information request or administrative subpoena issued under sections 104(e) or 122(e)(3)(B) of CERCLA or section 3007 of RCRA with respect to the Site, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (c) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise. This waiver does not apply with respect to any defense, claim, or cause of action that Respondent may have against any person otherwise covered by this waiver if such person asserts a claim or cause of action relating to the Site against Respondent.

91. Respondent agrees not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

### **XVIII. EFFECT OF SETTLEMENT; CONTRIBUTION**

92. The Parties agree that: (a) this Settlement constitutes an administrative settlement under which Respondent has, as of the Effective Date, resolved its liability to USEPA within the meaning of sections 113(f)(2), 113(f)(3)(B), and 122(h)(4) of CERCLA; and (b) Respondent 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. The “matters addressed” in this Settlement are the Work, and Future Response Costs, provided, however, that if USEPA exercises rights against Respondent under the reservations in ¶¶ 86.a through 86.e, the “matters addressed” in this Settlement do not include those response costs or response actions that are within the scope of the exercised reservation.

93. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify USEPA no later than sixty (60) days prior to the initiation of such suit or claim. Respondent shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify USEPA within ten (10) days after service of the complaint on Respondent. In addition, Respondent shall notify USEPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial.

94. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated against Respondent by USEPA or by the United States on behalf of USEPA for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (*res judicata*), issue preclusion (*collateral estoppel*), claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case.

95. Except as provided in ¶ 90, nothing in this Settlement creates any rights in, or grants any defense or cause of action to, any person not a Party to this Settlement. Except as provided in Section XVII (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including pursuant to section 113 of CERCLA), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States under section 113(f)(2) and (3) of CERCLA to pursue any person not a Party to this Settlement 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).

## **XIX. RECORDS**

96. **Respondent’s Certification.** Respondent certifies individually that: (a) to the best of its knowledge and belief, after thorough inquiry it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the Navajo Nation or the State; and (b) it has fully complied with any and all USEPA requests for information under sections 104(e) and 122(e) of CERCLA, and section 3007 of RCRA.

**97. Retention of Records and Information**

a. Respondent shall retain, and instruct its contractors and agents to retain, the following documents and electronically stored data (“Records”) until ten (10) years after the Notice of Completion of the Work under ¶ 48.a (“Record Retention Period”):

- (1) All records regarding Respondent’s liability and the liability of any other person under CERCLA regarding the Site;
- (2) All reports, plans, permits, and documents submitted to USEPA in accordance with this Settlement, including all underlying research and data;
- (3) All data developed by, or on behalf of, Respondent in the course of performing the Work; and
- (4) Any other records related to the Work and the Site.

b. At the end of the Record Retention Period, Respondent shall notify USEPA, the Navajo Nation, and the State that they have ninety (90) days to request the Respondent’s Records subject to this Section. Respondent shall retain and preserve its Records subject to this Section until ninety (90) days after USEPA’s, the Navajo Nation’s, and the State’s receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

98. Respondent shall provide to USEPA, the Navajo Nation, and the State, upon request, copies of all Records and information required to be retained under this Section. Respondent shall also make available to USEPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

**99. Privileged and Protected Claims**

a. Respondent may assert that all or part of a record requested by USEPA is privileged or protected as provided under federal law, in lieu of providing the record, provided that Respondent complies with ¶ 99.b, and except as provided in ¶ 99.c.

b. If Respondent asserts a claim of privilege or protection, it shall provide USEPA with the following information regarding such record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a record, Respondent shall provide the record to USEPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all records that it claims to be privileged or protected until USEPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent’s favor.

c. Respondent shall not make any claim of privilege or protection regarding: (1) any data regarding the Site, including all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any record that Respondent is required to create or generate in accordance with this Settlement.

100. **Confidential Business Information Claims.** Respondent is entitled to claim that all or part of a record submitted to USEPA under this Section is Confidential Business Information (“CBI”) that is covered by section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Respondent shall segregate all records or parts thereof submitted under this Settlement which it claims is CBI and label them as “claimed as confidential business information” or “claimed as CBI.” Records that a submitter properly labels in accordance with the preceding sentence will be afforded the protections specified in 40 C.F.R. part 2, subpart B. If the records are not properly labeled when they are submitted to USEPA, or if USEPA notifies the submitter that the records are not entitled to confidential treatment under the standards of section 104(e)(7) of CERCLA or 40 C.F.R. part 2, subpart B, the public may be given access to such records without further notice to the submitter.

