

**FEDERAL FACILITY COMPLIANCE AGREEMENT
BETWEEN THE DEPARTMENT OF THE INTERIOR AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

I. SCOPE AND PURPOSE

1. The express purpose of the undersigned Parties in entering into this Federal Facility Compliance Agreement (“FFCA” or “Agreement”) is to address noncompliance at Department of Interior schools with, and to further the goals of, the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251-1387; the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11001-11050; and the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2601-2692. It is the objective of all provisions and obligations of this FFCA to cause the Department of Interior to come into and remain in full compliance at its schools as provided in the aforementioned environmental laws.

II. JURISDICTION

2. The United States Environmental Protection Agency and the Department of the Interior enter into this FFCA pursuant to the Clean Water Act, 33 U.S.C. §§ 1251-1387; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001-11050; the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692; and Executive Order No. 12088, to achieve and maintain compliance with the CWA, EPCRA, and TSCA.

III. PARTIES

3. The Parties to this FFCA are the United States Environmental Protection Agency (EPA) and the United States Department of the Interior (DOI). The actions required of DOI under this FFCA will be undertaken by the office of the Assistant Secretary – Indian Affairs (IA). The Bureau of Indian Education (BIE) and the Bureau of Indian Affairs (BIA) are components of IA.
4. This agreement shall apply to, and be binding upon, IA and EPA. The IA includes its officers, agents, contractors, employees, successors, and assigns. IA shall give written notice of this FFCA to any prospective successor in interest. At least ninety (90) calendar days prior to transfer of ownership or operation of a facility subject to this Agreement, IA shall give written notice of such transfer or change in ownership or operation to the relevant EPA address listed in Attachment A to this FFCA. No change in ownership or operation shall in any way alter the status or responsibility of the Parties under this FFCA with regard to violations occurring before the change in ownership.
5. The undersigned representative of each Party to this FFCA certifies that s/he is fully authorized by the Party whom s/he represents to enter into the terms and conditions of the FFCA and to execute and legally bind that Party to it.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. For the purposes of this FFCA, the following constitutes a summary of the findings upon which this FFCA is based. The facts related herein shall not be considered admissions by any Party. This section contains findings of fact determined solely by the Parties and shall not be used by any person related or unrelated to this FFCA for purposes other than determining the basis of this FFCA.

A. Clean Water Act

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into the waters of the United States by any person except in accordance with other specified sections of the Act, including Section 402, 33 U.S.C. § 1342.
8. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System ("NPDES") program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe.
9. Each violation of an NPDES permit and each discharge of pollutant that is not authorized by an NPDES permit constitutes a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
10. Kayenta Community School did not have an NPDES permit or the required storm water pollution prevention plan at the time of inspection for the construction project it was then undertaking, thereby violating 33 U.S.C. § 1311(a).
11. Winslow Residential Hall did not have an NPDES permit or the required storm water pollution prevention plan at the time of inspection for the construction project it was then undertaking, thereby violating 33 U.S.C. § 1311(a).

B. Emergency Planning and Community Right-to-Know Act

12. Section 311 of EPCRA, 42 U.S.C. § 11021, requires the owner or operator of any facility which is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, to submit the MSDS to the proper state and local authorities.
13. Section 312 of EPCRA, 42 U.S.C. § 11022, requires the owner or operator of any facility which is required to prepare or have available a MSDS for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, to prepare and submit an emergency and hazardous chemical inventory form to the proper state and local authorities.

14. Despite storing diesel and gasoline above the applicable threshold for the Tier I/II Reports for those two hazardous materials, Haskell Indian Nations University failed to submit MSDSs for the hazardous materials, in violation of 42 U.S.C. § 11021.
15. Despite storing over 10,000 pounds of diesel, the following facilities failed to submit Tier I/II Chemical Inventory Reports that include information for that hazardous material, in violation of 42 U.S.C. § 11022:
 - First Mesa (Polacca) Elementary School
 - Haskell Indian Nations University
 - Hopi Day School
 - Hopi Jr/Sr High School
 - Hotevilla Bacavi Community School
 - Kayenta Community School
 - Keams Canyon Elementary School
 - Moencopi Day School
 - Second Mesa Day School
 - Sicangu Owaye Oti (Rosebud) Dormitory
 - Two Eagle River School
16. Despite storing over 10,000 pounds of propane, the following facilities failed to submit Tier I/II Chemical Inventory Reports that include information for that hazardous material, in violation of 42 U.S.C. § 11022:
 - Northern Cheyenne Tribal School
 - San Simon School
 - Santa Rosa Boarding School
 - Santa Rosa Ranch School
 - Tohono O'Odham High School
17. Despite storing over 10,000 pounds of fuel, the following facilities failed to submit Tier I/II Chemical Inventory Reports that include information for that hazardous material, in violation of 42 U.S.C. § 11022:
 - Loneman Day School
 - Marty Indian School
 - Porcupine School
 - Sherman Indian High School
 - St. Francis School
 - Wounded Knee School

