

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

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UNITED STATES OF AMERICA
and STATE OF COLORADO,

Plaintiffs,

Civil Action No. 20-cv-02939-KLM

v.

TCI PACIFIC COMMUNICATIONS, LLC,

Defendant.

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**EAGLE MINE SUPERFUND SITE
OPERABLE UNIT 1**

**REMEDIAL DESIGN/REMEDIAL ACTION
CONSENT DECREE**

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I. BACKGROUND

A. The United States of America (United States), on behalf of the Administrator of the United States Environmental Protection Agency (EPA), filed a complaint in this matter in 1995 pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks, *inter alia*, performance of response actions by the defendant (Settling Defendant) at the Eagle Mine Superfund Site (Site) consistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300.

C. The Settling Defendant does not admit any liability to the United States or the State of Colorado (State) (collectively, Plaintiffs) arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment. The United States, the State, and Settling Defendant agree that the Parties shall not use this Consent Decree in any judicial or administrative proceeding, except in a proceeding to enforce this Consent Decree, as evidence of Settling Defendant's liability for the matters addressed, as defined in Paragraph 78.

D. Solely for the purposes of section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the OUI Remedy and the Work to be performed pursuant to this Consent Decree by Settling Defendant shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

E. EPA and Colorado Department of Public Health and Environment (CDPHE) (collectively, the Agencies) entered into a Memorandum of Agreement dated September 12, 2018 (MOU) to coordinate their respective activities and provide for substantial and meaningful State involvement at the Site. The Agencies acknowledge their intent to follow the MOU. The MOU imposes no obligations nor grants any rights or remedies upon Settling Defendant.

F. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the

terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and the State and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Defendant, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work and to each person representing Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Settling Defendant within the meaning of section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree 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 Consent Decree or its appendices, the following definitions shall apply solely for purposes of this Consent Decree:

“Affected Property” shall mean all real property as addressed by the OUI Remedy.

“Agencies” shall mean EPA and CDPHE collectively.

“BFPP AOC” shall mean the Administrative Settlement Agreement and Order on Consent for Response Action and Release and Waiver of CERCLA § 107(r) Lien, Docket No. CERCLA-08-2028-0009, issued by EPA to Battle North, LLC, and Battle South, LLC, effective on July 3, 2018.

“CDPHE” shall mean the Colorado Department of Public Health and Environment and any successor departments or agencies of the State.

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

“CD/RAP” shall mean the Consent Decree, Order, Judgment and Reference to Special Master, captioned *State of Colorado v. Gulf + Western Industries, Inc. & the New Jersey Zinc Co.*, Civ. Action No. 83-C-2387 (May 20, 1988). The State entered into the CD/RAP, whereby Gulf + Western Industries, Inc. agreed to perform remedial actions as set forth in the Remedial Action Plan, attached to the consent decree.

“CD/SOW” shall mean the Eagle Mine Operable Unit Number 1 Partial Consent Decree, captioned *United States v. Viacom International, Inc.*, Civ. Action. No 95-N-2360 (June 12, 1996), filed in the U.S. District Court for the District of Colorado. EPA, with the State as a signatory, entered into the CD/SOW, whereby Viacom International, Inc. agreed to perform additional remedial actions as set forth in the OU1 ROD. The Statement of Work for implementing the remedial actions in the OU1 ROD was attached.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto (listed in Section XXII). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

“Day” shall mean a calendar day. In computing any period of time under this Consent Decree, 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.

“Eagle 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).

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

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

“EPA Future Response Costs” shall mean all costs incurred after September 30, 2019, less \$100,000. EPA Future Response Costs will include direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Consent Decree, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 11 (Emergencies and Releases); Paragraph 12 (Community Involvement) (including the costs of any technical assistance grant under section 117(e) of CERCLA, 42 U.S.C. § 9617(e)); Paragraph 29 (Access to Financial Assurance); Section VII (Remedy Review); Section VIII (Property Requirements) (including the cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions and/or to secure, implement, monitor, maintain, or

enforce Institutional Controls including the amount of just compensation); Section XIII (Dispute Resolution); and all litigation costs.

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

“Institutional Controls” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the OU1 Remedy; and (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund, 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. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, also called the National 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.

“O&M” shall mean all operation and maintenance activities required to operate, maintain, and monitor the effectiveness of the OU1 Remedy as specified in the O&M SOW or any EPA-approved O&M plan.

“O&M SOW” shall mean the “Operation & Maintenance Statement of Work” document describing the activities Settling Defendant must perform to implement O&M regarding the Site, which is attached as Appendix C.

“OU1” shall mean Operable Unit 1 of the Site. OU1 is primarily media-based, focusing on protecting surface water at the Site by reducing metals loading to the Eagle River. On-going remediation within OU1 includes, among others, active engineered remedial features designed to capture and treat mine waste in surface and groundwater.

“OU1 ESD” shall mean the Explanation of Significant Differences issued by EPA on September 1, 1999 to modify the OU1 ROD.

“OU1 Remedy” shall mean the remedies selected by EPA for OU1 set forth in the OU1 ROD, the OU1 ESD, and the OU1 ROD Amendment.

“OU1 ROD” shall mean the Record of Decision for OU1 issued by EPA on March 29, 1993.

“OU1 ROD Amendment” shall mean the amendment to the OU1 ROD issued by EPA on September 28, 2017 to further modify the OU1 ROD by adding the Remedial Action.

“Owner” shall mean any person, other than Settling Defendant, that owns or controls any Affected Property, including Battle North, LLC, and Battle South, LLC.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower-case letter.

“Parties” shall mean the United States, the State and Settling Defendant.

“Performance Standards” shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the OU1 Remedy. With respect to surface water quality, performance standards shall be the Colorado Water Quality Control Commission’s 2008 water quality standards for cadmium, copper and zinc identified as ARARs in the OU1 ROD Amendment.

“Plaintiffs” shall mean the United States and the State.

“Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office. Proprietary Controls include Notices of Environmental Use Restrictions (Restrictive Notices) pursuant to Colorado’s Environmental Covenants Law, C.R.S. § 25-15-317 *et seq.*, as selected in the OU1 ROD Amendment and other Site decision documents as appropriate Institutional Controls.

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

“RD/RA SOW” shall mean the OU1 Remedial Design/Remedial Action Statement of Work document describing the activities Settling Defendant must perform to develop final plans and specifications for the Remedial Action, attached as Appendix A.

“Remedial Action” shall mean the remedial action selected in the OU1 ROD Amendment.

“Remedial Design” shall mean those activities to be undertaken by Settling Defendant to develop final plans and specifications for the Remedial Action as stated in the RD/RA SOW, as attached hereto as Appendix A.

“Restrictive Notices” shall mean Notices of Environmental Use Restrictions, which are a form of Institutional Control and are established pursuant to Colorado’s Environmental Covenants Statute, C.R.S. § 25-15-317 *et seq.*

“RPM” shall mean the Remedial Project Manager as defined in 40 C.F.R. § 300.5.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendant” shall mean TCI Pacific Communications, LLC, a Delaware limited liability company and its successors and assigns.

“Site” shall mean the Eagle Mine Superfund Site, encompassing approximately 235 acres, located approximately 1 mile southeast of the town of Minturn and 8 miles south of Vail in Eagle County, Colorado, and depicted generally on the map attached as Appendix B. The Site does not include the adjacent Belden Cribbings site.

“SOWs” shall refer collectively to statement of works created pursuant to this Consent Decree, including the RD/RA SOW and the O&M SOW.

“State” shall mean the State of Colorado.

“State Project Manager” shall mean the CDPHE personnel designated as the Site project manager.

“State Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the State incurs in reviewing or developing deliverables submitted pursuant to this Consent Decree, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 12 (Emergencies and Releases); Paragraph 13 (Community Involvement); Paragraph 32 (Access to Financial Assurance); Section VII (Remedy Review); Section VIII (Property Requirements) (including the cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including the amount of just compensation); Section XIII (Dispute Resolution); and all litigation costs.

“Supervising Contractor” shall mean the principal contractor retained by Settling Defendant to supervise and direct the implementation of the Work under this Consent Decree.

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

“UAO” shall mean the Unilateral Administrative Order for Remedial Design and Remedial Action, Docket No. CERCLA-08-2018-0007, issued by EPA to Settling Defendant on May 30, 2018.

“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 (1) any “hazardous substance” under section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any “solid waste” under section 1004(27) of RCRA, 42 U.S.C. § 6903(27). Waste Material does not include any hazardous substance, pollutant, or contaminant released in the course of Settling Defendant’s management of Belden Cribbing blocks as described in the O&M SOW, Section 3.A(p).

“Work” shall mean all activities and obligations Settling Defendant is required to perform under this Consent Decree, except the activities required under Section XIX (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties.

a. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by implementation of the Remedial Action and performance of operation and maintenance activities at the Site by Settling Defendant, to provide for the payment of Plaintiffs’ response costs, and to resolve the claims of Plaintiffs against Settling Defendant as provided in this Consent Decree.

b. This Consent Decree supersedes all prior enforcement documents relating to OU1 of the Site, including the CD/RAP, the CD/SOW, and the UAO. The CD/RAP, CD/SOW, and UAO are no longer in effect.

6. Commitments by Settling Defendant

a. Settling Defendant shall finance and perform the Work in accordance with this Consent Decree and all deliverables developed by Settling Defendant and approved or modified by EPA pursuant to this Consent Decree. Settling Defendant shall pay the United States for its response costs and the State for its response costs as provided in this Consent Decree.

7. **Compliance with Applicable Law.** Nothing in this Consent Decree limits Settling Defendant’s obligations to comply with the requirements of all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the OU1 Remedy and the SOWs. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP as provided in section 300.700(c)(3)(ii) of the NCP.

8. Permits

a. As provided in section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any

portion of the Work that is not on-Site requires a federal or state permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Defendant may seek relief under the provisions of Section XII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in Paragraph 8.a and required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

d. Settling Defendant has operated its water treatment plant at the Site pursuant to Colorado Discharge Permit System (CDPS) no. CO-0042480 since 1990. In 2018, the Colorado Water Quality Control Division (CWQCD) reissued a new discharge permit for the water treatment plant. The CWQCD declined to use the Technical Impracticability waiver alternate remedial goal of 3 micrograms per liter (ug/l) for arsenic set forth in the OUI ROD Amendment as the permit effluent limit. As a result, in accordance with section 121(e) of CERCLA, EPA will issue a Permit Equivalent Document, after consultation with CDPHE and an opportunity for CDPHE to comment.

e. Settling Defendant has operated the Liberty Well No. 4 at the Site pursuant to CDPS permits no. COG-600094, COG-6000181, and CO-0048952 since 1998. Settling Defendant also indicated its intent to terminate the current CDPS permit, CO-0048952, concurrent with the water treatment plant permit termination.

f. Pursuant to section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and section 300.400(e) of the NCP, and after EPA issues the relevant Permit Equivalent Document, Settling Defendant will no longer be required to comply with the relevant CDPS permits from Paragraph 8.d or 8.e. Settling Defendant shall then comply with the Water Treatment Plant Permit Equivalent Document and/or with the Liberty Well No. 4 Permit Equivalent Document.

