UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

REGION 9

IN THE MATTER OF: Mariano Lake Mine Site Mariano Lake, New Mexico Chevron U.S.A. Inc., Respondent	U.S. EPA Region 9 CERCLA Docket No. 2016-11 **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR ENGINEERING EVALUATION AND COST ANALYSIS** Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement" or "AOC") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Chevron U.S.A. Inc. ("Chevron" or "Respondent"). This Settlement Agreement concerns Respondent's preparation and performance of an engineering evaluation and cost analysis ("EE/CA") at the Mariano Lake Mine Site, and payment of EPA's relevant response costs, as defined below. Preparation of an EE/CA is a required step in the process of developing a non-time-critical removal action for the Site.

2. The Mariano Lake Mine Site, comprised of the former Mariano Lake Mine footprint and areas in close proximity to the former mine affected or potentially affected by former Mariano Lake Mine operations, which include, but may not be limited to, areas identified as having elevated concentrations of COPCs in the Removal Site Evaluation (collectively, the "Site" or "Mariano Lake Mine Site"), is located generally at 15N, 14W/Sections 11 and 12 in McKinley County, New Mexico. The Site and vicinity are shown on the map provided as Attachment 1 ("Map") to Appendix A, the Statement of Work ("SOW") to this Settlement Agreement. The Site lies within Navajo tribal allotted and/or trust lands administered by the Bureau of Indian Affairs ("BIA") on behalf of the Eastern Agency of the Navajo Nation. Chevron is the corporate successor to the former Gulf Mineral Resources Company, which previously held mining leases to the Mariano Lake Mine Site.

3. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607, and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). These authorities were further redelegated to Superfund Branch Chiefs on September 29, 1997, by the Regional Administrator by EPA Region 9 Order Nos. 1290.15 and 1290.20.

4. EPA has notified the Environment Department and the Mining and Minerals Division of the State of New Mexico (the "State") and the Navajo Nation of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

5. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), EPA notified the U.S. Fish and Wildlife Service, the New Mexico Office of Natural Resources Trustee, and the Navajo Nation Division of Natural Resources of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal, State, and/or Tribal trusteeship.

6. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement 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 Agreement, the validity of the findings of fact in Section V and the conclusions of law and determinations in Section VI. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

7. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement.

8. Respondent shall ensure that its contractors, subcontractors, and representatives performing any portion of the Work as defined herein receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

9. Each undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Respondent to this Settlement Agreement.

III. STATEMENT OF PURPOSE

10. In entering into this Settlement Agreement, the objectives of EPA and Respondent are: (a) to the extent not previously determined, to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site; and (b) to identify and evaluate removal alternatives to prevent, mitigate, or otherwise respond to any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. These two objectives will be addressed by conducting an EE/CA, as more specifically set forth in the Statement of Work ("SOW") attached as Appendix A to this Settlement Agreement. An additional objective of EPA and Respondent is to provide a mechanism for EPA to recover Interim Response Costs and Future Response Costs.

11. The Work conducted under this Settlement Agreement is subject to approval by EPA and shall provide, consistent with the SOW, all appropriate and necessary information to assess Site conditions and evaluate alternatives to the extent necessary to select one or more removal actions that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). Respondent shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidances, policies, and procedures.

IV. DEFINITIONS

12. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations.

Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

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

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Effective Date" shall mean the effective date of this Settlement Agreement as provided in Section XXIX.

"Engineering Evaluation and Cost Analysis" or "EE/CA" shall mean the element of a non-time-critical removal action required pursuant to Section 300.415(b)(4)(i) of the NCP. An EE/CA must identify the objectives of the removal action and analyze the effectiveness, implementability, and cost of various alternatives that may satisfy these objectives.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Future Response Costs" shall mean all costs, that the United States incurs at or in connection with the Site from the Effective Date through completion of the Work, including, but not limited to, reviewing or developing plans, reports, and other deliverables submitted pursuant to this Settlement Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, and including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XII (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access, including, but not limited to, the amount of just compensation), Paragraph 48 (Emergency Response), Paragraph 91 (Work Takeover), and the costs incurred by the United States in enforcing the terms of this Settlement Agreement, including all costs incurred in connection with Section XV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include any Agency for Toxic Substances and Disease Registry ("ATSDR") costs at or in connection with the Site.

"Institutional controls" shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall 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.

"Interim Response Costs" shall mean all previously unrecovered costs incurred by the United States up until the Effective Date, including, but not limited to, direct and indirect costs, at or in connection with the Site. Interim Response Costs shall also include any unrecovered Agency for Toxic Substances and Disease Registry ("ATSDR") costs at or in connection with to the Site.

"Mariano Lake Mine Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and the prior settlement between the Parties regarding the Site: Administrative Settlement Agreement and Order on Consent for Interim Removal Action, EPA Docket No. 2011-12.

"NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Navajo Nation EPA" or "NNEPA" shall mean the Navajo Nation Environmental Protection Agency and any successor departments or agencies of the Navajo Nation.

"Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter. References to paragraphs in the SOW will be so identified, e.g., "SOW Paragraph 15."

"Parties" shall mean EPA and Respondent.

"RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992.

"Respondent" shall mean Chevron U.S.A. Inc.

"Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

"Settlement Agreement" or "EE/CA AOC" or "AOC" shall mean this Administrative Settlement Agreement and Order on Consent, the SOW, all appendices attached hereto (listed in Section XXVII) and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Settlement Agreement upon approval by EPA. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.