101. Notwithstanding any provision of this Settlement, USEPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## **XX. NOTICES AND SUBMISSIONS**

102. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Settlement must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Settlement, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to USEPA: *via email to:*

[Larsen.Kenyon@epa.gov](mailto:Larsen.Kenyon@epa.gov)

Re: Old Church Rock Mine Site/A9DU

As to NNEPA: *via email to:*

[s.etsitty@navajo-nsn.gov](mailto:s.etsitty@navajo-nsn.gov)

As to Respondents: *via email to:*

[josh@laramide.com](mailto:josh@laramide.com)

## **XXI. APPENDIXES**

103. The following appendixes are attached to and incorporated into this Settlement:

“Appendix A” is the Statement of Work.

## **XXII. MODIFICATIONS**

104. The USEPA Project Coordinator may make reasonable modifications of any plan or schedule or SOW in writing or by oral direction. USEPA will promptly memorialize in writing any oral modification, which will be effective on the date of the USEPA Project Coordinator’s oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

105. If Respondent seeks permission to deviate from any approved Removal Action Work Plan or schedule or the SOW, Respondent’s Project Coordinator shall submit a written request to USEPA for approval outlining the proposed modification and its basis. Respondent may not proceed with a requested deviation until receiving oral or written approval from the USEPA Project Coordinator pursuant to ¶ 104.

106. No informal advice, guidance, suggestion, or comment by the USEPA Project Coordinator or other USEPA representatives regarding any deliverable submitted by Respondent relieves Respondent of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

## **XXIII. SIGNATORIES**

107. The undersigned representative of USEPA and the undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind such party to this Settlement.

## **XXIV. INTEGRATION**

108. This Settlement constitutes the entire agreement among the Parties regarding the subject matter of the Settlement and supersedes all prior representations, agreements and understandings, whether oral or written, regarding the subject matter of the Settlement.

## **XXV. EFFECTIVE DATE**

109. This Settlement is effective when USEPA issues notice to Respondent that the Regional Administrator or his/her delegatee has signed the Settlement.

**IT IS SO AGREED AND ORDERED:**

**BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY:**

4/1/2026

\_\_\_\_\_  
Dated

/s/

\_\_\_\_\_  
Will C. Duncan III  
Assistant Director  
Superfund & Emergency Management Division, Region 9



## APPENDIX A

### STATEMENT OF WORK FOR ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR INTERIM REMOVAL ACTION OLD CHURCH ROCK MINE SITE

#### 1. Introduction

- 1.1 This Statement of Work identifies the components of Work required pursuant to the Settlement for performance of an interim time-critical removal action to consolidate and stabilize contaminated soil and mine waste at the Old Church Rock Mine Site (generally depicted in Attachment 1 to this SOW). Under this SOW, Respondent shall prepare and submit the items identified below, and implement such items and other requirements of this SOW.
- 1.2 The Work includes actions at four Areas of Concern (shown in Attachment 2 to this SOW), as described below, and each Area of Concern (“AOC”) is located within Section 17:
- (a) **AOC 1 – Historical waste disposal on grazing land east of Route 566 (approximately 0.3 acre).** Action at this AOC shall include excavating approximately 484 cubic yards (“CY”) of contaminated soil and waste, at a minimum depth of one foot below ground, from a former waste deposition area east of Route 566 and transporting the waste less than 0.25 miles to an on-site stockpile in or adjacent to Pond #4. The excavation shall be backfilled to grade with clean soil and revegetated with endemic grazing vegetation. Purpose: prevent direct contact exposure to waste and livestock grazing on waste in grazing area.
  - (b) **AOC 2 – An on-site berm constructed with contaminated material (approximately 1 acre).** Action at this AOC shall consist of removing the berm by excavating approximately 4,598 CY of contaminated soil and waste, at a minimum depth of one foot below ground, and placing the removed waste in or adjacent to Pond #4 to ensure that drainage stays on the Site. Purpose: prevent migration of waste via overland flow to the nearby unnamed arroyo.
  - (c) **AOC 3 – Waste located on the southeastern bank of the unnamed arroyo for approximately 600 feet (approximately 0.5 acre).** Action at this AOC shall consist of excavating approximately 887 CY of waste, at a minimum depth of one foot below ground, and consolidating the waste in or adjacent to Pond #4. The excavation shall be backfilled to grade with clean soil or it may be backfilled with

the treated coarse fraction from high-pressure slurry ablation (“HPSA,” a type of treatment technology that may be used at the Site), if such treatment is performed on-site and it does not exceed a gamma count rate of 35,000 counts per minute (“cpm”) for the Site. This action shall include recontouring of the bank to prevent surface runoff migrating to the unnamed arroyo (keeping runoff on-site). Purpose: prevent migration of waste via overland flow and mass wasting to the adjacent unnamed arroyo.

- (d) **AOC 4 – Waste located on the Site covering approximately 17 acres.** This action requires using an environmentally compatible soil stabilization technology on unvegetated areas of AOC 4 to prevent windblown and fluvial migration off-site (e.g., biomat, Gorilla Snot) or covering unvegetated areas of AOC 4 with no less than 6 inches of clean soil and/or treated coarse fraction from HPSA instead of biomat or other soil stabilization technology, if such treatment is performed on-site and it does not exceed 35,000 cpm gamma count rate for the Site. Purpose: prevent windblown migration of waste off the Site.