C. Toxic Substances Control Act

18. Section 15(a) of TSCA, 15 U.S.C. § 2614(a), prohibits noncompliance with rules promulgated under section 6 of TSCA, 15 U.S.C. § 2605.

19. Section 6 of TSCA, 15 U.S.C. § 2605, authorizes the Administrator to promulgate rules relating to hazardous chemical substances and mixtures, including Polychlorinated Biphenyls (PCBs).
20. 40 CFR § 761.40, promulgated under 15 U.S.C. § 2605, sets forth the method for properly marking PCBs.
21. In violation of 40 CFR § 761.40, Chemawa Indian School failed to properly mark the PCB storage area and the items.
22. 40 CFR §§ 761.50 and 761.60, promulgated under 15 U.S.C. § 2605, set forth the method for properly disposing of PCBs.
23. In violation of 40 CFR § 761.50(b)(2), Chemawa Indian School failed to properly dispose of the PCB bulk product waste.
24. 40 CFR § 761.65, promulgated under 15 U.S.C. § 2605, sets forth the method for properly storing PCBs for disposal including, among other things, specifications for buildings in which PCBs are stored, a requirement for inspection of the PCBs every 30 days, and recordkeeping requirements for disposed PCBs.
25. In violation of 40 CFR § 761.65(b)(1), Chemawa Indian School failed to properly meet the requirements for storing PCBs and PCB items designated for disposal.
26. In violation of 40 CFR § 761.65(c)(5), Chemawa Indian School failed to inspect all PCB items in storage for leaks every 30 days.
27. In violation of 40 CFR § 761.65(c)(8), Chemawa Indian School failed to record the dates when the PCB items were removed from service for disposal.
28. 40 CFR §§ 761.202 and 761.205, promulgated under 15 U.S.C. § 2605, require PCB generators, commercial storers, transporters, and disposers to notify EPA prior to engaging in PCB waste handling activities.
29. In violation of 40 CFR §§ 761.202 and 761.205, Chemawa Indian School failed to notify EPA prior to engaging in PCB waste handling activities.

V. COMPLIANCE PROGRAM

30. IA agrees to take any and all necessary steps to achieve and maintain full compliance with the law as soon as practicable. Such steps shall include, but not be limited to, the activities outlined in this section. To the extent IA is able to achieve compliance more expeditiously than the timeframes set forth in this FFCA, IA shall do so.
31. To the extent it has not already done so, IA shall, within ninety (90) days of the effective date of this FFCA, achieve and maintain compliance with all applicable provision of CWA, EPCRA, and TSCA at all of its facilities. More specifically, IA shall:

