

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

<p>IN THE MATTER OF:</p> <p>El Paso Natural Gas, L.L.C.,</p> <p>Respondent</p>	<p>U.S. EPA Region 9</p> <p>CERCLA Docket No. 2013-9</p> <p>THIRD MODIFICATION TO ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR MINE ASSESSMENTS AND INTERIM REMOVAL ACTIONS</p> <p>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</p>
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**THIRD MODIFICATION OF ORIGINAL ADMINISTRATIVE
SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR
REMOVAL SITE EVALUATION COMPLETION FOR SEVENTEEN
EPNG MINE SITES**

I. RELATIONSHIP OF MODIFICATION TO ORIGINAL AGREEMENT

The Administrative Order on Consent and Settlement Agreement, CERCLA Docket No. 2013-09, entered into on August 23, 2013 (“Original Agreement” or “2013 AOC”) between El Paso Natural Gas Company, L.L.C. (“EPNG” or “Respondent”) and the United States Environmental Protection Agency (“USEPA”), provided for modification of any requirements of this Settlement Agreement “in writing by mutual agreement of the parties.” *See* 2013 AOC, Section XXVII. MODIFICATIONS at para. 87. The First Modification of the 2013 AOC was fully-executed on June 28, 2017, and the Second Modification of the 2013 AOC was fully-executed on July 31, 2018 (effective August 3, 2018). Pursuant to this Third Modification of the 2013 AOC, Respondent agrees to perform additional work as provided herein.

II. ADDITIONAL WORK PROVISIONS

The purpose of this Third Modification of the 2013 AOC is the completion of Removal Site Evaluations (RSEs) at seventeen mine sites subject to the 2013 AOC. The First Modification required that RSEs be completed at Charles Huskon #12 and Charles Huskon #14 (collectively, the “Priority Mine Sites”); the Second Modification required that Engineering Evaluations/Cost Analyses be performed for the Priority Mine Sites; and this modification requires EPNG to complete RSEs for the 17 remaining mine sites covered by the 2013 AOC (collectively, the “17 Mine Sites”). This additional work shall be completed in accordance with (1) the Scope of Work provided as Attachment C to the Original Agreement, and (2) the provisions of this Third Modification, including Attachment A (Supplemental Scope of Work), which is incorporated herein by this reference.

III. ALL OTHER PROVISIONS OF ORIGINAL AGREEMENT TO APPLY

All provisions of the Original Agreement remain in full force and effect, except to the extent that any of these provisions conflict with this Third Modification. In the event of any conflict between the Original Agreement and this Third Modification, this Third Modification shall control.

IV. Effective Date

This Third Modification shall be effective (“Effective Date”) three (3) days after Respondent is notified that it has been signed by the Assistant Director of the Superfund Division.

The undersigned representative of Respondent certifies that s/he is fully authorized to enter into the terms and conditions of the Third Modification and to bind the party s/he represents to this document.

Agreed this 24 day of May, 2019
For Respondent, El Paso Natural Gas Company, L.L.C.

By (Name): Dirk Cockrum
(Title): Vice President

AS
4/25/2019

It is so ORDERED and Agreed, this 29 day of July, 2019

By: *Will C Duncan*
Will Duncan
Assistant Director, Superfund Division
Partnership, Land Revitalization and Cleanup Branch
United States Environmental Protection Agency, Region 9

Attachment A to Third Modification of EPNG 2013 AOC
Supplemental Scope of Work
Completion of RSEs at 17 Mine Sites

This Supplemental Scope of Work (“Supplemental SOW”) describes the additional work (“Additional Work”) to be performed by EPNG pursuant to the Third Modification (“Third Modification”) to the Administrative Order and Settlement Agreement, CERCLA Docket No. 2013-9, dated August 23, 2013 (“2013 AOC”). The work to be performed includes the completion of field work and submission to the United States EPA (“USEPA”) of workplans and reports for Removal Site Evaluations (“RSEs”) for 17 of the 19 EPNG mine sites (“Mine Sites”) in Western Navajo Nation covered by the 2013 AOC. The 17 Mine Sites are listed in Exhibit 1 to this Supplemental SOW, which Exhibit is incorporated herein by this reference.