- 1.3** If Respondent or its contractors use a treatment technology (such as HPSA) at the Site, such treatment technology will be considered Work required under and subject to the terms of the Settlement and this SOW. Waste that undergoes HPSA or similar treatment and remains on-site may be used in lieu of clean cover and/or soil stabilization technology for AOCs 2, 3 and 4 to prevent windblown and fluvial migration off-site pursuant to the requirements under ¶ 1.2(b) through (d) of this SOW, provided that the gamma scanning results required and specified under ¶ 4.1 of this SOW are met. If treated coarse fraction from HPSA is used for AOCs 2, 3 and 4 and do not meet the gamma scanning results under ¶ 4.1, then clean soil cover of no less than 6 inches will be required for these AOCs.
- 1.4** If Respondent or its contractors use a treatment technology (such as HPSA), USEPA and its contractor retain the right to oversee all aspects of the implementation of the treatment technology, including collection of samples or split samples of all sampling conducted by Respondent or its contractors in accordance with ¶¶ 37.c and 37.d of the Settlement.
- 1.5** The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Settlement, have the meanings assigned to them in CERCLA, in such regulations, or in the Settlement, except that the term “Paragraph” or “¶” means a paragraph of the SOW, and the term “Section” means a section of the SOW, unless otherwise stated.

## **2. Surveys and Clearances**

- 2.1 Biological Resource Consultation.** Respondent shall complete biological resource consultation with the Navajo Nation Department of Fish & Wildlife (“NNDFW”), and obtain any related approvals required by NNDFW, for Work to be performed under this SOW. This consultation process shall include USEPA. USEPA will share recent biological survey reports and consultation conducted with NNDFW regarding USEPA’s 2022/2023 Removal Assessment. Respondent shall adhere to all requirements stipulated as a result of consultation by NNDFW and USEPA regarding protection of biological resources and provided in any related approvals obtained from NNDFW. This consultation and any resulting necessary actions are consistent with federal and tribal biological resource laws for the Site.
- 2.2 Cultural Resource Consultation.** Respondent shall complete cultural resource consultation with the Navajo Nation Heritage and Historic Preservation Department (“NNHHPD”), and obtain any related approvals required by NNHHPD, for Work to be performed under this SOW. This consultation process shall include USEPA. USEPA will share recent cultural resource survey reports and consultation conducted with NNHHPD regarding USEPA’s 2022/2023 Removal Assessment. Respondent shall adhere to all requirements stipulated as a result of consultation with NNHHPD and USEPA regarding protection of cultural resources and provided in any related approvals obtained from NNHHPD. This consultation and any resulting necessary actions are consistent with federal and tribal cultural resource laws for the Site.
- 2.3 Utility Clearances.** Prior to any construction, Respondent shall perform all necessary utility clearances to mark underground utilities. Additional underground utility investigation may be necessary where maps or information are inadequate.

## **3. Meetings, Inspections, and Site Visits**

- 3.1 Preconstruction Conference.** Respondent shall organize and hold a preconstruction conference (kickoff meeting) with USEPA, NNEPA, contractors, and others as directed or approved by USEPA. The Preconstruction Conference can be in-person or virtual. The purpose of the preconstruction conference is to: review the TCRA; discuss key quality control components of the Work; review the Removal Action Construction Schedule and all key milestones; discuss community concerns and needs; and review communication procedures. Respondent shall submit an agenda for USEPA’s approval two (2) days prior to the preconstruction conference. Respondent shall prepare minutes of the conference and shall distribute the minutes to all parties no later than one week following the meeting.

**3.2 Weekly Meetings.** As required by USEPA, beginning one week after the preconstruction conference and for the duration of the excavation and construction activities at the Site, Respondent or its contractor, health and safety officer, and Project Coordinator, as appropriate, shall participate in weekly meetings with USEPA and NNEPA to discuss implementation of and costs associated with the Work. Weekly meetings can be in-person or virtual. Prior to the first weekly meeting, Respondent shall submit a current Removal Action Construction Schedule. The schedule shall be updated weekly as needed and submitted with the final daily report of the work week as required under ¶ 45 (Progress Reports) of the Settlement. Weekly meetings shall occur during normal business hours at a time determined by USEPA. Respondent shall distribute an agenda and list of attendees to all parties prior to each meeting, and prepare and distribute minutes of the meetings to all parties no later than one week following the meetings.

**3.3 Periodic Meetings.** As requested by USEPA, Respondent shall participate in meetings with USEPA and NNEPA, and their contractors and personnel, to discuss urgent topics.