VI. PERFORMANCE OF THE WORK

9. Coordination and Supervision

a. Project Coordinators

(1) Settling Defendant's Project Coordinator is Russ Cepko. Settling Defendant must have a Project Coordinator for Work at the Site. Settling Defendant's Project Coordinator must have sufficient technical expertise to coordinate the Work. Settling Defendant's Project Coordinator may not be an attorney representing Settling Defendant in this matter and may not act as the Supervising Contractor. Settling Defendant's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA has designated Jamie Miller as EPA's Remedial Project Manager (RPM). EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. The RPM will have the same authority as a remedial project manager as described in the NCP, including the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) CDPHE has designated Dustin McNeil as its State Project Manager. The State may designate other representatives, including its employees, contractors and/or consultants to oversee the Work. For any meetings and inspections in which the RPM participates, the State Project Manager also may participate. The RPM shall notify the State reasonably in advance of any such meetings or inspections.

(4) Settling Defendant's Project Coordinator shall meet with the RPM and the State Project Manager at the request of the Agencies.

(5) **Supervising Contractor.** Settling Defendant's Supervising Contractor is Dave Hinrichs. Settling Defendant must have a Supervising Contractor for the Work at the Site. Settling Defendant's proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard). In the event SD's contractors do not have an ANSI/ASQC system, the contractors will comply with the existing Quality Assurance Project Plan.

b. Procedures for Disapproval/Notice to Proceed

(1) EPA may change its RPM by notifying the State and Settling Defendant.

(2) CDPHE may change its State Project Manager by notifying EPA and Settling Defendant.

(3) Settling Defendant may change its Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of this Paragraph.

(4) Settling Defendant shall designate, and notify the Agencies, not later than 10 days before changing its Project Coordinator or Supervising Contractor, of the name, title, contact information, and qualifications of the Settling Defendant's proposed Project Coordinator and Supervising Contractor, whose qualifications shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and do not have a conflict of interest with respect to the Site.

(5) EPA, after consultation with CDPHE and an opportunity for CDPHE to comment, shall issue notices of disapproval and/or authorizations to proceed

regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, Settling Defendant shall, not later than 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed, after consultation with CDPHE and an opportunity for CDPHE to comment, regarding each supplemental proposed coordinator and/or contractor. Settling Defendant may select any coordinator/contractor covered by an authorization to proceed and shall, not later than 21 days, notify the Agencies of Settling Defendant's selection.

(6) EPA has authorized, after consultation with CDPHE and an opportunity for CDPHE to comment, Settling Defendant to proceed regarding the Project Coordinator and Supervising Contractor as provided in Paragraphs 9.a(1) and 9.a(5).

10. Performance of Work in Accordance with SOWs.

a. Settling Defendant shall develop the Remedial Design and perform the Remedial Action all in accordance with the RD/RA SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the RD/RA SOW:

(1) In accordance with the RD/RA SOW, Settling Defendant has completed many deliverables, including the Remedial Design Work Plan, the Health and Safety Plan, the Quality Assurance Project Plan, the Emergency Response/Contingency Plan, the Preliminary Design Investigation Work Plan, the Pre-Design Investigation Conference, and an Annual Summary Report.

(2) In accordance with the RD/RA SOW, Settling Defendant shall perform the remaining Remedial Design deliverables, which include the Preliminary Design Investigation Summary Report, the Notice of Work Completion after Preliminary Design Investigation Summary Report, the Pre-final (95%) Remedial Design, and the Final (100%) Remedial Design. Additionally, in accordance with the RD/RA SOW, Settling Defendant shall perform the Remedial Action and Remedial Action Construction Completion deliverables.

b. Settling Defendant shall operate, maintain, and monitor the effectiveness of the OUI Remedy, in accordance with the O&M SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the O&M SOW.

c. All deliverables that Settling Defendant is required to submit for approval under the Consent Decree and SOWs shall be subject to approval by EPA in accordance with approval of deliverables pursuant to the relevant document.

11. Emergencies and Releases. Settling Defendant shall comply with the emergency and release response and reporting requirements in the SOWs. Subject to Section XV (Covenants by Plaintiffs), nothing in this Consent Decree, including the SOWs, limits any authority of Plaintiffs: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect

human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site. If, due to Settling Defendant's failure to take appropriate response action under the SOWs, EPA or, as appropriate, the State takes such action instead, Settling Defendant shall reimburse the Agencies under Section X (Payments for Response Costs) for all costs of the response action.

12. **Community Involvement.** If requested by EPA, Settling Defendant shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with the SOWs. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator. Costs incurred by the Agencies under this Section constitute EPA Future Response Costs or State Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

13. **Modification of SOWs or Related Deliverables**

a. After consultation with CDPHE and an opportunity for CDPHE to comment, if EPA determines that it is necessary to modify the Work specified in the SOWs and/or in deliverables developed under the SOWs in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the Remedial Action, and such modification is consistent with the Scope of the Remedy set forth in the SOWs, then EPA will notify Settling Defendant of such modification. If Settling Defendant objects to the modification it may, not later than 30 days after EPA's notification, seek dispute resolution under Section XIII (Dispute Resolution).

b. The SOWs and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA after consultation with CDPHE and an opportunity for CDPHE to comment, or (2) if Settling Defendant invokes dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree, and Settling Defendant shall implement all work required by such modification. Settling Defendant shall incorporate the modification into the deliverable required under the relevant SOWs, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

14. Nothing in this Consent Decree, the SOWs, or any deliverable required under the SOWs constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOWs or related deliverable will achieve the Performance Standards.

VII. REMEDY REVIEW

15. **Periodic Review.** Settling Defendant shall conduct, in accordance with the O&M SOWs, studies and investigations to support EPA's reviews under section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, of whether the OU1 Remedy is protective of human health and the environment.

16. **EPA Selection of Further Response Actions.** If EPA determines, after consultation with CDPHE and an opportunity for CDPHE to comment, at any time, that the OUI Remedy is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

17. **Settling Defendant's Obligation to Perform Further Response Actions.** If EPA selects further response actions relating to the Site, EPA may require Settling Defendant to perform such further response actions, but only to the extent that the reopener conditions in Paragraph 67 or 68 (United States' Pre- and Post-Certification Reservations) are satisfied. Settling Defendant may invoke the procedures set forth in Section XIII (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of Paragraph 67 or 68 (United States' Pre- and Post-Certification Reservations) are satisfied, (b) EPA's determination that the OUI Remedy is not protective of human health and the environment, or (c) EPA's selection of further response actions. Disputes regarding EPA's determination that the OUI Remedy is not protective or EPA's selection of further response actions shall be resolved pursuant to Paragraph 47 (Record Review).

18. **Submission of Plans.** If Settling Defendant is required to perform further response actions pursuant to Paragraph 17, it shall submit a plan for such response action to the Agencies for EPA approval in accordance with the procedures of Section VI (Performance of the Work). Settling Defendant shall implement the approved plan in accordance with this Consent Decree.

VIII. PROPERTY REQUIREMENTS

19. **Agreements Regarding Access and Non-Interference**

a. Settling Defendant shall, with respect to any Affected Property, use best efforts to secure from the Owner an agreement, enforceable by Settling Defendant and by Plaintiffs, providing Plaintiffs and Settling Defendant, and Settling Defendant's representatives, contractors, and subcontractors, with access at all reasonable times to such Affected Property to conduct any activity required by or relating to the Consent Decree, including those listed in Paragraph 20 (Access Requirements). Settling Defendant shall provide a copy of such access to the Agencies.

b. Settling Defendant shall refrain from using the Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the OUI Remedy, or any Site remedy, including the restrictions listed in Paragraph 20.b (Land, Water, or Other Resource Use Restrictions).

20. **Access Requirements**

a. The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOWs;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 71 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XVIII (Access to Information);
- (9) Assessing Settling Defendant's compliance with the Consent Decree;
- (10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

b. **Land, Water, or Other Resource Use Restrictions.** Land, water, or other resource use restrictions applicable to the Affected Property have been recorded as restrictive notices in Eagle County, Colorado. The restrictive notices applicable to the Affected Property include: Restrictive Notice Nos. RSNOT00042, RSNOT00043, RSNOT00044, RSNOT00045, RNSOT00046, RSNOT00047, and RSNOT00048. The restrictive notices can be obtained through the EPA RPM/State Project Manager or downloading directly from the CDPHE Environmental Covenants and Use Restrictions website: <https://www.colorado.gov/pacific/cdphe/sites-environmental-covenants-and-use-restriction>.

21. **Institutional Controls.** Settling Defendant shall use best efforts to implement Institutional Controls to any Affected Property within the Site not covered by Restrictive Notices already implemented on Affected Property. If Settling Defendant's best efforts cannot secure Restrictive Notices, other Proprietary Controls shall be sought granting appropriate rights to CDPHE and any other appropriate grantee including the United States or Settling Defendant.

22. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Settling Defendant would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. If Settling Defendant is unable to accomplish what is required through "best efforts" in a timely manner, Settling Defendant shall notify the Agencies, and include a description of the steps taken to comply with the requirements. If the Agencies deem it appropriate, it may assist Settling Defendant, or take independent action, in obtaining such access and/or use restrictions, Proprietary Controls, releases, subordinations, modifications, or relocations of Prior Encumbrances that affect the title to the Affected Property, as applicable. All costs incurred by the Agencies in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute EPA Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

23. Notwithstanding any provision of the Consent Decree, Plaintiffs retain all their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions and Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulation.

IX. FINANCIAL ASSURANCE

24. No later than 120 days after the Effective Date and in order to ensure completion of the Work, Settling Defendant shall secure financial assurance, initially in the amount of \$20,000,000 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Settling Defendant may use multiple mechanisms if it is limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by Settling Defendant that it meets the relevant test criteria of Paragraph 26, accompanied by a standby funding commitment, which obligates Settling Defendant to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of Settling Defendant or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with Settling Defendant; and (2) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of Paragraph 26.

25. Settling Defendant has selected, and EPA has found satisfactory, after consultation with CDPHE and an opportunity for CDPHE to comment, a letter of credit as an initial form of financial assurance. Not later than 120 days after the Effective Date, Settling Defendant shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Region 8 Financial Officer, to the United States, and to the Agencies as specified in Section XX (Notices and Submissions).

26. Settling Defendant seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 24.e or 24.f, must, not later than 120 days after the Effective Date:

a. Demonstrate that:

(1) the Settling Defendant or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least \$10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The Settling Defendant or guarantor has:

i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least \$10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

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

27. Settling Defendant providing financial assurance by means of a demonstration or guarantee under Paragraph 24.e or 24.f must also:

a. Annually resubmit the documents described in Paragraph 26.b not later than 90 days after the close of the affected Settling Defendant's or guarantor's fiscal year;

b. Notify EPA not later than 30 days after Settling Defendant or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, not later than 30 days after EPA's request, reports of the financial condition of the Settling Defendant or guarantor in addition to those specified in

Paragraph 26.b; EPA may make such a request at any time based on a belief that the Settling Defendant or guarantor may no longer meet the financial test requirements of this Section.