- a. Submit a permit application for its discharges or cease discharging at those schools listed in paragraphs 9-11.
 - b. Submit MSDSs for the diesel and gasoline stored at Haskell Indian Nations University.
 - c. Submit Tier I/II Chemical Inventory Reports for the diesel stored at the schools in paragraph 15.
 - d. Submit Tier I/II Chemical Inventory Reports for the propane stored at the schools in paragraph 16.
 - e. Submit Tier I/II Chemical Inventory Reports for the fuel stored at the schools in paragraph 17.
 - f. Properly mark the PCB storage area and the items at Chemawa Indian School.
 - g. Properly dispose of the PCB bulk product waste located at Chemawa Indian School.
 - h. Properly meet the requirements for storing PCBs and PCB items designated for disposal at Chemawa Indian School.
 - i. Inspect all PCB items in storage at Chemawa Indian School for leaks every 30 days.
 - j. Record the dates when the PCB items at Chemawa Indian School were removed from service for disposal.
 - k. Ship off site for proper disposal all PCB bulk product waste at Chemawa Indian School within 30 days after removal from service at the school.
 - l. Notify EPA prior to engaging in additional PCB waste handling activities at Chemawa Indian School.
32. IA shall, upon completion of the corrective actions for each violation, submit to EPA a Statement of Return to Compliance.
33. Respondent shall submit copies of any communications or reports with respect to the Compliance Provisions of this FFCA to the EPA contact(s) listed in Attachment A to this FFCA.
34. If EPA determines that a delay or noncompliance with the requirements herein has been or will be caused by events, conditions, or circumstances entirely beyond the control of IA and that IA could not have prevented such delay or noncompliance by the exercise of due diligence, the time for performance of such requirement shall be extended for a period not to exceed the actual delay resulting from such circumstances and stipulated penalties for such delay or noncompliance shall not accrue for such period. IA shall

bear the burden of proving to EPA by a preponderance of the evidence, through a written submission to EPA, that any delay was caused by circumstances entirely beyond the control of IA and that IA could not have prevented such delay by the exercise of due diligence. In the event that EPA does not agree that a delay has been or will be caused by circumstances beyond the control of IA, EPA will notify IA in writing of the basis for its decision within fourteen (14) days. If EPA fails to respond to IA's request within fourteen (14) days, IA may initiate dispute resolution to determine the outcome of the request.

VI. REPORTING AND SAMPLING

35. Respondent shall submit a semi-annual report to EPA Headquarters on January 1 and July 1 of each year documenting the progress made in implementing the FFCA and the anticipated actions to be taken over the next 6 months. If the FFCA takes effect less than two months prior to the end of a reporting period, then the first report shall be due at the end of the next reporting period.
36. The semi-annual report shall include the following information:
 - a. A summary of all actions taken in the past 6 months and planned for the next 6 months to correct the violations listed in paragraphs 6 through 29 of the FFCA, including any deadlines or milestones during the reporting period. For the first report, the summary shall include all corrective actions taken since DOI was originally notified of the violations by EPA up to the time of the first report.
 - b. A detailed description of all instances where Respondent did not comply with any requirements of the FFCA in the past 6 months and an explanation why the non-compliance occurred and the remedial steps taken, or to be taken, to prevent or minimize such non-compliance.
37. Notification to EPA of any noncompliance with any provision of this FFCA or anticipated delay in performing any obligation under this FFCA shall not excuse IA's noncompliance or anticipated delay.
38. Unless specified otherwise, when written notification to or communication with EPA is required by the terms of this FFCA, it shall be addressed to the relevant EPA contact(s) listed in Attachment A to this FFCA.
39. In all documents and reports submitted to EPA pursuant to this FFCA, IA shall, by an authorized officer, certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading, by including and signing the following statement:

I certify that, to the best of my knowledge and belief, the information contained in this written certification and in any documents accompanying this certification is true, accurate, and complete. In making this statement, I have not made an independent review of all statements contained therein and have relied in good-faith on information, statements, and representations furnished to me by

employees or contractors of the Department of the Interior. Based on my inquiry of the person or persons (or the supervisors of such persons) directly responsible for gathering the information contained in this written certification and in any documents accompanying this certification, this document is, to the best of my knowledge and belief, true accurate and complete. I am aware that there are significant potential penalties for submitting materially false information, including the possibility of fines and imprisonment for knowing violations.

VII. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

40. Compliance with the terms of this FFCA in no way affects or relieves IA of its obligation to comply with all applicable requirements of the laws and regulations promulgated thereunder or other applicable requirements of Federal, state, or local law.

VIII. PERMIT OBLIGATIONS

41. This FFCA does not constitute a permit and does not relieve IA of any obligation to apply for and obtain applicable NPDES permits and to comply with all existing NPDES permits for its facilities.

IX. RIGHT OF ENTRY

42. EPA, its contractors, and other authorized representatives shall have the right to enter the facilities subject to this FFCA to conduct any inspection, including, but not limited to, records inspection, sampling, testing, or monitoring they deem necessary to determine IA's compliance with this FFCA. EPA, its contractors, and other authorized representatives will comply with appropriate environmental laws governing access and inspections.