**3.4 Daily Briefings and Site Visits**

- (a) Respondent or its Supervising Contractor or representative shall conduct daily briefings regarding safety each morning before beginning excavation, construction, or other fieldwork activities at the Site with all contractors, subcontractors, and personnel on-site. Respondent shall also conduct safety briefings with all visitors upon arrival to the Site.
- (b) All visitors and Respondent’s personnel, representatives, contractors, and subcontractors shall be appropriately attired with personal protective equipment (“PPE”) before entering the Site.

**3.5 Inspections**

- (a) USEPA or its representative shall conduct: (1) periodic inspections of and/or have an on-site presence during excavation, construction, and other fieldwork activities, including sample collection and gamma scanning; (2) final inspections, as needed, to confirm completion of the Work in accordance with ¶ 48 (Notice of Work Completion) of the Settlement; and (3) inspections of post-removal site controls. NNEPA or its representative may also conduct such inspections. At USEPA’s request, the Supervising Contractor or other designee shall accompany USEPA or its representative during inspections.

- (b) Upon notification by USEPA of any deficiencies in the Work, Respondent shall take all necessary steps to correct the deficiencies and/or bring the Work into compliance with the approved RAWP. If applicable, Respondent shall comply with any schedule provided by USEPA in its notice of deficiency.

#### **4. Gamma Scanning and Sampling**

- 4.1** Respondent shall conduct gamma scanning and sampling as required by USEPA and in accordance with ¶ 37 (Quality Assurance, Sampling, and Data Analysis) and ¶ 40.b (Technical Specifications for Deliverables) of the Settlement, including gamma scanning prior to performing excavation and construction activities at any AOC to refine the excavation footprint, and gamma scanning and sampling of excavated areas prior to adding backfill/cover soil to the area. Gamma scanning shall also be performed at locations where the treated coarse fraction from HPSA is used as cover. Gamma scanning results shall not exceed a 35,000 cpm gamma count rate. This gamma count rate level is an interim level to address the goals of the interim time-critical removal action (“TCRA”) required by the Settlement. Gamma scanning shall be conducted using a 2-inch by 2-inch sodium iodide (“NaI”) detector at one meter above the soil surface. The recommended detector is a Ludlum Model 44-10 (or equivalent) and the recommended survey ratemeter is the Ludlum Model 3000 or similar. The detector and ratemeter shall have undergone annual calibration within a year of the use at the Site, and shall undergo daily quality control measurements on the day of use. Note that gamma detectors typically do not read gamma energy of greater than 6 inches below the soil surface. Application of treated coarse fraction material from HPSA placed as cover over areas of higher gamma radiation may have higher cpm gamma measurements if there is insufficient cover depth (less than 6 inches).
- 4.2** Respondent shall submit all gamma scanning and sampling data to USEPA and NNEPA.
- 4.3** **Working Hour Restrictions.** Unless otherwise directed or approved by USEPA, Respondent shall only perform on-site fieldwork activities (including gamma scanning, sampling, surveys, excavation, and construction), during the following weekday and weekend hours: 7:00 am – 6:00 pm from Monday – Friday, and 9:00 am – 6:00 pm on Saturday.

#### **5. Deliverables**

- 5.1** **General Requirements.** All deliverables must be submitted in accordance with ¶ 40 (Deliverables: Specifications and Approval) and ¶ 102 of the Settlement, and by the deadlines in the Removal Action Schedule (¶ 6.2). Respondent shall develop the

deliverables in accordance with all applicable regulations, guidances, and policies (see Section 7 (References)). Respondent shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by USEPA. The Removal Action Work Plan (5.1(a)) can incorporate items 5.1(b) to 5.1(i) as attachments or sections within the Work Plan.

- (a) **Removal Action Work Plan (“RAWP”).** Respondent shall submit a RAWP for USEPA approval that provides details of all approaches, methods, and equipment for performance of the Work, including:
- (1) A proposed Removal Action Construction Schedule for the duration of the Work to be performed at the Site, such as a critical path method, Gantt chart, or Program Evaluation and Review Techniques (“PERT”) chart, which includes all milestones and actions required to complete the Work;
    - (i) The Removal Action Construction Schedule may provide that initiation of Work in AOCs 2, 3 and 4 can occur up to six months following completion of Work in AOC 1, provided that all Work must be completed within 12 months of approval of the RAWP if treatment technology is not used at the Site. If a treatment technology is used to treat waste at the Site and the treated coarse fraction from HPSA is used as cover, then all Work for AOCs 2, 3, and 4 must be completed within 20 months of approval of RAWP (see ¶ 6.2 (Removal Action Schedule)).
  - (2) A description of all Site preparation activities, including clearing and grubbing areas to be excavated; installing temporary fencing, barricades, and repairing fencing (as needed); constructing and repairing roads necessary for Site access; and preparing and maintaining equipment and material staging areas;
  - (3) A description of security and access control mechanisms to prevent trespass and damage to the Site;
  - (4) A description of how the Site will be appropriately marked, maintained, and equipped with adequate signage, notices, and facilities (including offices, sanitation and decontamination facilities);
  - (5) A plan and any needed equipment (such generators) for establishing access to power at the Site, considering green sources of power (such as

solar and wind generation) and USEPA's Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>;