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

29. Access to Financial Assurance

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 71.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 29.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and Settling Defendant fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 29.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 71.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraph 24.e or 24.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Settling Defendant shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or

trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Eagle 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.

e. All EPA Work Takeover costs not paid under this Paragraph must be reimbursed as EPA Future Response Costs under Section X (Payments for Response Costs).

30. **Modification of Amount, Form, or Terms of Financial Assurance.** Settling Defendant may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 25, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Settling Defendant of EPA's decision to approve or disapprove a requested reduction or change pursuant to this Paragraph, after consultation with CDPHE and an opportunity for CDPHE to comment. Settling Defendant may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution). Settling Defendant may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Settling Defendant pursuant to the dispute resolution provisions of this Consent Decree or in any other forum. Not later than 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Settling Defendant shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 25.

31. **Release, Cancellation, or Discontinuation of Financial Assurance.** Settling Defendant may release, cancel, or discontinue any financial assurance provided under this Section only (a) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (b) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution).

X. PAYMENTS FOR RESPONSE COSTS

32. **Payments for EPA Future Response Costs.** Settling Defendant shall pay all EPA Future Response Costs not inconsistent with the NCP.

a. On a periodic basis, EPA will send Settling Defendant an electronic billing notification to the individuals listed for Settling Defendant in Section XX (Notices and Submissions). If the billing notification is undeliverable, EPA will mail a paper copy to the

billing notification to Settling Defendant at the mailing address set forth in Section XX (Notices and Submissions).

b. The billing notification will include a standard regionally-prepared cost report with the direct and indirect costs incurred by EPA and its contractors, subcontractors, and the United States Department of Justice. Settling Defendant shall make all payments not later than 30 days of receipt of the bill, except as otherwise provided in Paragraph 33 (Contesting EPA Future Response Costs). Settling Defendant shall make payments using one of the payment methods set forth in the billing notification.

c. Settling Defendant may change its email billing address or mailing address by providing notice of the new address to:

Financial Management Officer
US EPA Region 8 (TMS-FMP)
1595 Wynkoop Street
Denver, Colorado 80202

d. **Deposit of EPA Future Response Costs Payments.** The total amount to be paid by Settling Defendant pursuant to Paragraph 32.a may be deposited by EPA in an Eagle 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. Any decision by EPA to deposit an EPA Future Response Costs payment directly into the EPA Hazardous Substance Superfund shall not be subject to challenge by Settling Defendant pursuant to the dispute resolution provisions of this Settlement or in any other forum.

e. **Interest.** In the event that any payment for EPA Future Response Costs is not made by the date required, Settling Defendant shall pay Interest on the unpaid balance. The Interest on EPA Future Response Costs shall begin to accrue on the bill's due date and shall continue to accrue through the date of Settling Defendant's payment. 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 Settling Defendant's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XIV (Stipulated Penalties).

f. For all payments made under Paragraph 32.b, Settling Defendant must include references to Site ID: 0845 and DJ No. 90-11-3-1044. At the time of any payment required to be made in accordance with Paragraph 32.b, Settling Defendant shall send notices that payment has been made to the United States, EPA, and the EPA Cincinnati Finance Center, in accordance with Section XX (Notices and Submissions). All notices must include references to Site ID: 0845 and DJ numbers.

33. **Contesting EPA Future Response Costs.** Settling Defendant may submit a Notice of Dispute, initiating the procedures of Section XIII (Dispute Resolution), regarding any EPA Future Response Costs billed under Paragraph 32 (Payments for EPA Future Response Costs) if Settling Defendant determines that EPA has made a mathematical error or included a

cost item that is not within the definition of EPA Future Response Costs, or if Settling Defendant 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 Notice of Dispute shall be submitted in writing not later than 30 days after receipt of the bill and must be sent to EPA pursuant to Section XX (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested EPA Future Response Costs and the basis for objection. If Settling Defendant submits a Notice of Dispute, Settling Defendant shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested EPA Future Response Costs to the United States, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested EPA Future Response Costs. Settling Defendant shall send to EPA, as provided in Section XX (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested EPA 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. If EPA prevails in the dispute, Settling Defendant shall pay the sums due (with accrued interest) to EPA not later than 7 days after the resolution of the dispute. If Settling Defendant prevails concerning any aspect of the contested costs, Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which Settling Defendant did not prevail to EPA not later than 7 days after the resolution of the dispute. Settling Defendant shall be disbursed any balance of the escrow account. All payments to EPA under this Paragraph shall be made in accordance with Paragraph 32. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendant's obligation to reimburse the United States for EPA Future Response Costs.

34. **Payments for State Future Response Costs.** Settling Defendant shall reimburse the State directly for State Future Response Costs pursuant to this Consent Decree that are not inconsistent with the NCP. The State will send Settling Defendant a Budget Projection, which includes direct and indirect costs to be incurred by the State and its contractors and subcontractors on a yearly basis by May 1st each year. Settling Defendant shall annually submit payment to the State in an amount equal to the State's estimated yearly costs according to the State's Budget Projection not later than June 30th each year. The amount set forth in the State's Budget Projection is only a good faith estimate and may be increased or decreased if circumstances warrant. Therefore, at the end of each State Fiscal year, the State will provide Settling Defendant with an accounting of the actual response costs incurred by the State during that fiscal year in connection with this Consent Decree. If the actual response costs incurred by the State are below the amount of estimated yearly costs paid for that fiscal year, the excess shall be subtracted from the next year's required payment. However, if the State's actual costs exceed the amount of estimated costs paid for that fiscal year, Settling Defendant shall submit payment for the additional amount with its required payment for the following year. Settling Defendant may dispute these costs, if necessary, in accordance with the dispute resolution procedures set forth in Paragraph 53. Annual payments directly to the State shall be submitted by June 30th each year. Payment shall be made by certified or cashier's check drawn to the order of "State of

Colorado, Treasurer, For Deposit in the Hazardous Substance Response Fund” and sent to the State Project Manager.

35. **Contesting State Future Response Costs.** Settling Defendant may submit a Notice of Dispute, initiating the procedures of Section XIII (Dispute Resolution), regarding any State Future Response Costs billed under Paragraph 34 (Payments for State Future Response Costs) if Settling Defendant determines that State has made a mathematical error or included a cost item that is not within the definition of State Future Response Costs, or if Settling Defendant believes the State budgeted or incurred excess costs as a direct result of a State action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing to the State not later than 30 days after receipt of the bill pursuant to Section XX (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested State Future Response Costs and the basis for objection. If Settling Defendant submits a Notice of Dispute, Settling Defendant shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested State Future Response Costs to the State, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested State Future Response Costs. Settling Defendant shall send to the State, as provided in Section XX (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested State 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. If the State prevails in the dispute, Settling Defendant shall pay the sums due (with accrued interest) to the State not later than 7 days after the resolution of the dispute. If Settling Defendant prevails concerning any aspect of the contested costs, Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which Settling Defendant did not prevail to the State not later than 7 days after the resolution of the dispute. Settling Defendant shall be disbursed any balance of the escrow account. All payments to the State under this Paragraph shall be made in accordance with Paragraph 34 (Payments by Settling Defendant to State). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendant’s obligation to reimburse the State for State Future Response Costs.

XI. INDEMNIFICATION AND INSURANCE

36. Settling Defendant’s Indemnification of the United States and the State

a. The United States and the State do not assume any liability by entering into this Consent Decree or by virtue of any designation of Settling Defendant as EPA’s authorized representatives under section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling Defendant shall indemnify, save, and hold harmless the United States and the State and their officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, their officers, directors, employees, agents, contractors,

subcontractors, and any persons acting on Settling Defendant's behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representatives under section 104(e) of CERCLA. Further, Settling Defendant agrees to pay the United States and the State all costs it incurs including, but not limited to, attorney fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States and the State based on negligent or other wrongful acts or omissions of Settling Defendant, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither Settling Defendant nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State, respectively, shall give Settling Defendant notice of any claim for which the United States or the State plans to seek indemnification pursuant to this Paragraph, and shall consult with Settling Defendant prior to settling such claim.

37. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States and the State, respectively, for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant shall indemnify, save and hold harmless the United States and the State 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 Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

38. **Insurance.** Not later than 15 days before commencing any on-Site Work, Settling Defendant shall secure, and shall maintain until the first anniversary after issuance of EPA's Certification of Remedial Action Completion pursuant to the RD/RA SOW commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming the United States and the State as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Settling Defendant pursuant to this Consent Decree. In addition, for the duration of this Consent Decree, Settling Defendant 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 Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work, Settling Defendant shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective

Date. If Settling Defendant demonstrates by evidence satisfactory to the Agencies that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Settling Defendant shall ensure that all submittals to EPA under this Paragraph identify the Eagle Mine Superfund Site, Minturn, Colorado and the civil action number of this case.

XII. FORCE MAJEURE

39. “Force Majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant’s contractors that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant’s best efforts to fulfill the obligation. The requirement that Settling Defendant exercise best efforts to fulfill the obligation includes using best efforts to anticipate any potential Force Majeure and best efforts to address the effects of any potential Force Majeure (a) as it is occurring and (b) following the potential Force Majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. Force Majeure does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

40. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which Settling Defendant intends or may intend to assert a claim of Force Majeure, Settling Defendant shall notify EPA’s RPM orally or, in the RPM’s absence, the Director of Superfund Remedial Program, EPA Region 8, not later than 7 days of when Settling Defendant first knew that the event might cause a delay. Not later than 30 days thereafter, Settling Defendant shall provide in writing to the Agencies an 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; Settling Defendant’s rationale for attributing such delay to a Force Majeure; and a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a Force Majeure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant’s contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Defendant from asserting any claim of Force Majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a Force Majeure under Paragraph 39 and whether Settling Defendant have exercised its best efforts under Paragraph 22, EPA may, in its unreviewable discretion, excuse in writing Settling Defendant’s failure to submit timely or complete notices under this Paragraph.

41. If EPA, after consultation with CDPHE and an opportunity for CDPHE to comment, agrees that the delay or anticipated delay is attributable to a Force Majeure, the time

for performance of the obligations under this Consent Decree that are affected by the Force Majeure will be extended by EPA, after consultation with CDPHE and an opportunity for CDPHE to comment, 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 shall not, of itself, extend the time for performance of any other obligation. If EPA, after consultation with CDPHE and an opportunity for CDPHE to comment, does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure, EPA will notify Settling Defendant in writing of its decision. If EPA, after consultation with CDPHE and an opportunity for CDPHE to comment, agrees that the delay is attributable to a Force Majeure, EPA will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure.

42. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution) regarding EPA's decision, it shall do so not later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 39 and 40. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

43. The failure by EPA to timely complete any obligation under the Consent Decree or the SOWs is not a violation of the Consent Decree, provided, however, that if such failure prevents Settling Defendant from meeting one or more deadlines in the SOWs, Settling Defendant may seek relief under this Section.