"Site" or "Mariano Lake Mine Site" shall mean the former Mariano Lake Mine footprint and areas in close proximity to the former mine affected or potentially affected by former Mariano Lake Mine operations, which include, but may not be limited to, areas identified as having elevated concentrations of COPCs in the Removal Site Evaluation.

"State" shall mean the State of New Mexico.

"Statement of Work" or "SOW" shall mean the Statement of Work for development of an EE/CA for the Site, as set forth in Appendix A to this Settlement Agreement. The Statement of Work is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Settlement Agreement.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities Respondent is required to perform under this Settlement Agreement, except those required by Section XIV (Retention of Records).

V. FINDINGS OF FACT

13. The Site includes the former Mariano Lake Mine. From approximately 1977 to 1982, the former Gulf Mineral Resources Company, a wholly owned subsidiary of Gulf Oil Corporation, operated the Mariano Lake Mine pursuant to a mineral lease with the Bureau of Indian Affairs ("BIA"). Gulf Oil Corporation merged with Respondent in 1985; Respondent is the corporate successor to the former Gulf Mineral Resources Company. Remediation obligations associated with the Mariano Lake Mine mineral lease were not extinguished by prior completion of reclamation or relinquishment of that interest.

14. The Navajo Nation asserts territorial jurisdiction over the Site in accordance with 7 N.N.C. § 254, regulatory jurisdiction over the Site in accordance with 4 N.N.C. § 2104(T) and access rights to the Site in accordance with 4 N.N.C. § 2301. The Navajo Nation also asserts jurisdiction in accordance with 18 U.S.C. § 1151.

15. Under a 1991 Memorandum of Agreement between the Navajo Nation and EPA Regions 6, 8 and 9, EPA Region 9 has the lead on any EPA response action on lands within the Navajo Nation.

16. Land use in the area is mixed residential and grazing, and characterized by low-density residential homesites surrounded by open grazing land and pinyon-juniper forests. Residential homesites in the vicinity of the Mine Site area may have been impacted by releases of hazardous substances and contaminants transported by wind, historic dewatering of mining operations and runoff during snow, rain and flood events.

17. During July 2008, EPA conducted a preliminary gamma radiation activity assessment on portions of the Site. EPA's detection of elevated readings prompted EPA to perform assessment work within the Mine Site area and at residential homesites adjacent to the former mining areas. From approximately November 2009 through May 2010, EPA conducted gamma radiation surveys of nine homesites, and performed additional surface soil scans of the Mine Site area. EPA detected elevated readings of gamma radiation in areas of the Site and radium-226 in some of the surface soils. Radium is a "hazardous substance" as defined by section 101(14) of CERCLA.

18. EPA assessed homesites and houses near the Site in 2009. One house was found to have elevated gamma radiation levels, probably due to contaminated soil from the Site. EPA removed and replaced contaminated carpet and upholstery to rehabilitate the house.

19. Respondent conducted a Removal Site Evaluation, with oversight from EPA and Navajo Nation EPA in 2011 and 2012. *See* Administrative Settlement Agreement and Order on Consent, EPA Docket No. 2011-12 (2011 AOC). The work included determining site background, surface gamma scans of the mine and surrounding areas, and surface and subsurface soil sampling. The results of the sampling showed that there are elevated concentrations of Radium 226 in both surface and subsurface soil above the background range.

20. On December 15, 2016, EPA issued a Notice of Completion of Work for the 2011 AOC. As described in that Notice, EPA concluded that, except for certain continuing obligations, Respondent had completed all work under the 2011 AOC. Respondent's continuing obligations include Post Removal Site Controls and payment of EPA's response costs.

21. Based on the Removal Site Evaluation Report for the Mariano Lake Mine Site, preliminary average background concentrations for Radium 226 in the vicinity of the Site are approximately 0.81 pCi/g; the Removal Site Evaluation applied a health-based investigation level of 2.05 pCi/g, which was based on a Preliminary Remediation Goal calculation of 1.24 pCi/g above background. Several sample results for Radium 226 at the Site have shown concentrations up to several hundred pCi/g. Radium is a "hazardous substance" as defined by section 101(14) of CERCLA.

22. The Site presents a risk of potential releases of hazardous substances to the air, surrounding soils, sediments, surface water, and ground water.

23. Radium is a known human carcinogen, and exposure may be a precursor to bone, liver and breast cancers and other health conditions.

24. This Settlement does not address investigation and potential cleanup of groundwater.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth in Section V, and the Administrative Record supporting this removal action, EPA has determined that:

25. The Mariano Lake Mine Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

26. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

27. The conditions described in the Findings of Fact in Section V above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

28. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

29. Respondent is a responsible party under Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622. Respondent is the corporate successor to Gulf Mineral Resources Company, which previously held mining leases to the Mariano Lake Mine Site and operated the mine, and as such is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for performance of response action and for response costs incurred and to be incurred at the Site. Respondent's corporate predecessor, Gulf Mineral Resources Company, was the "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) and (a)(2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (a)(2).

30. The actions required by this Settlement Agreement are necessary to protect the public health, welfare, and the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA, 42 U.S.C. §§ 9604(b)(1) and 9622(a), and the NCP, and will expedite effective response actions and minimize litigation, 42 U.S.C. § 9622(a).