- 1. RSE Work Plan(s) for the 17 Mine Sites:** EPNG shall prepare and submit to USEPA Removal Site Evaluation (RSE) Work Plan(s) that will describe the process for conducting the tasks necessary to complete required field activities and support development of an RSE report for each of the 17 Mine Sites. At EPNG’s discretion, an RSE Work Plan may be proposed for each site or for groupings of sites, or a combined Draft Work Plan may be prepared with an attachment(s) for specific tasks identified for each site. (Note: RSEs for CH-12 and CH-14 are being conducted pursuant to the First Modification to the 2013 AOC).
- 2. Biological Assessments and Cultural Resource Surveys:** Respondent has previously conducted biological assessments and cultural resource surveys for all of the Mine Sites. For Mine Site areas not already surveyed, where intrusive activities are proposed in the RSE Work Plan(s) subject to this Third Modification, the Respondent shall consult with the Navajo Nation Department of Fish and Wildlife (NNDFW) and the Navajo Nation Historical Preservation Department (NNHPD) and receive approval before any intrusive activities are undertaken. Respondent shall arrange for and provide the USEPA with contemporaneous copies of communications Respondent submits to, or receives from, NNDFW and NNHPD regarding any additional surveys that may be necessary.
- 3. RSE Work to be conducted at each of the 17 Mine Sites:**
 - i. Access Agreements:** Respondent shall use its best efforts to obtain any access agreements needed to address additional areas needed to complete this Supplemental SOW.
 - ii. Field Sampling for background and correlation:** On a site-specific basis, Respondent will propose either using background and correlation information collected pursuant to the First Modification; from RSE work at other nearby Mine Sites; or propose additional data collection, depending on site-specific geologic characteristics. The RSE Work Plan(s) will identify those sites where supplemental field sampling will be required to support background and correlation data requirements. An evaluation of background conditions will be presented in the RSE Report for each site.

- iii. Gamma Scanning:** Respondent has previously performed extensive gamma scanning on the 17 Mine Sites and in step-out areas near the 17 Mine Sites. The RSE Work Plan(s) shall identify potential data gaps for additional gamma scanning to complete lateral delineation of mining-related disturbances as necessary. Consideration of additional areas shall include the evaluation of whether such areas were disturbed by mining, using the multiple lines of evidence approach described in paragraph (vi) below.
- iv. Characterization of Surface, Subsurface Soils, and Sediment:** Respondent shall sample surface and subsurface soils (and sediments, if present) in order to characterize the nature and extent of contamination associated with the 17 Mine Sites. The samples shall be taken at intervals that allow confirmation of the extent of mine-related disturbances, and shall be analyzed for select radionuclides and metals, as specified in the approved RSE Work Plan.
- v. Vertical Delineation:** In addition to, or, if approved by USEPA, in place of, subsurface sampling, Respondent shall use available historical data (e.g., Navajo Abandoned Mine Land pre-reclamation surveys) and other relevant information to estimate the nature and extent of vertical disturbances within the lateral boundaries found to be disturbed by mining-related activities.
- vi. Delineation of Mine Disturbance Areas:** Respondent shall implement an investigation process, based on multiple lines of evidence (e.g., historical mining/reclamation documents, current field observations, geologic mapping, gamma scanning, soil sampling), to identify the locations and lateral extent of mining-related disturbances (as opposed to naturally-occurring radioactive material). Respondent shall describe the lines of evidence and rationale Respondent will use to determine if an area within a Mine Site boundary and/or an area outside of the boundary has been disturbed by mining-related activities. These results will serve as the basis for confirming the scope and scale of the remaining RSE field activities.
- vii. Characterization of Any Solid Waste:** Respondent shall sample or gamma-scan any solid waste found within the lateral delineation boundaries, such as old fencing materials, old piping, and concrete debris, and shall estimate the volume or quantity of such solid waste.
- viii. Impacts to Water:** Respondent shall evaluate the potential for mine-related impacts to surface and groundwater. This evaluation shall include the following:
- Consideration of a desktop study of regional and local hydrology and hydrogeology as previously provided to USEPA pursuant to the First Modification;
 - A field survey to identify (a) surface water bodies (including ponds and drainages) within one-half mile of each Mine Site, and (b) groundwater wells for drinking or livestock purposes within one mile of each Mine Site;