X. DISPUTE RESOLUTION

43. In the event of any action or issue that generates a dispute pursuant to this FFCA, EPA and IA shall meet promptly and work in good faith in an effort to reach a mutually agreeable resolution of the dispute.
44. Except as specifically set forth elsewhere in this FFCA, if a dispute arises under this FFCA, the procedures of this Section shall apply.
45. The pendency of any dispute under this Section shall not affect IA's responsibility to perform the work required by this FFCA in a timely manner, except that the time period for completion of work affected by such dispute may, at EPA's sole discretion, be extended for a period of time not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this FFCA which are not affected by the dispute shall continue and be completed in accordance with any applicable schedule or schedules.
46. The Parties to this FFCA shall make reasonable efforts to informally resolve disputes at the Project Manager level. With respect to EPA, "Project Manager" means Richard

Satterfield of EPA's Federal Facilities Enforcement Office or any duly identified successor. With respect to IA, "Project Manager" means Judith Wilson, Director of the IA Division of Environmental and Cultural Resources or any duly identified successor.

47. Within fourteen (14) days after any action which leads to or generates a dispute, IA shall submit to EPA a written statement of dispute setting forth the nature of the dispute, IA's position with respect to the dispute, and the information IA is relying upon to support its position. If IA does not provide such written statement to EPA within this fourteen (14) day period, IA shall be deemed to have agreed with EPA's position with respect to the dispute.
48. Upon EPA's receipt of the written statement of dispute from IA, the Parties shall engage in dispute resolution among the Project Managers. The Parties shall have fourteen (14) days from the receipt by EPA of the written statement of dispute to resolve the dispute. During this period, the Project Managers shall meet or confer as many times as necessary to discuss and attempt resolution of the dispute. If agreement cannot be reached on any issue within this fourteen (14) day period, IA may, within ten (10) days after the conclusion of the fourteen (14) days dispute resolution period, submit a written notice to EPA elevating the dispute to the Dispute Resolution Committee ("DRC") for resolution. If IA does not elevate the dispute to the DRC within this ten (10) day period, IA shall be deemed to have agreed with EPA's position with respect to the dispute.
49. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached pursuant to the foregoing paragraphs in this Section. Following elevation of a dispute to the DRC, the DRC shall have thirty (30) days to unanimously resolve the dispute. EPA's designated representative on the DRC is V. Anne Heard, of EPA's Federal Facilities Enforcement Office. IA's designated representative on the DRC is John Rever, Director, IA Office of Facilities, Environment, and Cultural Resources. Delegation of the authority from a Party's representative on the DRC to an alternate shall be provided in writing to the other Party within seven (7) days of delegation.
50. If unanimous resolution by the DRC is not achieved within this thirty (30) day period, a member of the DRC may, within twenty-one (21) days after the conclusion of the thirty (30) day dispute resolution period, submit a written Notice of Dispute to the Director of EPA's Federal Facilities Enforcement Office for final resolution of the dispute. In the event that the dispute is not elevated to the Director of EPA's Federal Facilities Enforcement Office within the designated twenty-one (21) day period, IA shall be deemed to have agreed with the original EPA position with respect to the dispute.
51. Within thirty (30) days of elevation to the Director of EPA's Federal Facilities Enforcement Office, the Director of EPA's Federal Facilities Enforcement Office shall review and resolve the dispute. Upon resolution, the Director shall provide IA with a written final decision setting forth the resolution of the dispute.
52. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, IA shall incorporate the resolution and final determination into

the appropriate statement of work, plan, schedule, or procedures and proceed to implement this FFCA according to the amended statement of work, plan, schedule, or procedures.

53. Resolution of a dispute pursuant to this Section of the FFCA constitutes a final resolution of the dispute arising under this FFCA. The Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of the FFCA.