31. EPA has determined that Respondent is qualified to conduct the EE/CA and will carry out the Work properly and promptly, in accordance with Sections 104(b) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(b) and 9622(a), if Respondent complies with the terms of this Settlement Agreement.

VII. SETTLEMENT AGREEMENT AND ORDER

32. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VIII. DESIGNATION OF CONTRACTORS, PROJECT COORDINATOR, AND REMEDIAL PROJECT MANAGER

33. Selection of Contractors, Personnel. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within 30 days

after the Effective Date, and before the Work outlined below begins, Respondent shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995, or most recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001; Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Settlement Agreement is contingent on Respondent's demonstration to EPA's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Settlement Agreement. If EPA disapproves in writing of any person's technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacements within 30 days after the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to conduct a complete EE/CA, and to seek reimbursement for costs and penalties from Respondent. During the course of the EE/CA, Respondent shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

34. Respondent has designated, and EPA has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement: Ian Robb, Chevron Environmental Management Company, 6001 Bollinger Canyon Road, Room C2136, San Ramon, CA 94583, (925) 842-3919, ianrobb@chevron.com. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 21 days following EPA's disapproval.

35. Respondent shall have the right to change its Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA 14 days before such a change is made, unless EPA agrees to a shorter notice period. The initial notification may be made orally, but shall be promptly followed by a written notification. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

36. During the course of conducting the EE/CA, Respondent may add or change the personnel used to carry out the Work by providing written notice. At least 30 days before Respondent proposes to involve any new personnel, Respondent shall notify EPA in writing of the names, titles, and qualifications of such new personnel. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

37. Notice to EPA and NNEPA: EPA has designated Mark Ripperda of the Superfund Division, EPA Region 9, as its Remedial Project Manager ("RPM"). EPA will notify Respondent of any change of its designated RPM. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions and written notifications required by this Settlement Agreement to the current Mariano Lake Mine Site RPM by email and/or by mailing these submissions to 75 Hawthorne St. (SFD 6-2), San Francisco, CA 94105. Whenever Respondents direct submissions and other written notifications to EPA, Respondent shall also provide a copy of the submission and/or notification to NNEPA by email and/or mailing these submissions to Frieda White, Navajo Nation EPA, P.O. Box 2946, Window Rock, AZ 86515, or friedawhite@navajo-nsn.gov.

38. EPA's RPM shall have the authority lawfully vested in a Remedial Project Manager by the NCP. In addition, EPA's RPM shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of EPA's RPM from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

39. EPA shall arrange for one or more qualified persons to assist in its oversight and review of the conduct of the EE/CA, as required by Section 104(b) of CERCLA, 42 U.S.C. § 9604(b). Such person shall have the authority to observe Work and make inquiries in the absence of EPA, but not to modify the EE/CA Work Plan.

IX. WORK TO BE PERFORMED

40. Respondent shall conduct an EE/CA in accordance with the provisions of this Settlement Agreement, the SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to the *Guidance on Conducting Non-Time-Critical Removal Actions under CERCLA, OSWER* (Aug. 1993), EPA 540-R-93-057, and guidance referenced therein, and guidances referenced in the SOW and approved Work Plans, as may be amended or modified by EPA. The EE/CA shall identify the objectives of the planned removal action, develop alternatives that may be used to achieve these objectives, and analyze those alternatives for cost, effectiveness, and implementability.

41. Respondent shall conduct Post Removal Site Controls as described in the SOW. The Post Removal Site Controls comprise those elements of the work required pursuant to the 2011 AOC that remain necessary at the Site.

42. The Work to be performed pursuant to this Settlement Agreement covers the Site, as defined above in Section IV (Definitions). The Site and surrounding areas are shown in Attachment 1.

43. Respondent shall submit all deliverables to EPA and NNEPA in the form(s) specified in the SOW.

44. Modification of the EE/CA Work Plan.

a. If at any time during the EE/CA process, Respondent identifies a need for additional data, Respondent shall submit a memorandum documenting the need for additional data to the EPA Remedial Project Manager within 21 days after identification. EPA in its discretion will determine whether the additional data will be collected by Respondent and, if so, how it will be incorporated into plans, reports, and other deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the EPA Remedial Project Manager by telephone or email within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the EE/CA Work Plan, EPA shall modify or amend the EE/CA Work Plan in writing accordingly. Respondent shall perform the EE/CA Work Plan as modified or amended.

c. EPA may determine that in addition to tasks defined in the initially approved EE/CA Work Plan, other additional Work may be necessary to accomplish the objectives of the EE/CA. Respondent agrees to perform these response actions in addition to those required by the initially approved EE/CA Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a complete EE/CA.

d. Respondent shall confirm its willingness to perform the additional Work in writing to EPA within 7 days after receipt of an EPA written request. If Respondent objects to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). The SOW and/or EE/CA Work Plan shall be modified in accordance with the final resolution of the dispute.

e. Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth and approved by EPA in a written modification to the EE/CA Work Plan or in a written EE/CA Work Plan supplement. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

45. Off-Site Shipment.

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, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b). Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if Respondent complies with EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the

appropriate state environmental official in the receiving facility's state and to the EPA Remedial Project Manager. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten 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 environmental official referenced above and the EPA Remedial Project Manager 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 EE/CA and before the Waste Material is shipped.

46. Meetings. Respondent shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the EE/CA. In addition to discussion of the technical aspects of the EE/CA, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion; however, EPA will provide reasonable notice to Respondent and coordinate with Respondent on the scheduling of these meetings, so that Respondent can prepare for and arrange to participate in the meetings.