XIII. DISPUTE RESOLUTION

44. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section.

45. Informal Dispute Resolution

a. All disputes regarding this Consent Decree shall be considered to have arisen when one party sends the other parties a written Notice of Dispute, except that a dispute regarding EPA Future Response Costs shall be considered to have arisen when Settling Defendant sends EPA a written Notice of Dispute, and a dispute regarding State Future Response Costs shall be considered to have arisen when Settling Defendant sends the State a written Notice of Dispute.

b. Any dispute under this Paragraph shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

46. Statements of Position

a. In the event that a dispute involving EPA cannot be resolved by informal dispute resolution under Paragraph 45 (Informal Dispute Resolution), then the position advanced by EPA shall be considered binding unless, not later than 30 days after the conclusion of the informal dispute resolution period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the parties a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 47 (Record Review) or 48 (General Formal Dispute Resolution), except that formal dispute resolution regarding EPA Future Response Costs shall proceed under Paragraph 48 (General Formal Dispute Resolution).

b. Not later than 30 days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant EPA's Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 47 (Record Review) or 48 (General Formal Dispute Resolution), except that formal dispute resolution regarding EPA Future Response Costs shall proceed under Paragraph 48 (General Formal Dispute Resolution).

c. Not later than 30 days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

d. If there is disagreement between EPA and Settling Defendant as to whether dispute resolution should proceed under Paragraph 47 (Record Review) or 48 (General Formal Dispute Resolution), the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraph 47 (Record Review) or 48 (General Formal Dispute Resolution).

e. Statement of Positions Regarding State Future Response Costs

(1) In the event that a dispute regarding State Future Response Costs cannot be resolved by informal dispute resolution under Paragraph 45 (Informal Dispute Resolution), then the position advanced by the State shall be considered binding unless, not later than 30 days after the conclusion of the informal dispute resolution period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data,

analysis, or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. Formal dispute resolution regarding State Future Response Costs shall proceed under Paragraph 49 (State Future Response Costs Dispute Resolution).

(2) Not later than 30 days after receipt of Settling Defendant's Statement of Position, the State will serve on Settling Defendant the State's Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the State.

(3) Not later than 30 days after receipt of the State's Statement of Position, Settling Defendant may submit a Reply.

47. **Record Review.** This Paragraph governs formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree, and the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of a provision in an OUI Remedy decision document.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position, including documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental Statements of Position by the parties to the dispute.

b. An EPA management official at the Division Director level or higher will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 47.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraphs 47.c and 47.d.

c. Any administrative decision made by EPA pursuant to 47.a shall be reviewable by the Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all parties not later than 10 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, not later than which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the EPA management official at the Division Director level or higher is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 47.a.

48. **General Formal Dispute Resolution.** This Paragraph governs formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law as governed by Paragraph 47 (Record Review), except as stated in Paragraphs 49 (State Future Response Costs Dispute Resolution). Settling Defendant shall submit a Notice of Dispute in writing to EPA no later than 30 days after receipt of a billing notification as set forth in Paragraph 32 (Payments for EPA Future Response Costs). An EPA management official at the Division Director level or higher will issue a final decision resolving the dispute based on the Statements of Position and reply, if any, served under Paragraph 46 (Statements of Position). This decision shall be binding on Settling Defendant unless, not later than 10 days after receipt of the decision, Settling Defendant files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion.

49. **State Future Response Costs Dispute Resolution.** This Paragraph governs disputes concerning payment of State Future Response Costs. Settling Defendant shall submit a Notice of Dispute in writing to the State no later than 30 days after receipt of the Budget Projection or billing as set forth in Paragraph 34 (Payments for State Future Response Costs).

a. The Director of Environmental Programs for CDPHE will issue a final decision resolving the dispute based on the Statements of Position and reply, if any, served under Paragraph 46.e. This decision shall be binding on Settling Defendant unless, not later than 10 days after receipt of the decision, Settling Defendant files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The State may file a response to Settling Defendant's motion.

50. Notwithstanding Paragraph D of Section I (Background), judicial review of any dispute governed by this Section shall be governed by applicable principles of law.

51. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree, except as provided in Paragraph 33 (Contesting EPA Future Response Costs) and Paragraph 35 (Contesting State Future Response Costs), as agreed by EPA, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in Paragraph 60. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

XIV. STIPULATED PENALTIES

52. Settling Defendant shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 54.a and 55 for failure to comply with the obligations specified in Paragraphs 54.b and 55, unless excused under Section XII (Force Majeure). Settling Defendant shall be liable to the State for stipulated penalties in the amounts set forth in Paragraph 54.a for failure to comply with Paragraph 34, unless Settling Defendant has invoked dispute resolution and resolution is pending pursuant to Paragraph 49.

53. “Comply” as used in the previous sentence includes compliance by Settling Defendant with all applicable requirements of this Consent Decree, within the deadlines established under this Consent Decree. If an initially submitted or resubmitted deliverable contains a material defect, and the deliverable is disapproved or modified by EPA under the SOWs due to such material defect, then the material defect shall constitute a lack of compliance for purposes of this Paragraph.

54. **Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverables, and Other Milestones**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 54.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$750
15th through 30th day	\$1,750
31st day and beyond	\$4,000

b. **Obligations**

(1) Payment of any amount due under Section X (Payments for Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section IX (Financial Assurance).

(3) Compliance with the RD Schedule in Section 8.2 and the RA Schedule in Section 8.3 of the RD/RA SOW.

(4) Compliance with Table 2 (Compliance Requirements) of the O&M SOW.

55. **Stipulated Penalty Amounts – Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to the Consent Decree other than those specified in Paragraph 54.b:

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

56. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 71 (Work Takeover), Settling Defendant shall be liable for a stipulated penalty in the amount of \$100,000. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 29 (Access to Financial Assurance) and 71 (Work Takeover).

57. 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 the SOWs, during the period, if any, beginning on the 1st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency; (b) with respect to a decision by An EPA management official at the Division Director level or higher, under Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

59. All penalties accruing under this Section shall be due and payable to the United States not later than 30 days after Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 32.b.

60. Penalties shall continue to accrue as provided in Paragraph 57 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA not later than 15 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA not later than 60 days after receipt of the Court's decision or order, except as provided in Paragraph 60.c;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, not later than 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Not later than 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that it prevails.

61. If Settling Defendant fails to pay stipulated penalties when due, Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Defendant has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 60 until the date of payment; and (b) if Settling Defendant fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 59 until the date of payment. If Settling Defendant fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

62. The payment of penalties and Interest, if any, shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

63. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Consent Decree 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), provided, however, that the United States shall not seek civil penalties pursuant to section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this Consent Decree, except in the case of a willful violation of this Consent Decree.

64. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XV. COVENANTS BY PLAINTIFFS

65. **Covenants for Settling Defendant by United States.** Except as provided in Paragraphs 67, 68 (United States' Pre- and Post-Certification Reservations), and 70 (General

Reservations of Rights), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants shall take effect upon the Effective Date. With respect to future liability, these covenants shall take effect upon Certification of Remedial Action Completion by EPA pursuant to the RD/RA SOW. The United States covenants not to sue or to take administrative action against Settling Defendant pursuant to sections 106 and 107(a) of CERCLA with respect to SD's obligations described in the O&M SOW, Section 3.A(p) as related to the Belden Cribbings site. With respect to SD's obligations described in the O&M SOW, Section 3.A(p) as related to the Belden Cribbings site, these covenants shall take effect at the end of the five-year period following the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants extend only to Settling Defendant and do not extend to any other person.

66. Covenants for Settling Defendant by State. Except as provided in Paragraph and 70 (General Reservations of Rights), the State covenants not to sue or to take administrative action against Settling Defendant pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), relating to the Site. Except with respect to future liability, these covenants shall take effect upon the Effective Date. With respect to future liability, these covenants shall take effect upon Certification of Remedial Action Completion by EPA pursuant to the RD/RA SOW. The State covenants not to sue or to take administrative action against Settling Defendant pursuant to sections 106 and 107(a) of CERCLA with respect to Settling Defendant's obligations described in the O&M SOW, Section 3.A(p) as related to the Belden Cribbings site. With respect to SD's obligations described in the O&M SOW, Section 3.A(p) as related to the Belden Cribbings site, these covenants shall take effect at the end of the five-year period following the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants extend only to Settling Defendant and do not extend to any other person.

67. United States' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Settling Defendant to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) prior to Certification of Remedial Action Completion, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

68. United States' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Settling Defendant to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) subsequent to Certification of Remedial Action Completion, (1) conditions at the Site,

previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

69. For purposes of Paragraph 67 (United States' Pre-Certification Reservations), the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date the OU1 ROD Amendment was signed and set forth in the OU1 ROD Amendment for the Site and the administrative record supporting the OU1 ROD Amendment. For purposes of Paragraph 68 (United States' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Remedial Action Completion and set forth in the OU1 ROD Amendment, the administrative record supporting the OU1 ROD Amendment, the post-OU1 ROD Amendment administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Remedial Action Completion.

70. **General Reservations of Rights.** The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Plaintiffs' covenants. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Settling Defendant with respect to:

- a. Liability for failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. Liability arising from the past, present, or future disposal, release, or threat of release of Waste Material by Settling Defendant outside of the Site;
- c. Liability based on the ownership of the Site by Settling Defendant when such ownership commences after signature of this Consent Decree by Settling Defendant;
- d. Liability based on the operation of the Site by Settling Defendant when such operation commences after signature of this Consent Decree by Settling Defendant and does not arise solely from Settling Defendant's performance of the Work;
- e. Liability based on Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the OU1 Remedy, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by Settling Defendant;
- 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. Criminal liability;

h. Liability for violations of federal or state law that occur during or after implementation of the Work; and

i. Liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the OU1 Remedy, but that cannot be required pursuant to Paragraph 13 (Modification of SOWs or Related Deliverables).

71. Work Takeover

a. In the event EPA determines that Settling Defendant: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Settling Defendant. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Settling Defendant a period of 10 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 10-day notice period specified in Paragraph 71.a, Settling Defendant has not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify Settling Defendant in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph. Funding of Work Takeover costs is addressed under Paragraph 29 (Access to Financial Assurance).

c. Settling Defendant may invoke the procedures set forth in Paragraph 47 (Record Review), to dispute EPA’s implementation of a Work Takeover under Paragraph 71.b. However, notwithstanding Settling Defendant’s invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 71.b until the earlier of (1) the date that Settling Defendant remedies, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with Paragraph 47 (Record Review) requiring EPA to terminate such Work Takeover.

72. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

XVI. COVENANTS BY SETTLING DEFENDANT

73. **Covenants by Settling Defendant.** Subject to the reservations in Paragraph 75, Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State with respect to the Site, and this Consent Decree, including, but not limited to:

a. Any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA section 106(b)(2), 107, 111, 112 or 113, or any other provision of law;

b. Any claims under CERCLA section 107 or 113, RCRA section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Site, EPA Future Response Costs, State Future Response Costs, and this Consent Decree; or

c. Any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Colorado Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

74. Except as provided in Paragraph 82 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or the State brings a cause of action or issues an order pursuant to any of the reservations in Section XV (Covenants by Plaintiffs), other than in Paragraphs 70.a, 70.g, and 70.h, but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

75. Settling Defendant reserves, and this Consent Decree 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 Settling Defendant's deliverables or activities.