- (6) Identification of the clean backfill/cover soil materials and water sources that will be used for excavation and construction activities;
- (7) A description of monitoring and control measures to protect human health and the environment, including: air and dust monitoring and associated monitoring stations to ensure emissions during dust-or-emission-generating activities (including Site preparation, trucking and transportation activities, construction activities, excavation and backfill, stockpiling (staging), loading of bulk-carriers, stockpile management, and consolidation) are monitored; dust prevention and dust suppression controls that will be implemented to maintain a safe working environment; spill prevention and contamination controls measures to minimize contamination of clean areas at the Site and surrounding areas; and measures to reduce and manage traffic, noise, odors, dust, storm water, and erosion during the selected removal action in accordance with the Community Involvement Handbook pp. 53-66 (text box on p. 55) to minimize community impacts;
- (8) A description of all treatment technology (such as HPSA) that will be used at the Site;
- (9) Methods or approaches for excavation and stabilizing surface soils to prevent off-site migration of contamination, considering the following factors:
  - (i) protection of existing vegetation;
  - (ii) use of non-chemical soil stabilization materials or clean soil cover;
  - (iii) protection of wildlife activity; and
  - (iv) visual aesthetics consistent with the natural landscape; and
- (10) Plans for satisfying permitting requirements, if any, including obtaining permits for off-site activity and for satisfying substantive requirements of permits for on-site activity.

- (b) **Waste Treatment Work Plan (“WTWP”).** A work plan shall be provided to USEPA of all treatment technology (such as HPSA) that will be used at the Site. The WTWP shall describe how the treatment technology will be implemented, including: the area(s) of the Site that will be impacted; the specific waste (including volumes) involved; the equipment and resources (e.g., water, electricity) that will be used; the names of the proposed contractor(s) who will perform the treatment technology activities; a timeline for implementing and completing all treatment technology activities, consistent with ¶ 6.2 (Removal Action Schedule) of this SOW; how the treatment technology activities that occur on-site will comply with all ARARs selected for the Site; how the treatment technology activities that occur off-site will comply with all applicable state, tribal, local, and federal laws and regulations; the names of facilities proposed for off-site disposal of waste that undergoes treatment technology and confirmation that the facilities and any off-site disposal comply with section 121(d)(3) of CERCLA, 40 C.F.R. § 300.440, and ¶ 41 (Off-Site Shipments) of the Settlement.
- (c) **Field Sampling Plan (“FSP”).** The FSP addresses all sample collection activities and shall be consistent with ¶ 37 (Quality Assurance, Sampling, and Data Analysis) of the Settlement. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. Respondent shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).
- (d) **Quality Assurance Project Plan (“QAPP”).** The QAPP must include a detailed explanation of Respondent’s quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. Respondent shall develop the QAPP in accordance with USEPA Directive CIO 2105.1 (Environmental Information Quality Policy, 2021), the most recent version of *Quality Management Systems for Environmental Information and Technology Programs – Requirements with Guidance for Use*, ASQ/ANSI E-4 (Feb. 2014, and *Guidance for Quality Assurance Project Plans*, EPA QA/G-5, USEPA Office of Environmental Information (Dec. 2002). Respondent shall collect, produce, and evaluate all environmental information at the Site in accordance with the approved QAPP.
- (e) **Construction Quality Control Plan (“CQCP”).** Respondent shall prepare a CQCP that addresses quality control methods for all aspects of earth moving, backfilling, compacting, and restoration. The CQCP shall provide a means to

maintain effective quality control at the Site. The quality control measures shall include quality control organization; methods of performing, documenting, and enforcing quality control operations of both the primary contractor and subcontractors (including inspection and testing); inspections to be performed; and protocol describing corrective actions.

- (f) **Transportation and Disposal Plan (“TODP”).** Respondent shall prepare and implement a TODP that includes:
- (1) A description of how material will be managed for transportation and on-site disposal activities (including details on hauling Waste Material from the AOCs to Pond #4), as well as during treatment technology activities, to minimize contamination of clean areas and identify modes of transportation and proposed routes;
  - (2) Requirements for using proposed routes and roads, including Indian Route 566, and plans for satisfying such requirements;
  - (3) Identification of any existing roads that need repairs and any new roads that need to be constructed to access the Site, and plans for repairing and constructing such roads;
  - (4) A contingency plan in the event of a spill, consistent with ¶ 43 (Emergency Response) and ¶ 44 (Release Reporting) of the Settlement;
  - (5) Plans for radiological scanning and decontamination of trucks;
  - (6) Plans to ensure compliance with ¶ 41 (Off-Site Shipments) of the Settlement, if Waste Material will be shipped off-site; and
  - (7) Description of plans to minimize impacts (*e.g.*, noise, traffic, dust, odors) on affected communities.
- (g) **Traffic Control Plan.** Respondent shall prepare and implement a Traffic Control Plan, which shall provide locations, details of traffic flow, and controls implemented on roads around, adjacent to, and required for access to the Site, including Indian Route 566 and the United States Department of the Interior’s Bureau of Land Management (“BLM”) roads, to ensure safety of workers and the community and compliance with applicable traffic laws. The Traffic Control Plan shall include details on signage and turn-outs that will be used to support traffic flow and controls. To mitigate potential traffic congestion, truck loading areas