47. Progress Reports. In addition to the plans, reports, and other deliverables set forth in this Settlement Agreement, Respondent shall provide to EPA monthly progress reports, on the schedule specified in the SOW. At a minimum, with respect to the preceding month, these progress reports shall (a) describe the actions that have been taken to comply with this Settlement Agreement during that month, (b) include all results of sampling and tests and all other data received by Respondent, (c) describe Work planned for the next two months with schedules relating such Work to the overall project schedule for EE/CA completion, and (d) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

48. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during, arising from, or relating to performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately provide notice of the incident or Site conditions to the EPA Remedial Project Manager or, in the event of his/her unavailability, the OSC or the Regional Duty Officer at (415) 972-3167 and (415) 972-3063, the Region 9 Spill Response Center at 415-947-4400, and the National Response Center at (800) 424-8802. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs).

b. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the EPA Remedial Project Manager at (415-972-3167) or the Region 9 Spill Response Center at (800) 300-2193, and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

49. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Settlement Agreement, in a notice to Respondent EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modifies the submission, or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 15 days or such longer time as may be specified by EPA, except where to do so would cause serious disruption to the Work or where previous submission(s) of that plan, report or other item have been disapproved due to material defects.

50. In the event of approval, approval upon conditions, or modification, pursuant to Paragraph 49.a, 49.b, or 49.d, Respondent shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval, or approval with modifications of a submission or portion thereof, Respondent shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies identified pursuant to Paragraph 49.b and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties).

51. Resubmission.

a. Upon receipt of a notice of disapproval, Respondent shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI, shall accrue during the 30-day period or otherwise specified period, but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 49 and 50, respectively.

b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall

not relieve Respondent of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

c. Respondent shall not proceed with any activities or tasks dependent on the EE/CA Work Plan or the EE/CA Sampling and Analysis Plan until receiving EPA approval, approval on condition, or modifications of such deliverables. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondent shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement Agreement. Respondent shall not proceed with any activities or tasks dependent on a Health and Safety Plan until receiving EPA comments on that plan, or acknowledgement of receipt and no comments.

d. For all remaining deliverables not listed above in Paragraph 51.c, Respondent shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the EE/CA.

52. If EPA disapproves a resubmitted plan, report, or other deliverable, or portion thereof, EPA may again direct Respondent to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report, or other deliverable. Respondent shall implement any such plan, report, or deliverable as corrected, modified, or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XV (Dispute Resolution).

53. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately unless Respondent invokes the dispute resolution procedures in accordance with Section XV (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XV (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified, or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XV, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVI.

54. In the event that EPA takes over some of the tasks, but not the preparation of the EE/CA Report, Respondent shall incorporate and integrate information supplied by EPA into the final reports.

55. All plans, reports, and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

56. Neither failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondent's deliverables, Respondent is responsible for preparing deliverables consistent with the requirements of this Settlement Agreement, unless the absence of approval prevents Respondent from proceeding with Work according the terms of this Settlement Agreement.

XI. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

57. Quality Assurance. Respondent shall assure that Work performed, samples taken, and analyses conducted conform to the requirements of the SOW, the Quality Assurance Project Plan (QAPP), and guidances identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain of custody procedures. Respondent shall only use laboratories that have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001; Reissued May 2006) or equivalent documentation as determined by EPA.

58. Sampling.

a. All results of sampling, tests, modeling, or other data (including raw data) generated by Respondent, or on Respondent's behalf, during the period that this Settlement Agreement is effective, shall be submitted to EPA in the next monthly progress report. EPA will make available to Respondent validated data generated by EPA, unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondent shall notify EPA and NNEPA at least two weeks prior to conducting significant field events. At EPA's request, or the request of EPA's oversight contractor, Respondent shall allow split or duplicate samples to be taken by EPA or NNEPA (and their authorized representatives) of any samples collected in implementing this Settlement Agreement. All split samples of Respondent shall be analyzed by the methods identified in the QAPP.

59. Access to Information.

a. Upon request, Respondent shall provide to EPA and NNEPA, copies of records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA and NNEPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

b. Respondent may assert business confidentiality claims covering part or all of the Records submitted to EPA and NNEPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and

40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and NNEPA, or if EPA has notified Respondent that the Records are not confidential 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 Respondent. Respondent shall segregate and clearly identify all Records submitted under this Settlement Agreement for which Respondent asserts business confidentiality claims.

c. Respondent may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing Records, it shall, upon request, provide EPA and NNEPA with the following: (i) the title of the Record; (ii) the date of the Record; (iii) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the Record; and (vi) the privilege asserted by Respondent. However, no Records created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

d. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other Records evidencing conditions at or around the Site.

60. In entering into this Settlement Agreement, Respondent waives any objections to any data gathered, generated, or evaluated by EPA or Respondent in the performance or oversight of the Work that has been verified according to the quality assurance/quality control ("QA/QC") procedures required by the Settlement Agreement or any EPA-approved EE/CA Work Plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to the EE/CA, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.

XII. SITE ACCESS AND INSTITUTIONAL CONTROLS

61. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide EPA, 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 Agreement.

62. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within thirty (30) days after the Effective Date, or as otherwise specified in writing by the EPA Remedial Project Manager. Respondent shall immediately notify EPA if, after using its best efforts, it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. If

Respondent cannot obtain access agreements, EPA may either (a) obtain access for Respondent or assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate; (b) perform those tasks or activities with EPA contractors; or (c) terminate the Settlement Agreement. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVIII (Payment of Response Costs). If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondent shall perform all other tasks or activities not requiring access to that property, and shall reimburse EPA for all costs incurred in performing such tasks or activities. Respondent shall integrate the results of any such tasks or activities undertaken by EPA into its plans, reports, and other deliverables.

63. Notwithstanding any provision of this Settlement Agreement, EPA retains its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. COMPLIANCE WITH OTHER LAWS

64. Respondent shall comply with all applicable state, tribal, and federal laws and regulations when performing the EE/CA. No local, state, tribal, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-Site and requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal, state, or tribal statute or regulation.

XIV. RETENTION OF RECORDS

65. During the pendency of this Settlement Agreement and for a minimum of ten (10) years after commencement of construction of any removal action, Respondent shall preserve and retain all non-identical copies of records, reports, or information (hereinafter referred to as "Records") (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after commencement of construction of any removal action, Respondent shall also instruct their contractors and agents to preserve all Records of whatever kind, nature, or description relating to performance of the Work.

66. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such Records, and, upon request by EPA, Respondent shall deliver any such Records to EPA. Respondent may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: (a) the title of the Record; (b) the date of the Record; (c) the name and title of the author of the Record; (d) the name and title of each addressee and recipient; (d) a description of the subject of the Record;

and (f) the privilege asserted by Respondent. However, no Records created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

67. Respondent hereby certifies that 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 the earlier of notification of potential liability by EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XV. DISPUTE RESOLUTION

68. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

69. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Interim Response Costs and/or Future Response Costs, it shall notify EPA in writing of its objection(s) within 30 days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 30 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

70. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level or higher will issue a written decision. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill all requirements that were the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs, and regardless of whether Respondent agrees with the decision.

XVI. STIPULATED PENALTIES

71. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 72 and 73 for failure to comply with any of the requirements of this Settlement Agreement specified below unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the Work under this Settlement Agreement or any activities contemplated under any EE/CA Work Plan or other plan approved under this Settlement Agreement identified below, in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA

pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

72. Stipulated Penalty Amounts - Work (Including Payments).

a. The following stipulated penalties shall accrue per day for any noncompliance identified in Paragraph 72.b:

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

b. Compliance Milestones.

1. Failure to timely submit a final report

2. Failure to timely submit a response cost payment

73. Stipulated Penalty Amounts - Other.

a. The following stipulated penalties shall accrue per violation per day for failure to comply with other obligations of this Settlement Agreement:

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

74. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 91 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of $250,000.

75. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section X (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the EPA management official designated in Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period

begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

76. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the same and describe the noncompliance. EPA may send Respondent a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

77. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XV (Dispute Resolution). Respondent shall make all payments required by this Paragraph to EPA by Fedwire Electronic Funds Transfer to:

> Federal Reserve Bank of New York
> ABA = 021030004
> Account = 68010727
> SWIFT address = FRNYUS33
> 33 Liberty Street
> New York NY 10045
> Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference stipulated penalties, EPA Region 9, Mariano Lake Mine Site, Site/Spill ID Number 09TA, and the EPA docket number for this action.

At the time of payment, Respondent shall send notice that payment has been made as provided in Paragraph 85.b below.

78. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

79. Penalties shall continue to accrue as provided in Paragraph 75 during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

80. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 77.

81. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of

CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement Agreement, except in the case of willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 91 (Work Takeover). Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVII. FORCE MAJEURE

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

83. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA within 48 hours of when Respondent first learns the event might cause a delay. Within 7 days thereafter, Respondent shall provide to EPA a written explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event, if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

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

XVIII. PAYMENT OF RESPONSE COSTS

85. Payments of Interim Response Costs and Future Response Costs.

a. Respondent shall pay EPA all Interim Response Costs and Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA, its contractors, DOJ and/or ATSDR. Respondent shall make all payments within 30 days after receipt of each bill requiring payment, except as otherwise provided in Paragraph 87 of this Settlement Agreement. Payments shall be made to EPA by Fedwire Electronic Funds Transfer ("EFT") to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference EPA Region 9, the Mariano Lake Mine Site, Site/Spill ID Number 09TA and the EPA docket number for this action.

b. At the time of payment, Respondent shall send notice that payment has been made to Mark Ripperda, USEPA, 75 Hawthorne Street (Mail Code SFD-6-2), San Francisco, CA 94105, and to the EPA Cincinnati Finance Center by email at cinwd_acctsreceivable@epa.gov, or by mail to

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference EPA Region 9, the Mariano Lake Mine Site, Site/Spill ID Number 09TA and the EPA docket number for this action.

c. The total amount to be paid by Respondent pursuant to Paragraph 85.a shall be deposited by EPA in the Mariano Lake Mine 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 EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit Interim Response Costs or Future Response Costs payments directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Mariano Lake Mine Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit Interim Response Costs or Future Response Costs payments directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

d. Pursuant to the 2011 AOC, Paragraph 50.b, Respondent made a prepayment of "Future Response Costs," as the term is defined in the 2011 AOC. In September 2011, EPA received that prepayment in the amount of $142,000 and deposited it into the Mariano Lake Mine Site Special Account in accordance with Paragraph 50.b of the 2011 AOC. In October 2016, EPA applied $46,387.40 of the prepayment amount to its "Future Response Costs" bill, which reflected costs associated with the 2011 AOC that EPA incurred between July 1, 2015 and June 30, 2016. The remaining $95,612.60 of the prepayment amount shall continue to be retained in the Mariano Lake Mine Site Special Account and used to conduct or finance future response actions at or in connection with the Site. EPA anticipates applying that amount to "Future Response Costs" incurred pursuant to this Settlement Agreement.