76. Nothing in this Consent Decree 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).

XVII. EFFECT OF SETTLEMENT; CONTRIBUTION

77. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section XVI (Covenants by Settling Defendant), 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 that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree 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).

78. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person; provided, however, that if the United States exercises rights under the reservations in Section XV (Covenants by Plaintiffs), other than in Paragraphs 70.a, 70.g, and 70.h, the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

79. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

80. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States and the State in writing not later than 60 days prior to the initiation of such suit or claim.

81. Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States and the State not later than 10 days after service of the complaint. In addition, Settling Defendant shall notify the United States and the State not later than 10 days after service or receipt of any Motion for Summary Judgment and not later than 10 days after receipt of any order from a court setting a case for trial.

82. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant 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 by the United States or the State 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 covenants not to sue set forth in Section XV (Covenants by Plaintiffs).

XVIII. ACCESS TO INFORMATION

83. Settling Defendant shall provide to Agencies, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within Settling Defendant’s possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, 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 regarding the Work. Settling Defendant shall also make available to Agencies, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

84. Privileged and Protected Claims

a. Settling Defendant may assert that all or part of a Record requested by Agencies is privileged or protected as provided under federal law, in lieu of providing the Record, provided Settling Defendant complies with Paragraph 84.b, and except as provided in Paragraph 84.c.

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

c. Settling Defendant may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Settling Defendant are required to create or generate pursuant to this Consent Decree.

85. **Business Confidential Claims.** Settling Defendant may assert that all or part of a Record provided to Agencies under this Section or Section XIX (Retention of Records) is business confidential 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). Settling Defendant shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendant asserts business confidentiality claims. Records that Settling Defendant claims to be confidential business information 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 Agencies, or if EPA has notified Settling Defendant 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 Settling Defendant.

86. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the SOWs and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree.

87. Notwithstanding any provision of this Consent Decree, Plaintiffs retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIX. RETENTION OF RECORDS

88. Until 10 years after EPA's Certification of Work Completion under the RD/RA SOW, Settling Defendant shall preserve and retain all non-identical copies of 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 its liability under CERCLA with respect to the Site, provided, however, that Settling Defendant must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any 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, provided, however, that Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

89. At the conclusion of this record retention period, Settling Defendant shall notify the United States and the State at least 90 days prior to the destruction of any such Records, and, upon request by the Plaintiffs, and except as provided in Paragraph 84 (Privileged and Protected Claims), Settling Defendant shall deliver any such Records to the Plaintiffs.

90. Settling Defendant certifies individually 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 notification of potential liability by the United States or the State and that it has

fully complied with any and all Plaintiffs' requests for information regarding the Site pursuant to sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XX. NOTICES AND SUBMISSIONS

91. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this Consent Decree must be in writing unless otherwise specified. Whenever, under this Consent Decree, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below at the address(es) specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Notices required to be sent to EPA, and not to the United States, should not be sent to the DOJ. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to the United States:

EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
eescdcopy.enrd@usdoj.gov
Re: DJ No. 90-11-3-1044

and:

Jamie Miller
Remedial Project Manager
Mail Code: 8EPR-SR
U.S. Environmental Protection Agency
1595 Wynkoop Street,
Denver, Colorado 80202
Miller.Jamie@epa.gov
(303) 312-6519

and:

Kayleen Castelli
Enforcement Attorney
Mail Code: 8ENF-L
U.S. Environmental Protection Agency
1595 Wynkoop Street,
Denver, Colorado 80202
Castelli.kayleen@epa.gov
(303) 312-6174

As to the Regional Financial Management Officer:

Region 8 CERCLA Financial Analyst
CERCLA Technical Enforcement Program
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1595 Wynkoop Street,
Denver, Colorado 80202

At to EPA Cincinnati Finance Center:

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Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

As to the State:

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State Project Manager
Colorado Department of Public Health &
Environment
HMWMD-RP-B2
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dustin.mcneil@state.co.us
303-692-3324

and:

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Assistant Attorney General
Colorado Attorney General's Office
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Denver, Colorado 80202
jason.king@coag.gov
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As to Settling Defendant:

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Russ P. Cepko
Project Coordinator
Vice President – Environmental Projects
ViacomCBS Inc.
20 Stanwix ST. 10th Floor
Pittsburgh, PA 15222
(412) 642-2569
Russ.Cepko@cbs.com

XXI. RETENTION OF JURISDICTION

92. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIII (Dispute Resolution).

XXII. APPENDICES

93. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the RD/RA SOW.

“Appendix B” is the map of the Site.

“Appendix C” is the O&M SOW.

XXIII. MODIFICATION

94. Except as provided in Paragraph 13 (Modification of SOWs or Related Deliverables), material modifications to this Consent Decree, including the SOWs, shall be in writing, signed by the United States, the State, and Settling Defendant, and shall be effective upon approval by the Court. Except as provided in Paragraph 13, non-material modifications to this Consent Decree, including the SOWs, shall be in writing and shall be effective when signed by duly authorized representatives of the United States, the State, and Settling Defendant. All modifications to the Consent Decree, other than the SOWs, also shall be signed by the State, or a duly authorized representative of the State, as appropriate. A modification to the SOWs shall be considered material if it implements a new ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOWs, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

95. Nothing in this Consent Decree shall be deemed to alter the Court’s power to enforce, supervise, or approve modifications to this Consent Decree.

XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

96. This Consent Decree shall be lodged with the Court for at least 30 days for public notice and comment in accordance with section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

97. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXV. SIGNATORIES/SERVICE

98. Each undersigned representative of Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and the Division Director for the Hazardous Materials and Waste Management Division of CDPHE for the State certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

99. Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

100. Settling Defendant has identified, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXVI. FINAL JUDGMENT

101. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

102. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge

Signature Page for Consent Decree regarding the Eagle Mine Superfund Site

FOR THE UNITED STATES OF AMERICA:

JONATHAN D. BRIGHTBILL
Principal Deputy Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

9/28/20
Dated


JAMES D. FREEMAN
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
999 18th Street
South Terrace, Suite 370
Denver, Colorado 80202

Signature Page for Consent Decree regarding the Eagle Mine Superfund Site

**BETSY
SMIDINGER**

Digitally signed by
BETSY SMIDINGER
Date: 2020.07.15
17:15:43 -06'00'

Dated

Betsy Smidinger
Division Director, Region 8
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202

7/15/2020

Dated



Kenneth "KC" Schefski
Regional Counsel, Region 8
Office of Regional Counsel
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202

Dated

Kayleen Castelli
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 8
Office of Regional Counsel
1595 Wynkoop Street
Denver, Colorado 80202

Signature Page for Consent Decree regarding the Eagle Mine Superfund Site

Dated

Betsy Smidinger
Division Director, Region 8
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202

Dated

Kenneth "KC" Schefski
Regional Counsel, Region 8
Office of Regional Counsel
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202

7/16/2020

Dated



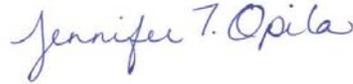
Kayleen Castelli
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 8
Office of Regional Counsel
1595 Wynkoop Street
Denver, Colorado 80202

Signature Page for Consent Decree regarding the Eagle Mine Superfund Site

FOR THE STATE OF COLORADO:

6/18/20

Dated



Jennifer Opila
Division Director
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80222-1530

6/5/20

Dated



Jason E. King
Senior Assistant Attorney General
Colorado Attorney General's Office
1300 Broadway, 7th Floor
Denver, CO 80203

Signature Page for Consent Decree regarding the Eagle Mine Superfund Site

FOR TCI PACIFIC COMMUNICATIONS, LLC:

2020.06.05

Dated



David Marcus
Senior Vice President
Comcast Cable
1701 John F. Kennedy Boulevard
Philadelphia, PA 19103
(215) 286-7026

Agent Authorized to Accept Service
on Behalf of Above-signed Party:

Marna Salimena
Assistant General Counsel
Comcast Cable
1701 John F. Kennedy Boulevard
Philadelphia, PA 19103
(215) 286-7026