shall be located away from the main road as much as possible. Community preferences and acceptance should be considered in developing this plan.

- (h) **Stormwater Pollution Prevention Plan (“SWPPP”).** Respondent shall prepare and implement, prior to any soil-disturbing activities, a SWPPP in accordance with the 2022 National Pollutant Discharge Elimination System Construction General Permit (“CGP”). The SWPPP may provide for the installation of physical erosion and sediment control structures such as straw bales, on-site berms, drainage ditches, biodegradable matting and coir logs, silt fences, fiber rolls, sedimentation basins, check dams, and rock fields and covers.
- (i) **Post-Removal Site Control Plan.** The Post-Removal Site Control Plan (“PRSC Plan”) describes the requirements for inspecting, repairing, maintaining, and implementing the TCRA. Respondent shall develop the PRSC Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The PRSC Plan must include the following additional requirements:
- (1) Description of Performance Standards required to be met to implement the TCRA;
  - (2) Description of activities to be performed: (i) to provide confidence that Performance Standards will be met; and (ii) to determine whether Performance Standards have been met;
  - (3) Plans for the restoration of all areas that are disturbed during the performance of the TCRA, including backfilling; regrading, consistent with the natural topography; revegetation using native plants and consistent with and according to Navajo Fish and Wildlife guidance, [https://www.nndfw.org/dnpp/docs/Handbook\\_Restoring\\_Plants\\_to\\_NN\\_Lands.pdf](https://www.nndfw.org/dnpp/docs/Handbook_Restoring_Plants_to_NN_Lands.pdf)); temporary and permanent erosion controls, including to minimize any surface overland flow toward the unnamed arroyo; physical Site controls (such as fencing), and drainage features; and
  - (4) Plans to periodically inspect the Site, as required by USEPA, for two (2) years after construction is complete, unless USEPA determines additional time for inspections is needed, and to schedule repairs and maintenance as needed, with notification to USEPA of such inspections and repairs.

- (j) **Final Removal Action Report.** Respondent shall submit a Final Removal Action Report regarding the Work and in accordance with this Section 5.1(j) and ¶ 47 (Final Removal Action Report) of the Settlement. The Final Removal Action Report must:
- (1) summarize the actions taken to comply with the Settlement and SOW;
  - (2) summarize the final status of each of the four AOCs, including:
    - (i) a description of the Work completed and conditions of all four AOCs at completion of the removal action;
    - (ii) sampling and scanning results of all four AOCs;
    - (iii) a description of any deviations from the RAWP and description of approval provided by USEPA; and
    - (iv) any updates to the monitoring and maintenance requirements for the PRSC Plan;
  - (3) conform to the requirements of section 300.165 of the NCP (“OSC Reports”), and with USEPA’s *Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports* (OSWER Directive No. 9360.3-03, June 1, 1994);
  - (4) list the quantities and types of materials removed off-site or handled on-site;
  - (5) describe the removal and disposal options considered for those materials;
  - (6) identify the ultimate destination(s) of those materials;
  - (7) include the analytical results of all sampling and analyses performed; and
  - (8) include all relevant documentation generated during the Work (e.g., manifests, invoices, bills, contracts, and permits) and the total costs incurred to complete the Work, including a separate line item for any treatment technology employed.
- (k) **PRSC Annual Reports.** Respondent shall submit three (3) annual reports following the removal action detailing the condition of the Site and how PRSCs

are functioning. The PRSC Annual Reports will be submitted annually to USEPA for three years starting on the anniversary of the final Removal Action Report. The PRSC annual reports shall summarize the monitoring and maintenance at the four AOCs, including:

- (1) description of the conditions of all four AOCs based on a recent inspection;
- (2) photos with descriptions of the four AOCs;
- (3) descriptions of any maintenance activities that occurred within the past year;
- (4) identification of any repairs or maintenance activities that may be required, and timeline for performing such activities; and
- (5) description of any event(s) that triggered an inspection.