86. Interest. If Respondent does not pay Interim Response Costs or Future Response Costs within 30 days after Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. Interest on unpaid Interim Response Costs and/or Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI. Respondent shall make all payments required by this Paragraph in the manner described in Paragraph 85.

87. Respondent may contest payment of any Interim Response Costs or Future Response Costs billed under Paragraph 85 if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Interim Response Costs or Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 30 days after receipt of the bill and must be sent to the EPA Remedial Project Manager. Any such objection shall specifically identify the contested Interim Response Costs and/or Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period pay all uncontested Interim Response Costs and/or Future Response Costs to EPA in the manner described in Paragraph 85. Simultaneously, Respondent shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation, and remit to that escrow account funds equivalent to the amount of the contested Interim Response Costs and/or Future Response Costs. Respondent shall send to the EPA Remedial Project Manager a copy of the transmittal letter and check paying the uncontested Interim Response Costs and/or Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established, as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 85. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 85. Respondent shall be disbursed any balance of the escrow

account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Interim Response Costs and Future Response Costs.

XIX. COVENANT NOT TO SUE BY EPA

88. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Interim Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, payment of Interim Response Costs and Future Response Costs pursuant to Paragraph 85 (Payment of Response Costs). This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

89. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

90. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. liability for failure by Respondent to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definition of Interim Response Costs or Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal, state, or tribal law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement Agreement.

91. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by EPA in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XVIII (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

92. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Interim Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work or arising out of the response actions for which the Interim Response Costs or Future Response Costs have or will be incurred, including any claim under the United States Constitution, the New Mexico Constitution, the Navajo Nation Code or the common law of the Navajo Nation, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Work or payment of Interim Response Costs or Future Response Costs.

93. Except as expressly provided in Paragraphs 97 (Claims Against De Micromis Parties), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XX (Reservations of Rights by EPA), other than in Paragraph 90.a (liability for failure to meet a requirement of the

Settlement Agreement) or 90.d (criminal liability), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

94. Respondent reserves, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondent's plans, reports, other deliverables, or activities.

95. This AOC shall not have any effect on claims or causes of action that Respondent has or may have pursuant to CERCLA against the United States or any of its agencies or departments, other than EPA, based on the alleged status of the United States or any of its agencies or departments, other than EPA, as a potentially responsible party pursuant to CERCLA, 42 U.S.C. § 9607(a), relating to the Work, Future Response Costs, or this AOC.

96. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

97. Claims Against De Micromis Parties. Respondent agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) or 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.

98. The waiver in Paragraph 97 (Claims Against De Micromis Parties) shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 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 has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site

XXII. OTHER CLAIMS

99. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent.

100. Except as expressly provided in Paragraph 97 (Claims Against De Micromis Parties) and Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

XXIII. EFFECT OF SETTLEMENT/CONTRIBUTION

102. Except as provided in Paragraph 97 (Claims Against De Micromis Parties), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XXI (Covenant Not to Sue by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which 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 Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons 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).

103. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement Agreement.

The "matters addressed" in this Settlement Agreement are the Work, Interim Response Costs, and Future Response Costs.

104. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

105. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

106. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XIX.

107. Effective upon signature of this Settlement Agreement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Respondent the payment(s) required by Section XVIII (Payment of Response Costs) and, if any, Section XVI (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 103 and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XXIV. INDEMNIFICATION

108. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all 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 representatives in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but

not limited to 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 pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

109. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

110. Respondent waives all claims 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 any one or more of Respondent and any person for performance of Work on or relating to the Site. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on or relating to the Site.

XXV. INSURANCE

111. At least 60 days prior to commencing any on-Site Work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, commercial general liability insurance with limits of $1 million dollars, for any one occurrence, and automobile insurance with limits of $1 million dollars, combined single limit, naming the EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement Agreement. Within the same period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, 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 Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent needs provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

112. Within 30 days after the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of $500,000 in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;

b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of the Work;

c. a trust fund administered by a trustee acceptable in all respects to EPA;

d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;

e. a written guarantee to pay for or perform the Work provided by one or more parent companies of Respondent, or by one or more unrelated companies that have a substantial business relationship with Respondent; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

f. a demonstration of sufficient financial resources to pay for the Work made by Respondent, which shall consist of a demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

113. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within 30 days after receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 112, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within 30 days after such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

114. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Paragraph 112.e or a demonstration pursuant to Paragraph 112.f, Respondent shall (a) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (b) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date, or such other date as agreed by EPA, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of $300,000 for the Work at the Site plus any other RCRA, CERCLA or other federal environmental obligations financially assured by the relevant Respondent or guarantor to EPA by means of passing a financial test.

115. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 112 of

this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

116. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. INTEGRATION/APPENDICES

117. This Settlement Agreement and its appendices and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

"Appendix A" is the SOW (Attachment 1 to the SOW is a Map showing approximate boundaries of the Site).