- An evaluation of potential hydraulic connections between material within the lateral boundaries of mining disturbances and identified surface water bodies, including sediment in intermittent surface water bodies (e.g., dry ponds or washes), and groundwater wells, if any;
 - If a hydraulic connection is identified as a result of the evaluation described above, Respondent shall collect a water sample from appropriate groundwater wells within a mile, and a surface water sample from appropriate surface water bodies within one-half mile. If surface water is not present, Respondent shall collect a sediment sample from intermittent surface water features (e.g., dry ponds or washes) within one-half mile. Respondent shall analyze for select radionuclides and metals which will be determined in the RSE Work Plan.
4. **Removal Site Evaluation Report(s):** Respondent shall prepare and submit a complete draft and final RSE Report for USEPA, in consultation with the Navajo Nation EPA (“NNEPA”), approval in accordance with the schedule provided in this Supplemental SOW and the approved Work Plan. At EPNG’s discretion, a RSE Report may be prepared for each site, groupings of sites, or EPNG may prepare and submit a combined RSE Report. Respondent shall include a Conceptual Site Model (CSM) in the RSE Report that will include a discussion of site-specific nature and extent of contamination and fate and transport mechanisms. The CSM will provide a foundation for development of a risk assessment and engineering evaluation/cost analysis (EE/CA). Additionally, Respondent shall estimate the volume of material impacted by mining activities.
5. **Operation and Maintenance:** EPNG may, after notice to and approval by the USEPA Remedial Project Manager, perform limited work on any of the 17 Mine Sites, including CH-12 and CH-14, for the purpose of maintaining site stability during the CERCLA closure process (“O&M work”). O&M work may include measures such as limited regrading to address significant erosional features, and drainage and access improvements.
6. **Schedule:** The Work to be performed pursuant to the 2013 AOC, the original SOW and this Supplemental SOW shall be performed in compliance with the following schedule, unless otherwise agreed to by the Parties. Respondent may request an extension of any time periods impacted by the need to perform additional biological or cultural assessment work prior to intrusive field work. In consultation with USEPA and NNEPA, EPNG will divide the remaining Mine Sites into two groups (Phase I and Phase II) and propose that the field work for all of the Mine Sites will be conducted over approximately a 2-year period.
- a. **RSE Work Plan(s):** Respondent shall submit RSE Workplan(s) for approximately 50% of the 17 Mine Sites (Phase 1) within 60 days of the Effective Date of the Third Modification (“Effective Date”). The RSE Workplan(s) for the balance of the remaining sites (Phase 2) shall be due within 270 days of the Effective Date of the Third Modification. The RSE Work Plan(s) shall include a Health and Safety Plan Addendum, Quality Assurance Project Plan, and Data Management Plan. As discussed in Section 1, at EPNG’s discretion a RSE Work Plan(s) may be prepared for each Mine

Site, groupings of sites, or a combined Work Plan may be prepared with an attachment(s) for specific tasks identified for each Mine Site.

- b. **Biological Assessments and Cultural Resource Surveys:** As part of the RSE Work Plans, Respondent shall confirm that proposed field activities are covered by existing biological assessments and cultural resource surveys. If any proposed activities are not covered by existing surveys, the Respondent will expeditiously conduct necessary surveys to secure NNHPD and/or NNDFW approval. Respondent may request an extension of time for implementation of field activities, if a longer time period is required to receive the necessary approvals.
- c. **Access Agreements:** Respondent shall use its best efforts to obtain any additional access agreements needed to address additional areas needed to complete this Supplemental SOW within **45 days of identifying any additional areas for which access is needed.**
- d. **Field Work:** Unless the required field work is delayed by biological or cultural resource assessment requirements for additional field survey work or otherwise due to circumstances beyond the Respondent's control, Respondent shall complete the field work for the Phase 1 Mines **within 120 days of Phase 1 Mines RSE Work Plan approval.** Field work for the Phase 2 Mines shall be completed **within 120 days of Phase 2 Mines RSE Work Plan approval.**
- e. **Submission of RSE Report(s)**
 - i. **Draft RSE Report(s):** Respondent shall submit Draft RSE Reports no later than **90 days after the receipt of final laboratory data for the field work for the Mine Site or Group of Mine Sites;** and
 - ii. **Final RSE Report(s):** Respondent shall submit a Final RSE Reports no later than **60 days after receiving USEPA's final comments on the Draft RSE Report.**

**Exhibit 1 to Attachment A to Third Modification of EPNG 2013 AOC
Supplemental Scope of Work for completion of RSEs at remaining Mine sites**

The Mine Sites subject to the Third Modification are:

1. Charles Huskon #1,
2. Charles Huskon #3,
3. Charles Huskon #4,
4. Charles Huskon #5,
5. Charles Huskon #6,
6. Charles Huskon #7,
7. Charles Huskon #8,
8. Charles Huskon #9,
9. Charles Huskon #10,
10. Charles Huskon #11,
11. Charles Huskon #17,
12. Charles Huskon #26,
13. Evans Huskon #2,
14. Ramco #20,
15. Ramco #21,
16. Ramco #22
17. Ramco #24.