## **6. Schedules**

**6.1 Applicability and Revisions.** All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the Removal Action Schedule set forth below. Respondent may submit proposed revised Removal Action Schedule for USEPA approval. Upon USEPA's approval, the revised Removal Action Schedule supersedes the Removal Action Schedule set forth below, and any previously approved Removal Action Schedules.

## 6.2 Removal Action Schedule

	Description of Deliverable / Task	¶ Ref.	Deadline
1	RAWP and deliverables listed under ¶ 5.1(b)-(i)	¶ 5.1	Seventy-five (75) days after Effective Date
2	Pre-Construction Conference	¶ 3.1	Thirty (30) days after Approval of RAWP
3	Start of Construction		Sixty (60) days after Approval of RAWP
4	Completion of Construction of AOC 1		Ninety (90) days after Start of Construction
5a	Completion of Construction of AOCs 2, 3, and 4 (no treatment technology used)		All Work for AOCs 2, 3, and 4 must be completed within 12 months of approval of RAWP.
5b	Completion of Construction of AOCs 2, 3, and 4 (treatment technology used)	1.3	If treatment technology (such as HPSA) is used at the Site, all Work for AOCs 2, 3, and 4 must be completed within 20 months of approval of RAWP.
6	Final Removal Action Report	¶ 5.1(j)	Sixty (60) days after completing all Work and receipt of all analytical data (other than continuing obligations listed in ¶ 48.a of the Settlement)
7	PRSC Annual Report	¶5.1(k)	Every year for three years on the anniversary of the Removal Action Report

## 7. REFERENCES

**7.1** The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the three EPA web pages listed in ¶ 7.2:

- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
- (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).

- (c) Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988).
- (d) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
- (e) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G90/001 (Apr.1990).
- (f) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
- (g) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
- (h) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
- (i) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).
- (j) Final Superfund-Wide Standard Operating Procedure (SOP) for Waste Determination and Disposal of Remediation Waste Implementation Procedures, R9-SUP-PROC-R1 (2018).
- (k) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. part 300 (Oct. 1994).
- (l) Navajo Department of Fish and Wildlife. 2002. "Restoring Native Plants to Navajo Nation Lands Handbook." Diné Native Plants Program. October. [https://www.nndfw.org/dnpp/docs/Handbook\\_Restoring\\_Plants\\_to\\_NN\\_Lands.pdf](https://www.nndfw.org/dnpp/docs/Handbook_Restoring_Plants_to_NN_Lands.pdf)
- (m) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
- (n) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).

- (o) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, EPA/540-R-01-007 (June 2001).
- (p) Guidance for Quality Assurance Project Plans, EPA QA/G-5, EPA Office of Environmental Information (Dec. 2002) <https://www.epa.gov/quality/guidance-quality-assurance-project-plans-epa-qag-5>.
- (q) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (r) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (s) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2005), <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (t) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (u) Construction Specifications Institute's MasterFormat, available from the Construction Specifications Institute, <http://www.csinet.org/masterformat>.
- (v) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), <https://www.epaosc.org/HealthSafetyManual/manual-index.htm>.
- (w) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (x) Quality Management Systems for Environmental Information and Technology Programs -- Requirements with Guidance for Use, ASQ/ANSI E-4 (February 2014), available at <https://webstore.ansi.org/>.
- (y) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), <https://www.epa.gov/superfund/superfund-post-construction-completion>.
- (z) Advanced Monitoring Technologies and Approaches to Support Long-Term Stewardship (July 20, 2018), <https://www.epa.gov/enforcement/use-advanced-monitoring-technologies-and-approaches-support-long-term-stewardship>.

- (aa) Superfund Community Involvement Handbook, OLEM 9230.0-51 (March 2020). More information on Superfund community involvement is available on the Agency's Superfund Community Involvement Tools and Resources web page at <https://www.epa.gov/superfund/superfund-community-involvement-tools-and-resources>.
- (bb) EPA directive CIO 2105.1 (Environmental Information Quality Policy, 2021), [https://www.epa.gov/sites/production/files/2021-04/documents/environmental\\_information\\_quality\\_policy.pdf](https://www.epa.gov/sites/production/files/2021-04/documents/environmental_information_quality_policy.pdf).
- (cc) *EPA QA Field Activities Procedure*, CIO 2105-P-02.1 (Sept. 23, 2014) available at <https://www.epa.gov/irmpoli8/environmental-information-policy-procedures-and-standards>.
- (dd) *Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions* (Directive No. FEM-2011-01) (Nov. 2016) available at <https://www.epa.gov/measurements-modeling/documents-about-measurement-competency-under-acquisition-agreements>.
- (ee) *SW 846 Test Methods for Evaluating Solid Waste, Physical/Chemical Methods* (<https://www.epa.gov/hw-sw846>).
- (ff) *Standard Methods for the Examination of Water and Wastewater* (<https://www.standardmethods.org/>).
- (gg) *Air Toxics - Monitoring Methods* (<https://www3.epa.gov/ttnamti1/airtox.html>).
- (hh) 40 C.F.R. part 136.