XI. FORCE MAJEURE

54. IA's obligations under Section V (Compliance Program) of this FFCA shall be performed as set forth in this FFCA unless performance is prevented or delayed by a force majeure event. For purposes of this FFCA, "force majeure" is defined as any event arising from causes beyond the control of IA, which could not be overcome by the due diligence of IA, which delays or prevents the performance of any obligation under this FFCA, including acts of God or war and any judicial orders which prevent compliance with the provisions of this FFCA. Force majeure shall not include increased costs of performance of any activity required by this FFCA.
55. If IA is having difficulty meeting its obligations as set forth in this FFCA due to a force majeure event, it shall notify EPA promptly by telephone of any change in circumstances giving rise to the suspension of performance or the nonperformance of any obligation under this FFCA. In addition, within fourteen (14) days of the occurrence of force majeure, it shall provide a written explanation to EPA of the reason(s), the anticipated duration of the event and delay, the measures taken and to be taken to prevent or minimize the time and effects of failing to perform or delaying any obligation, and the timetable for the implementation of such measures. Failure to comply with the notice provisions shall constitute a waiver of any claims of force majeure. IA shall take all reasonable measures to avoid and/or minimize any such delay.
56. The burden of proving that any delay is caused by circumstances entirely beyond the control of IA shall rest with IA.

XII. MODIFICATIONS

57. The requirements, timetable, and deadlines under this FFCA may be modified upon receipt of a timely request for modification and when good cause exists for the requested modification. Any request for modification by IA shall be submitted in writing and shall specify: the requirement, timetable, or deadline for which a modification is sought; the length of the extension sought; the good cause for the extension; and any related requirement, timetable, deadline or schedule that would be affected if the extension were granted.
58. Good cause exists for a modification when sought in regard to: a force majeure; a delay caused, or which is likely to be caused, by the granting of an extension in regard to another timetable and deadline or schedule; a delay caused by failure of a regulatory

agency to perform in a timely manner where regulatory action is necessary to proceed with construction provided that IA has made a timely and complete request for action from the regulatory agency; and any other event or series of events that the Parties mutually agree constitutes good cause.

59. Within twenty-one (21) calendar days of receipt of a request for a modification, EPA shall advise IA of its position on the request. If EPA does not concur in the extension, it shall include in its statement of nonconcurrence the basis for its position.

XIII. FUNDING

60. It is the expectation of the Parties to this FFCA that all obligations of IA arising under this FFCA will be fully funded. IA agrees to use every legally available mechanism to seek sufficient funding through the IA budgetary process to fulfill its obligations under the FFCA.
61. Provisions herein shall not be interpreted to require obligations or payment of funds in violations of the Anti-Deficiency Act, 31 U.S.C. §1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted within the terms delineated in this FFCA.
62. If funds are not available to fulfill IA's obligations under this FFCA, EPA reserves the right to initiate any action that would be appropriate absent this Agreement.

XIV. GENERAL PROVISIONS

63. The Parties agree that the terms and conditions of this Agreement relating to the Clean Water Act and to the Toxic Substances Control Act are enforceable as appropriate by any person pursuant to 33 U.S.C. § 1365 and 15 U.S.C. § 2619, respectively. Terms and conditions of this Agreement changed by an agreed upon modification shall be enforceable as changed. Nothing in this Agreement shall be deemed to waive the sovereign immunity of the United States beyond what is already accomplished in the Clean Water Act and the Toxic Substances Control Act.
64. This FFCA was negotiated and executed by the parties in good faith to ensure compliance with the law. No part of this FFCA constitutes or should be interpreted or construed as an admission of fact or of liability under Federal, tribal, state or local laws, regulations, ordinances, or common law. By entering into this FFCA, IA does not waive any claim, right, or defense that it might raise in any other proceeding or action.
65. If any provision of this FFCA is ruled invalid, illegal or unconstitutional, the remainder of the FFCA shall not be affected by such ruling.
66. The effective date of this FFCA shall be the date it is signed by EPA.
67. In computing any period of time described as "days" herein, all references to "days" refer to "calendar days." The last day of a time period shall be included, unless it is a

Saturday, a Sunday or a Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a Federal holiday.

68. This FFCA shall terminate upon IA's receipt of EPA's determination that IA has satisfied its obligations under the FFCA.

For Respondent: The United States Department of the Interior

Date

Larry Echo Hawk
Assistant Secretary for Indian Affairs

For Complainant:

U.S. Environmental Protection Agency,
Headquarters

Date

Cynthia A. Giles
Assistant Administrator
Office of Enforcement and Compliance Assurance

APPENDIX A

EPA REGIONAL CONTACTS

EPA Region 1

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