XXVIII. ADMINISTRATIVE RECORD

118. EPA will determine the contents of the administrative record file for selection of the non-time critical removal action. Respondent shall submit to EPA documents developed during the course of the EE/CA. Upon request of EPA, Respondent shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of EPA, Respondent shall additionally submit any previous studies conducted under state, local, or other federal authorities relating to selection of the response action, and all communications between Respondent and state, local, or other federal authorities concerning selection of the response action. At EPA's discretion, Respondent shall establish a community information repository at or near the Site, to house one copy of the administrative record.

XXIX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

119. This Settlement Agreement shall be effective 5 days after the Settlement Agreement is signed by the Assistant Director, Superfund Division.

120. This Settlement Agreement may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by the EPA Assistant Director or other delegated EPA official.

121. No informal advice, guidance, suggestion, or comment by the EPA Remedial Project Manager or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXX. NOTICE OF COMPLETION OF WORK

122. When EPA determines that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to payment of Interim Response Costs, Future Response Costs and record retention, EPA will provide written notice to Respondent. If EPA determines that any Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the EE/CA Work Plan if appropriate in order to correct such deficiencies, in accordance with Paragraph 44 (Modification of the EE/CA Work Plan). Failure by Respondent to implement the approved modified EE/CA Work Plan shall be a violation of this Settlement Agreement.

Agreed this 4 day of Jan, 2017
For Respondent Chevron U.S.A. Inc.

[Name] Grace P. Nerona
[Title] Assistant Secretary

It is so ORDERED and AGREED 25th day of Jan., 2017.

BY: Clancy Tenley DATE: 1/25/2017
Clancy Tenley
Assistant Director, Superfund Division
U.S. Environmental Protection Agency, Region 9

EFFECTIVE DATE: 1/30/2017

APPENDIX A

STATEMENT OF WORK FOR ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR CONDUCTING THE ENGINEERING EVALUATION/COST ANALYSIS FOR THE MARIANO LAKE MINE SITE

1. Introduction

This Statement of Work (SOW) specifies actions required to be completed by Respondent Chevron U.S.A. Inc. (Respondent) pursuant to the Administrative Settlement Agreement and Order on Consent, CERCLA Docket No. 2016-11 (Settlement Agreement) for conducting the Engineering Evaluation and Cost Analysis (EE/CA). All terms used in this SOW shall be interpreted in a manner consistent with the definitions provided in the Settlement Agreement. In the event of any conflict between this SOW and the Settlement Agreement, the Settlement Agreement shall control.

2. Description of the Site

The Mariano Lake Mine Site (Site) and vicinity are shown in the Map, provided as Attachment 1. The areas to be addressed by this SOW are the former Mariano Lake Mine footprint and areas in close proximity to the former mine affected or potentially affected by former Mariano Lake Mine operations, which may include, but not be limited to, areas identified as having elevated concentrations of Contaminants of Potential Concern (COPCs) in the Removal Site Evaluation.

The Removal Site Evaluation is included in the administrative record for the Settlement Agreement.

3. General Requirements

3.1 Priority Media: Priority media to be addressed at this Site include soils, sediments and dust.

3.2 Contaminants of Potential Concern: Contaminants of Potential Concern (COPCs) include arsenic, mercury, molybdenum, selenium, vanadium and the radionuclides uranium-238, radium-226 and their progeny. The COPCs shall be evaluated as part of the risk assessment component of the EE/CA to determine whether they are Contaminants of Concern.

3.3 Data Deliverables: Respondent shall submit all deliverables to the United States Environmental Protection Agency (EPA) and the Navajo Nation Environmental Protection Agency (NNEPA) in electronic form. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5” by 11”, Respondent shall also provide EPA and NNEPA with paper copies of such exhibits. The Draft EE/CA and Final EE/CA shall be submitted in both hard copy and electronic form.

a. 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 developed in a Data Management Plan that will be part of the Work Plan. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

b. Unless otherwise approved by EPA in the Work Plan, spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at https://edg.epa.gov/EME/.

c. Each file must include an attribute name for each site unit or sub-unit submitted. Consult http://www.epa.gov/geospatial/policies.html for any further available guidance on attribute identification and naming.

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

4. Work to be Performed

The Work to be performed pursuant to this SOW shall include:

4.1 Work Plan: Respondent shall submit a Draft Work Plan providing a proposed outline for the EE/CA, including the Removal Action Objectives and a description of proposed alternatives for analysis. The Work Plan shall also describe the proposed approach for conducting the risk assessment, screening COPCs and for calculating proposed removal action goals. The Draft Work Plan shall also include a Data Management Plan.

4.2 Community Involvement Plan: As requested by EPA, Respondent shall provide information supporting EPA's community involvement plan and shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

4.3 Baseline Human Health Risk Assessment and Ecological Risk Assessment: Respondent shall perform the Baseline Human Health Risk Assessment and Ecological Risk

Assessment (Risk Assessments) in accordance with this SOW, EE/CA Work Plan, and applicable EPA guidance, including but not limited to: "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part A)," (RAGS, EPA-540-1-89-002, OSWER Directive 9285.7-01A, December 1989); "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)," (RAGS, EPA 540-R-97-033, OSWER Directive 9285.7-01D, January 1998); "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments" (ERAGS, EPA-540-R-97-006, OSWER Directive 9285.7-25, June 1997) or subsequently issued guidance. The Risk Assessment shall include exposure scenarios representative of current Navajo traditional uses of the land, including, e.g., current consumption of locally grazed livestock.