Appendix B

Eagle Mine RD/RA Consent Decree

Site Map

Operable Unit 1

Eagle Mine Superfund Site

Minturn, Eagle County, State of Colorado

EPA Region 8

June 2020

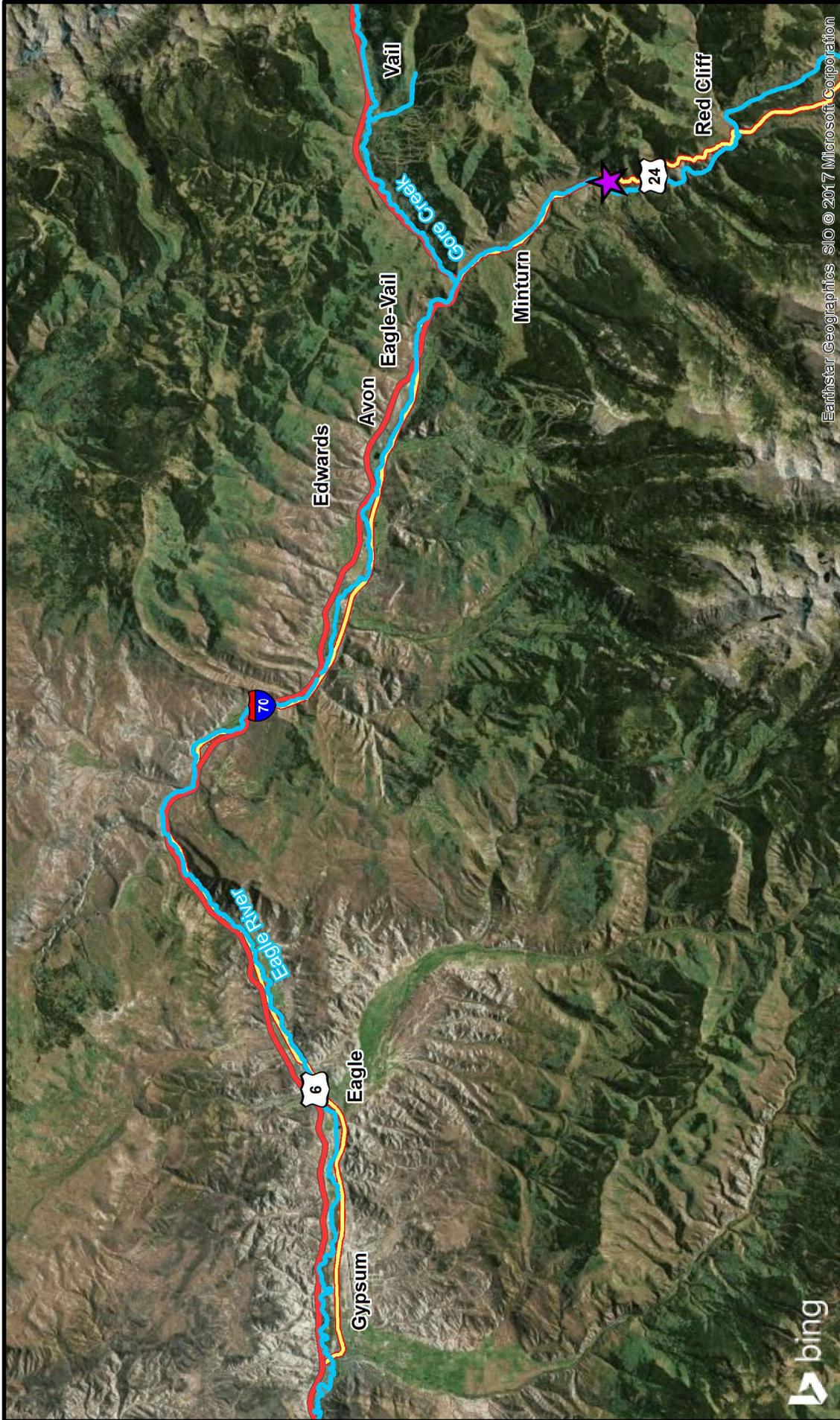


FIGURE 1
Vicinity Map
Eagle Mine Superfund Site
Eagle County, Colorado

Legend

-  General Site Location
-  Interstate
-  US Highway
-  Surface Water

Project Location



0 2 4 Miles

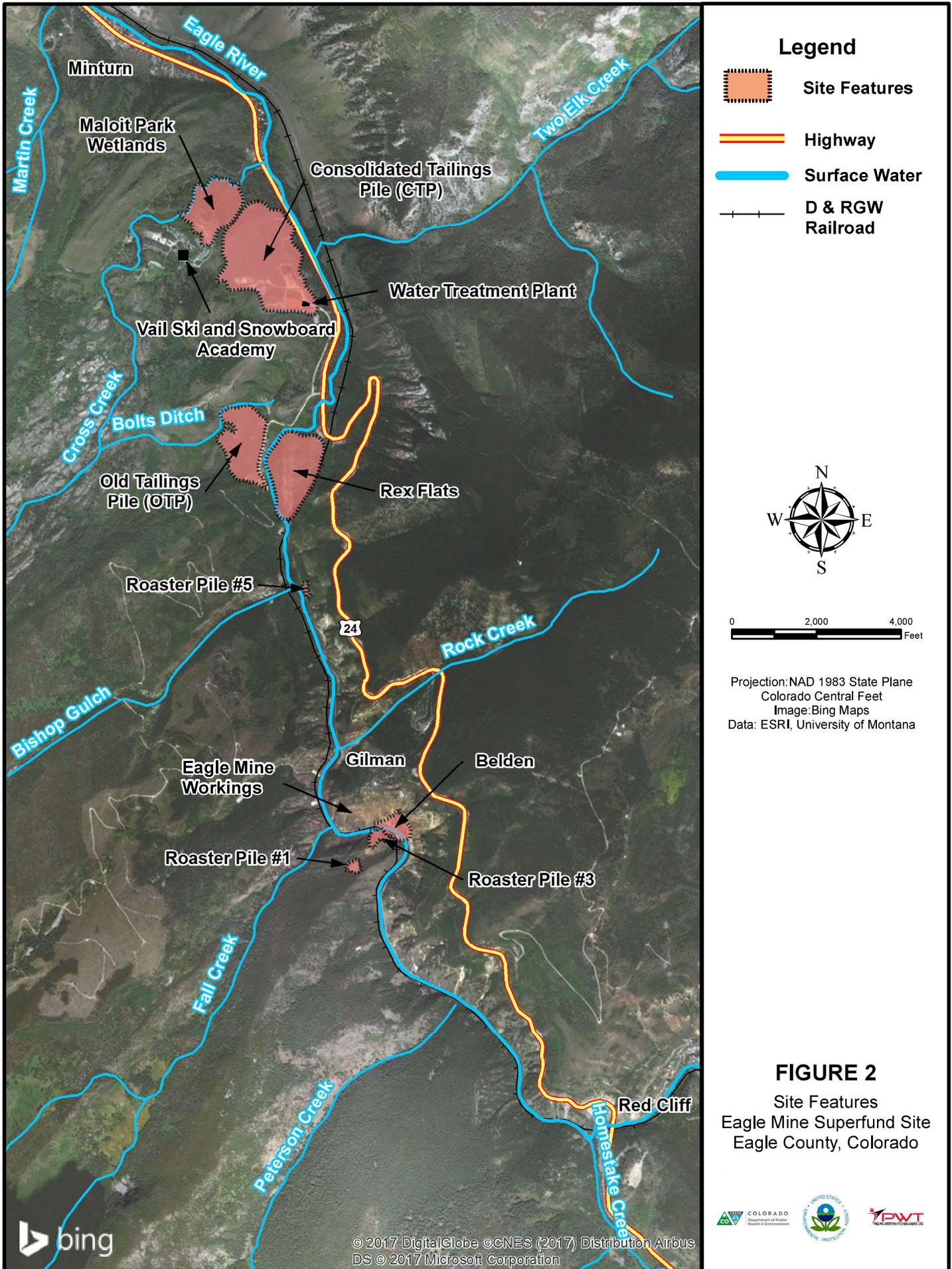
Projection: UTM Zone 13 NAD83
Image: Bing Maps
Data: ESRI, University of Montana

Earthstar Geographics, Inc. © 2017 Microsoft Corporation

Colorado
Department of Transportation

FPWT
FACILITY PARTNERSHIP

bing



Appendix A

Eagle Mine RD/RA Consent Decree

RD/RA Statement of Work

Operable Unit 1

Eagle Mine Superfund Site

Minturn, Eagle County, State of Colorado

EPA Region 8

June 2020

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1. INTRODUCTION

1.1 Purpose of the SOW

This Statement of Work (SOW) sets forth the procedures and requirements for implementing the Work as defined in the Unilateral Administrative Order (UAO).

1.2 Structure of the SOW

- (a) Section 2 (Community Involvement) sets forth the U.S. Environmental Protection Agency's (EPA's) and the Respondent's, TCI Pacific Communications, LLC (TCI), responsibilities for community involvement.
- (b) Section 3 (Remedial Design) sets forth the process for developing the Remedial Design (RD), which includes the submission of specified primary deliverables.
- (c) Section 4 (Remedial Action) sets forth requirements regarding the completion of the Remedial Action (RA), including primary deliverables related to completion of the RA.
- (d) Section 5 (RA Completion) describes the requirements for documenting completion of RA.
- (e) Section 6 (Reporting) sets forth TCI's reporting obligations.
- (f) Section 7 (Deliverables) describes the content of the supporting deliverables and the general requirements regarding TCI's submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
- (g) Section 8 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the RA.
- (h) Section 9 (State Participation) addresses participation by the State of Colorado (State).
- (i) Section 10 (References) provides a list of references, including URLs.

1.3 Scope of the Remedy

The Scope of the Remedy includes: (1) the collection of groundwater at Belden, at the mouth of Rock Creek and from the Mill Level of the mine during the early spring period of March and April; and (2) conveyance of the water to the existing water treatment plant (WTP). These actions are described in Section 4.2 of the Record of Decision Amendment (RODA) for Operable Unit 1 (OU1) of the Eagle Mine Superfund Site (Site), issued on September 28, 2017.

1.4 Remedy Compliance

The RODA adopted the Colorado Discharge Permit System (CDPS) Regulations and the Colorado Effluent Limitations Regulations to establish an arsenic effluent standard for the WTP point source discharge. The RODA also adopted the Colorado Basic Standards and Methodologies for Surface Water and the Colorado Surface Water Quality Classifications and Numeric Standards for Upper Colorado River Basin to establish surface water quality standards listed in Table 2 and Appendix B of the RODA. The permit establishes no effluent limit for arsenic until after 12/31/21 and then sets an interim limit of 6.1 ug/L. EPA produced a technical impracticability waiver for the arsenic standard, which sets an alternate remedial goal for arsenic in the WTP effluent at 3 ug/L. As an applicable or relevant and appropriate requirement for the RODA, TCI shall comply with the alternate remedial goal for arsenic of 3 ug/L.

TCI (or its designated representative) will complete design and construction for the above-listed OU1 remedial components as described in the UAO. For OU1, TCI will prepare an RDWP describing the design of the new groundwater extraction system. TCI shall also conduct a proof of principal test to show that the groundwater extraction system will be sufficient to capture metal loading to the Eagle River from the Belden area and the mouth of Rock Creek in order to attain applicable water quality standards during the spring period. This test shall be conducted prior to finalizing the design for the extraction system.

1.5 Definitions

The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the UAO, have the meanings assigned to them in CERCLA, in such regulations, or in the UAO, except that the term “Paragraph” or “¶” means a paragraph of the SOW, and the term “Section” means a section of the SOW, unless otherwise stated.

2. COMMUNITY INVOLVEMENT

2.1 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. In 2006, EPA developed a Community Involvement Plan (CIP) for the Site. Pursuant to 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP.
- (b) If requested by EPA, TCI shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. EPA may describe in its CIP TCI’s responsibilities for community involvement activities. All community

involvement activities conducted by TCI at EPA's request are subject to EPA's oversight.

3. REMEDIAL DESIGN

3.1 RD Work Plan

TCI shall submit an RD Work Plan (RDWP) for EPA approval. The RDWP must include:

- (a) Plans for implementing all RD activities identified in this SOW, in the RDWP, or required by EPA to be conducted to develop the RD;
- (b) A description of the overall management strategy for performing the RD, including a proposal for phasing of design and construction, if applicable;
- (c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the RA as necessary to implement the Work;
- (d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the RD;
- (e) Descriptions of any areas requiring clarification and/or anticipated problems (e.g., data gaps);
- (f) Description of any proposed pre-design investigation;
- (g) Descriptions of any applicable permitting requirements and other regulatory requirements;
- (h) Description of plans for obtaining access in connection with the Work, such as property acquisition, property leases, and/or easements;
- (i) The following supporting deliverables described in ¶ 7.7 (Supporting Deliverables): Health and Safety Plan (HASP) and Quality Assurance Project Plan (QAPP);
- (j) Description of any changes that may be needed to the existing Emergency Response/Contingency Plan (ER/CP);
- (k) Plan for reporting and complying with the arsenic effluent limit in the WTP discharge; and
- (l) Certification in accordance with ¶ 7.5 (Certification).

3.2 Design Meetings

TCI shall meet with EPA to discuss design issues as necessary, as directed, or determined by EPA.

3.3 Pre-Design Investigation

The purpose of the Pre-Design Investigation (PDI) is to provide proof of the amount of groundwater extraction needed to confirm that the system will prevent water quality exceedances during the spring melt period.