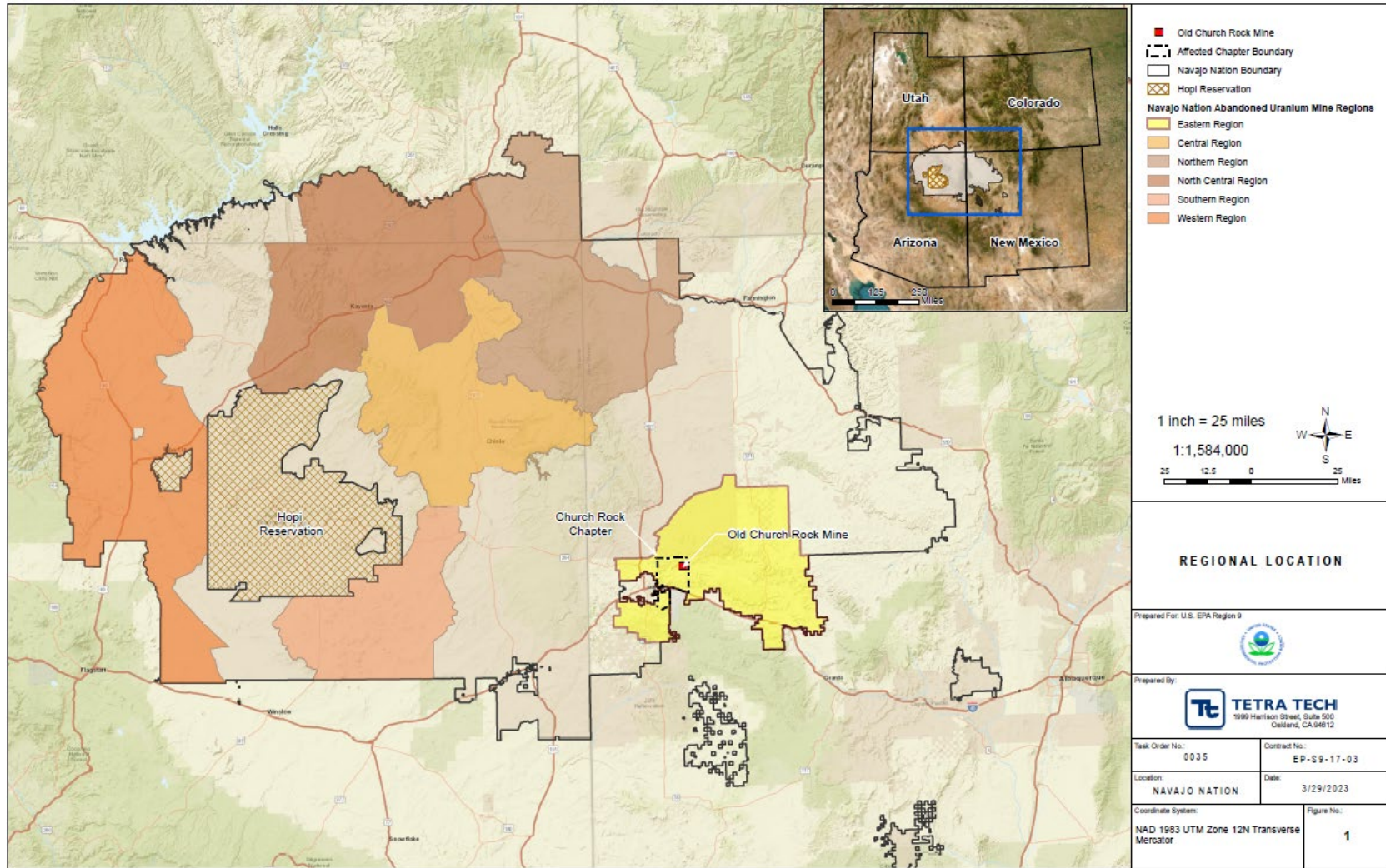
**7.2** A more complete list may be found on the following EPA web pages:

- (a) Laws, Policy, and Guidance at <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>;
- (b) Search Superfund Documents at <https://www.epa.gov/superfund/search-superfund-documents>; and
- (c) Test Methods Collections at: <https://www.epa.gov/measurements/collection-methods>.

- 7.3** For any regulation or guidance referenced in the Settlement or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from USEPA of the modification, amendment, or replacement.

Administrative Settlement Agreement and Order on Consent – SOW  
 Old Church Rock Mine Site

**Attachment 1. Map of Site and Vicinity**



Administrative Settlement Agreement and Order on Consent – SOW  
 Old Church Rock Mine Site

**Attachment 2. Areas of Concern and Gamma Survey Results**



Administrative Settlement Agreement and Order on Consent – SOW  
 Old Church Rock Mine Site