4.4 Development and Screening of Alternatives: Respondent shall develop an appropriate range of options for management of contaminated soil that will be evaluated through the development and screening of alternatives. The alternatives shall include options for managing contaminated soil both on the reservation and off the reservation. Respondent shall provide EPA with a proposed description of removal action objectives and a proposed description of alternatives in the EE/CA Work Plan. The removal action objectives shall include proposals for Engineering Controls, as well as for Institutional Controls. Respondent shall screen the comprehensive list of possible alternatives in the Work Plan and provide a list of alternatives for a detailed analysis in the EE/CA.

4.5 Detailed Analysis of Alternatives: Respondent shall conduct the EE/CA in accordance with the provisions of CERCLA, the NCP, and EPA guidance, including, but not limited to the Guidance on Conducting Non-Time-Critical Removal Actions under CERCLA, OSWER (Aug. 1993), EPA 540-R-93-057, and guidance referenced therein, and guidances referenced in this SOW, as may be amended or modified by EPA. The EE/CA shall identify the objectives of the planned removal action, propose alternatives that may be used to achieve these objectives, and analyze those alternatives for cost, effectiveness, and implementability.

4.6 Alternatives Analysis for Institutional Controls and Screening: The Alternatives Analysis for Institutional Controls and Screening shall do the following: (a) state the objectives (i.e., what will be accomplished) for the Institutional Controls; (b) determine the specific types of Institutional Controls that can be used to meet the removal action objectives; (c) investigate when the Institutional Controls need to be implemented and/or secured and how long they must be in place; (d) and research, discuss, and document any agreement with the proper entities (e.g., state, tribal and/or local government entities, local landowners, conservation organizations, Respondent) on exactly who will be responsible for securing, maintaining, and enforcing the Institutional Controls. Respondent shall be responsible for monitoring implementation of all Institutional Controls.

4.7 Data Gap Sampling and Analysis: Additional sampling may be required if data gaps are identified while conducting the EE/CA. A Sampling and Analysis Plan (SAP), a Quality Assurance Project Plan (QAPP), and a Data Management Plan (DMP) shall be submitted for approval prior to collection of any field data.

4.8 Post Removal Site Controls: As described in the Settlement Agreement at Paragraphs 20 and 41, Respondent shall continue implementing certain obligations that remain necessary under Administrative Settlement Agreement and Order on Consent for Interim Removal Action, EPA Docket No. 2011-12. Specifically, Respondent shall: (a) inspect signage, fencing, gates and locks monthly; (b) replace locks if they are found missing; (c) remove debris from fences and repair fences and gates as necessary; (d) replace signs as necessary; (e) inspect chip seal on perimeter roads monthly; (f) inspect soil tackifier in parking lot area monthly; (g) during subsequent inspection, repair minor road damage, such as small potholes; (h) after receiving approval from EPA, repair more significant road damage, such as extensive ruts that require heavy equipment.

The final removal action goals shall be selected by EPA in an Action Memorandum, following public comment on the EE/CA.

5. Schedules

The Work to be performed pursuant to the Settlement Agreement and this SOW shall be performed in compliance with the following schedule and subject to the approval provisions set forth in Section X of the Settlement Agreement (EPA Approval of Plans and Other Submissions):

- Draft Work Plan: Respondent shall submit its Draft Work Plan to EPA with a copy to NNEPA, within 60 days of the Effective Date of the Settlement Agreement.

- Final Work Plan: Respondent shall submit a proposed Final Work Plan to EPA, with a copy to NNEPA, within 30 days of its receipt of EPA's approval, approval with modifications, or approval upon specified conditions of Respondent's Draft Work Plan.

- Draft SAP, QAPP, and DMP: Respondent shall submit its Draft SAP, QAPP, and DMP to EPA, with a copy to NNEPA, on an as-needed basis, when a data gap requiring sampling is identified.

- Final SAP, QAPP and DMP: Respondent shall submit proposed Final SAPs, QAPPs and DMPs to EPA, with a copy to NNEPA, within 30 days of its receipt of EPA's approval, approval with modifications, or approval upon specified conditions of Respondent's Draft SAP, QAPP, and DMP.

- Draft EE/CA: Respondent shall submit a Draft EE/CA to EPA, with a copy to NNEPA, within 150 days of EPA's approval, approval with modifications, or approval upon specified conditions of the Final Work Plan. A 30-day extension shall be granted if EPA, in consultation with NNEPA, finds that additional sampling is necessary. EPA will grant additional extensions if EPA determines that weather or access conditions have caused unavoidable delays to sampling.

- Final EE/CA: Respondent shall submit a proposed Final EE/CA to EPA, with a copy to NNEPA, within 30 days of its receipt of EPA's approval, approval with modifications, or approval upon specified conditions of Respondent's Draft EE/CA.

6. Reporting

6.1. Weekly Technical Calls: Respondents shall, as needed, participate in weekly technical conference calls with EPA's project manager, EPA's consultants and Navajo Nation representatives. On the weekly call, Respondent's representatives shall provide updates on all tasks and raise issues that may need to be resolved in order to expedite completion of the Work.

6.2. Monthly Reporting: Respondent shall provide a Monthly Report to the EPA's project manager via email, with a copy to NNEPA via email, no later than the last day of the first full month following the Effective Date of the Settlement Agreement, and include in each report a complete update on all field, analytic and planning activities.

7. List of Attachments

Attachment 1 – Map of Site and Site Vicinity