- (a) **PDI Work Plan.** TCI shall submit a PDI Work Plan (PDIWP) for EPA approval. The PDIWP must include:
- (1) An evaluation and summary of existing data and description of data gaps, including an update to any calculations relevant to the design included in the OUI Focused Feasibility Study (FFS) and FFS Addendum;
 - (2) An evaluation of existing infrastructure to demonstrate that the existing pipeline and WTP have adequate capacity and integrity to convey and treat the additional collected water;
 - (3) A test plan and a Field Sampling Plan (FSP) including media to be sampled, contaminants or parameters for which sampling will be conducted, location (areal extent and depths), and number of samples as described in ¶ 7.7(c). The test plan should include any new wells to be installed for the test period and the complete test parameters including wells to be pumped, rate and period of pumping along with any modifications to the existing pipeline to carry the extracted flow. The FSP should include a comprehensive sampling plan including sampling locations, analytical parameters and monitoring frequency to document changes in Eagle River water quality as a result of system operation;
 - (4) Cross references to quality assurance/quality control (QA/QC) requirements set forth in the QAPP as described in ¶ 7.7(d);
 - (5) A design criteria report, as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995);
 - (6) Preliminary drawings and specifications;
 - (7) Descriptions of permit requirements, if applicable;
 - (8) Preliminary Operation and Maintenance (O&M) Plan for the operation of the new remedy components;

- (9) A description of how the RA will be implemented in a manner that minimizes environmental impacts in accordance with EPA's *Principles for Greener Cleanups* (Aug. 2009);
- (10) A description of monitoring and control measures to protect human health and the environment, such as air monitoring and dust suppression, during the RA;
- (11) Any proposed revisions to the RA Schedule that is set forth in ¶ 0 (RA Schedule);
- (12) A plan for disposal of material excavated during pipeline construction, including estimated material quantities and proposed disposal locations;
- (13) A plan for utility installation, if needed (note that a clean utility corridor is required to minimize future waste handling during utility repair);
- (14) A proposed PDI schedule in a Gantt Chart format;
- (15) A HASP that covers activities during the PDI;
- (16) Plans for satisfying the substantive requirements of permits for on-site activity;
- (17) Updates of all supporting deliverables required to accompany the RDWP and the following additional supporting deliverables described in ¶ 7.7 (Supporting Deliverables): FSP; Construction Quality Assurance/Quality Control Plan (CQA/QCP); Transportation Plan; Preliminary O&M Plan; and
- (18) Certification in accordance with ¶ 7.5 (Certification).

3.4 Meetings and Inspections

- (a) **Pre-Design Investigation Conference.** TCI shall hold a PDI conference with EPA and others as directed or approved by EPA and as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995). TCI shall prepare a meeting summary and shall distribute the summary to all Parties to the UAO and meeting attendees.
- (b) **Periodic Updates.** During periods of construction of the PDI, TCI shall provide weekly written summaries to EPA, and others as directed or determined by EPA, describing construction progress and any issues/problems that were encountered.
- (c) **Annual Summary Report.** At the conclusion of each calendar year that TCI conducts Work under the PDIWP, TCI shall provide a summary report detailing activities performed, compliance with PDIWP milestones, data collected and test system operating status.

- (d) **Inspections.** EPA or its representative shall conduct periodic inspections and may have an on-Site presence during the Work. At EPA's request, TCI's Project Coordinator or other designee shall accompany EPA or its representative during inspections.
- (e) Upon notification by EPA of any deficiencies in the Work, TCI shall take all necessary steps to correct the deficiencies and/or bring the Work into compliance with the approved Final Work Plans and/or any approved design changes. If applicable, TCI shall comply with any schedule provided by EPA in its notice of deficiency.

3.5 Emergency Response and Reporting

- (a) **Emergency Response and Reporting.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from OU1 and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, TCI shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 4.3(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the HASP, ER/CP, and any other deliverable approved by EPA under the SOW.
- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that TCI is required to report pursuant to section 103 of CERCLA, 42 U.S.C. § 9603, or section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004. TCI shall immediately notify the authorized EPA officer orally. TCI shall also notify the State Project Manager and the State's Environmental Release and Incident Reporting Line at (877) 518-5608 and follow notification procedures as detailed in the ER/CP for the Site, as amended.
- (c) The "authorized EPA officer" for purposes of immediate oral notifications and consultations under ¶ 4.3(a) and ¶ 4.3(b) is the EPA Remedial Project Manager (RPM) as designated in Section VIII of the UAO or the EPA Regional Duty Officer at (800) 424-8802 and the EPA National Response Center at (800) 424-8802 (if the RPM is not available).
- (d) For any event covered by ¶ 4.3(a) and ¶ 4.3(b), TCI shall, within 5 days after the onset of such event, submit a report to EPA and the Colorado Department of Public Health and Environment (collectively, the Agencies): (1) describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) all actions taken in response to such event.
- (e) The reporting requirements under ¶ 4.3 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304 and must be consistent with Section XIV of the UAO.

3.6 Off-Site Shipments

- (a) TCI 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. EPA will deem TCI to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if TCI 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).
- (b) TCI may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides notice to the appropriate state environmental official in the receiving facility's state and to the EPA Remedial Project Manager. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The 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. TCI 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. TCI shall provide the notice after the award of the contract for RA construction and before the Waste Material is shipped.
- (c) TCI may ship Investigation-Derived Waste (IDW) 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), 40 C.F.R. § 300.440, *EPA's Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the ROD. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.
- (d) All actions taken under ¶ 4.3(e) must be consistent with Paragraph 48 of the UAO.

3.7 Pre-Design Investigation Report

TCI shall submit a Pre-Design Investigation Summary Report (PDI Summary Report) for EPA's comment. The PDI Summary Report must include:

- (a) A summary of any investigations performed, summary of investigation results, summary of validated data, photographs documenting the Work and conclusions and recommendation as they may relate to the final design;
- (b) Certification in accordance with ¶ 7.5 (Certification); and

- (c) As-built drawings of any new construction elements that are: (1) certified by a registered professional engineer and (2) follow the Construction Specifications Institute's Master Format 2012.

3.8 Notice of Work Completion after PDI Summary Report

- (a) Within 30 days following the PDI Summary Report Work, TCI may elect to pursue RA Construction Completion. If TCI so elects, TCI shall follow the procedures outlined in Section 5 (RA Construction Completion).
- (b) If EPA concludes that the Work is complete following the PDI Summary Report, ¶ 3.9 (Pre-Final (95%) RD), ¶ 3.10 (Final (100%) RD), and Section 4 (Remedial Action) shall not apply.

3.9 Pre-Final (95%) RD

TCI shall submit the Pre-final (95%) RD for EPA's comment. The Pre-final RD must be a continuation and expansion of the PDI Work Plan and must address EPA's comments regarding the PDI Summary Report. The Pre-final RD will serve as the approved Final (100%) RD if EPA approves the Pre-final RD without comments. The Pre-final RD must include:

- (a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's Master Format 2012;
- (b) A survey and engineering drawings showing existing OU1 features, such as elements, property borders, easements, and OU1 conditions;
- (c) Pre-Final versions of the same elements and deliverables as are required for the Preliminary RD;
- (d) A specification for photographic documentation of the RA;
- (e) Updates of all supporting deliverables required to accompany the PDI Work Plan; and
- (f) Certification in accordance with ¶ 7.5 (Certification).

3.10 Final (100%) RD

TCI shall submit the Final (100%) RD for EPA approval. The Final RD must address EPA's comments on the Pre-final RD and must include final versions of all Pre-final RD deliverables and be certified in accordance with ¶ 7.5 (Certification). If no additional RA Construction is necessary, then this ¶ 3.9 will not apply.

4. REMEDIAL ACTION

4.1 RA Work Plan

TCI shall submit an RA Work Plan (RAWP) for EPA approval that includes:

- (a) A proposed RA Construction Schedule in a Gantt chart format;
- (b) A HASP that covers activities during the RA;
- (c) Plans for satisfying substantive requirements of permits for on-Site activity; and
- (d) Certification in accordance with ¶ 7.5 (Certification).

4.2 Meetings and Inspections

- (a) **Preconstruction Conference.** TCI shall hold a preconstruction conference with EPA and others as directed or approved by EPA and as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995). TCI shall prepare a meeting summary and shall distribute the summary to all Parties to the UAO and meeting attendees.
- (b) **Periodic Updates.** During the construction portion of the RA (RA Construction), TCI shall provide weekly written summaries to EPA, and others as directed or determined by EPA, describing construction progress and any issues/problems that were encountered.
- (c) **Inspections.** EPA or its representative shall conduct periodic inspections and may have an on-Site presence during the Work. At EPA's request, TCI's Project Coordinator or other designee shall accompany EPA or its representative during inspections.
- (d) Upon notification by EPA of any deficiencies in the RA Construction, TCI shall take all necessary steps to correct the deficiencies and/or bring the RA Construction into compliance with the approved Final RD, any approved design changes, and/or the approved RAWP. If applicable, TCI shall comply with any schedule provided by EPA in its notice of deficiency.

4.3 Emergency Response and Reporting

- (a) **Emergency Response and Reporting.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from OU1 and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, TCI shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 4.3(c)) orally; and (3) take such actions in consultation with the authorized

EPA officer and in accordance with all applicable provisions of the HASP, ER/CP, and any other deliverable approved by EPA under the SOW.

- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that TCI is required to report pursuant to section 103 of CERCLA, 42 U.S.C. § 9603, or section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004. TCI shall immediately notify the authorized EPA officer orally. TCI shall also notify the State Project Manager and the State's Environmental Release and Incident Reporting Line at (877) 518-5608 and follow notification procedures as detailed in the ER/CP for the Site, as amended.
- (c) The "authorized EPA officer" for purposes of immediate oral notifications and consultations under ¶ 4.3(a) and ¶ 4.3(b) is the EPA Remedial Project Manager (RPM) as designated in Section VIII of the UAO or the EPA Regional Duty Officer at (800) 424-8802 and the EPA National Response Center at (800) 424-8802 (if the RPM is not available).
- (d) For any event covered by ¶ 4.3(a) and ¶ 4.3(b), TCI shall, within 5 days after the onset of such event, submit a report to EPA and the Colorado Department of Public Health and Environment (collectively, the Agencies): (1) describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) all actions taken in response to such event.
- (e) The reporting requirements under ¶ 4.3 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304 and must be consistent with Section XIV of the UAO.

4.4 Off-Site Shipments

- (a) TCI 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. EPA will deem TCI to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if TCI 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).
- (b) TCI may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides notice to the appropriate state environmental official in the receiving facility's state and to the EPA Remedial Project Manager. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The 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. TCI 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. TCI shall provide the notice after the award of the contract for RA construction and before the Waste Material is shipped.

- (c) TCI may ship Investigation-Derived Waste (IDW) 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), 40 C.F.R. § 300.440, *EPA's Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the ROD. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.
- (d) All actions taken under ¶ 4.3(e) must be consistent with Paragraph 48 of the UAO.

5. RA CONSTRUCTION COMPLETION

5.1 RA Construction Completion Definition

For purposes of this Section 5, “RA Construction Completion” includes all actions necessary to construct and operate any system designed to achieve Performance Standards as set forth in the OU1 RODA. RA Construction Completion may occur after the completion of the PDI, if EPA determines the PDI system accomplishes the goals of the Work without the need for additional RA.

- (a) **Inspection of Constructed Remedy.** TCI shall schedule an inspection to review the construction and operation of the system and to review whether the system is functioning properly and as designed. The inspection must be attended by TCI and EPA and/or their representatives. A re-inspection must be conducted if requested by EPA.
- (b) **Shakedown Period.** There shall be a shakedown period of up to one year for EPA to review whether the remedy is functioning properly and performing as designed. TCI shall provide such information as EPA requests for such review.
- (c) **RA Report.** Following the shakedown period, TCI shall submit an “RA Report” requesting EPA’s determination that RA Construction has been completed. The RA Report must: (1) include statements by a registered professional engineer and by TCI’s Project Coordinator that construction of the system is complete and that the system is functioning properly and as designed; (2) include a demonstration, and supporting documentation, that construction of the system is complete and that the system is functioning properly and as designed; (3) include as-built drawings signed and stamped by a registered professional engineer; (4) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA’s *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); and (5) be certified in accordance with ¶ 7.5 (Certification).

- (d) If EPA determines that RA Construction is not complete, EPA shall so notify TCI. EPA's notice must include a description of, and schedule for, the activities that TCI must perform to complete RA Construction. EPA's notice may include a schedule for completion of such activities or may require TCI to submit a proposed schedule for EPA approval. TCI shall perform all activities described in the EPA notice in accordance with the schedule.
- (e) If EPA determines, based on the initial or any subsequent RA Report, that RA Construction is complete, EPA shall so notify TCI.

5.2 Notice of RA Completion

- (a) **RA Completion Inspection.** The RA is "Complete" for purposes of this ¶ 5.2 when it has been fully performed and the Performance Standards have been achieved. TCI shall schedule an inspection for the purpose of obtaining EPA's Notice of RA Completion. The inspection must be attended by TCI and EPA and/or their representatives.
- (b) **Monitoring Report.** Following the inspection, TCI shall submit a Monitoring Report to EPA requesting EPA's Notice of RA Completion. The report must: (1) include certifications by a registered professional engineer and by TCI's Project Coordinator that the RA is complete; (2) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA's *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); (3) contain monitoring data to demonstrate that Performance Standards have been achieved; and (4) be certified in accordance with ¶ 7.5 (Certification).
- (c) If EPA concludes that the RA is not Complete, EPA shall so notify TCI. EPA's notice must include a description of any deficiencies. EPA's notice may include a schedule for addressing such deficiencies or may require TCI to submit a schedule for EPA approval. TCI shall perform all activities described in the notice in accordance with the schedule.
- (d) If EPA concludes, based on the initial or any subsequent RA Report requesting Notice of RA Completion, that the RA is Complete, EPA shall so notify TCI. This notice will constitute the Notice of RA Completion for purposes of the UAO. Issuance of the Notice of RA Completion will not affect TCI's remaining obligations under the UAO or existing or future consent decrees.

5.3 Notice of Work Completion

- (a) **Work Completion Inspection.** Within 30 days of Notice of RA Completion, TCI shall schedule an inspection for the purpose of obtaining EPA's Certification of Work Completion. The inspection must be attended by TCI (and/or its representatives) and EPA (and/or its representatives).

- (b) **Work Completion Report.** Within 30 days following the Work Completion Inspection, TCI shall submit a report to EPA requesting EPA's Certification of Work Completion. The report must: (1) include certifications by a registered professional engineer and by TCI's Project Coordinator that the Work is complete; and (2) be certified in accordance with ¶ 7.5 (Certification). If the Monitoring Report submitted under ¶ 5.2(b) includes all elements required under this ¶ 5.3(b), then the RA Report(s) suffices to satisfy all requirements under this ¶ 5.3(b).
- (c) If EPA concludes that the Work is not complete, EPA shall so notify TCI. EPA's notice must include a description of the activities that TCI must perform to complete the Work. EPA's notice must include specifications and a schedule for such activities or must require TCI to submit specifications and a schedule for EPA approval. TCI shall perform all activities described in the notice or in EPA-approved specifications and schedule.
- (d) If EPA concludes, based on the initial or any subsequent report requesting Certification of Work Completion, that the Work is complete, EPA shall so certify in writing to TCI. Issuance of the Certification of Work Completion does not affect the following continuing obligations: (1) obligations under Sections X (Property Requirements), XII (Record Retention), and XI (Access to Information) of the UAO; and (4) reimbursement of EPA's Future Response Costs or the State's Future Response Costs under Section XV (Payments of Future Response Costs) of the UAO.

6. REPORTING

6.1 Progress Report Submittal

TCI shall submit weekly written Progress Reports via electronic mail during the PDI, and RA construction, as required in ¶ 4.2(b).

6.2 Notice of Progress Report Schedule Changes

If the schedule for any activity described in the Progress Reports, including activities required to be described under ¶ 4.1(a) changes, TCI shall notify EPA of such change at least 7 days before performance of the activity.

6.3 Monitoring Data

TCI will report any environmental monitoring data collected as part of the RD/RA in the Annual Site Monitoring and Activity Report, as required by the CD/SOW.

7. DELIVERABLES

7.1 Applicability

TCI shall submit deliverables for EPA approval or for EPA comment as specified in the SOW and UAO. If neither is specified, the deliverable does not require EPA's approval

or comment. Paragraphs 7.2 (In Writing) through 7.4 (Technical Specifications) apply to all deliverables. Paragraph 7.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 7.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.

7.2 In Writing

All deliverables under this SOW must be in writing unless otherwise specified.

7.3 General Requirements for Deliverables

TCI must submit all deliverables by the deadlines in the RD Schedule or RA Schedule, as applicable. TCI shall submit all deliverables to EPA in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in ¶ 7.4. All other deliverables shall be submitted to EPA in the electronic form specified by the RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", TCI shall also provide EPA with paper copies of such exhibits.

7.4 Technical Specifications

- (a) 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/>.
- (b) Each file must include an attribute name for the relevant Site operable unit. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (c) Spatial data submitted by TCI does not, and is not intended to, define the boundaries of the Site.

7.5 Certification

All deliverables that require compliance with this Certification must be signed by the TCI's Project Coordinator, or other responsible corporate official of TCI, and must contain the following statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified

personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

7.6 Approval of Deliverables

(a) Initial Submissions.

- (1) After review of any deliverable that is required to be submitted for EPA approval under the UAO or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) EPA also may modify any submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

(b) **Resubmissions.** Upon receipt of a notice of disapproval under ¶ 7.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 7.6(a), TCI shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring TCI to correct the deficiencies; or (5) any combination of the foregoing.

(c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under ¶ 7.6(a) (Initial Submissions) or ¶ 7.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the UAO; and (2) TCI shall take any action required by such deliverable, or portion thereof.

7.7 Supporting Deliverables

TCI shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. TCI shall develop the deliverables in accordance with all applicable regulations, guidance, and policies (see ¶ 10 References). TCI shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.

- (a) **Health and Safety Plan.** The Health and Safety Plan (HASP) describes all activities to be performed to protect on-Site personnel and area residents from physical, chemical, and all other hazards posed by the Work. TCI shall develop a HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP should cover RD activities and should be, as appropriate, updated to cover activities during the RA and updated to cover activities after RA completion. EPA does not approve the HASP, but will review it to ensure that all necessary elements are included and that the HASP provides for the protection of human health and the environment.
- (b) **Emergency Response/Contingency Plan update.** TCI is required to submit an updated ER/CP if the Work to be conducted may result in a release that is not anticipated in the existing ER/CP, or if the existing ER/CP is inconsistent with the requirements of ¶ 4.3 above.
- (c) **Field Sampling Plan(s).** The FSPs augment the QAPP and address RA sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. TCI shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988). The FSP shall be certified in accordance with ¶ 7.5 (Certification).
- (d) **Quality Assurance Project Plan.** The QAPP addresses sample analysis and data handling regarding the Work performed to support the PDI and RA. The QAPP must include a detailed explanation of TCI's quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples and be certified in accordance with ¶ 7.5 (Certification). TCI shall develop the QAPP in accordance with *EPA Requirements for Quality Assurance Project Plans*, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006); *Guidance for Quality Assurance Project Plans*, QA/G-5, EPA/240/R 02/009 (Dec. 2002); and *Uniform Federal Policy for Quality Assurance Project Plans*, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005). The QAPP also must include procedures:
- (1) To ensure that EPA and its authorized representatives and the State and its authorized representatives have reasonable access to laboratories used by TCI in implementing the UAO (TCI's Labs);
 - (2) To ensure that TCI's Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
 - (3) To ensure that TCI's Labs perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract*

Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010) or other methods acceptable to EPA;

- (4) To ensure that TCI's Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;
 - (5) For TCI to provide EPA with notice at least 7 days prior to any sample collection activity;
 - (6) For TCI to provide split samples and/or duplicate samples to EPA upon request;
 - (7) For EPA to take any additional samples that it deems necessary;
 - (8) For EPA to provide to TCI, upon request, split samples and/or duplicate samples in connection with EPA's and the State's oversight sampling; and
 - (9) For TCI to submit to EPA and the State all sampling and tests results and other data in connection with the implementation of the UAO.
- (e) **Construction Quality Assurance/Quality Control Plan.** The purpose of the Construction Quality Assurance Plan (CQAP) is to describe planned and systemic activities that provide confidence that the RA construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the Construction Quality Control Plan (CQCP) is to describe the activities to verify that RA construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQA/QCP must:
- (1) Identify, and describe the responsibilities of the organizations and personnel implementing the CQA/QCP;
 - (2) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/QCP;
 - (3) Describe industry standards and technical specifications used in implementing the CQA/QCP;
 - (4) Describe procedures for tracking construction deficiencies from identification through corrective action;
 - (5) Describe procedures for documenting all CQA/QCP activities;
 - (6) Describe procedures for retention of documents and for final storage of documents; and
 - (7) Be certified in accordance with ¶ 7.5 (Certification).

- (f) **Transportation Plan.** The Transportation Plan (TP) must include:
- (1) Proposed routes for transportation of Waste Material to the CTP;
 - (2) Estimated quantities of materials and number of truck trips; and
 - (3) Plan for compliance with Air Pollution Control Applicable or Relevant and Appropriate Requirements.
- (g) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the new components of the remedy. TCI shall develop the O&M Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The O&M Plan must include the following additional requirements:
- (1) Description of Cleanup Levels required to be met to implement the RODA;
 - (2) Description of activities to be performed: (i) to provide confidence that Cleanup Levels will be met and (ii) to determine whether Cleanup Levels have been met;
 - (3) O&M Reporting. Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;
 - (4) Description of corrective action in case of systems failure, including:
 - (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve Cleanup Levels; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (iv) community notification requirements; and
 - (5) Description of corrective action to be implemented in the event that Cleanup Levels are not achieved and a schedule for implementing these corrective actions.

8. SCHEDULES

8.1 Applicability and Revisions

All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the RD and RA Schedules set forth below. TCI may submit proposed revised RD Schedules or RA Schedules for EPA

approval. Upon EPA's approval, the revised RD and/or RA Schedules supersede the RD and RA Schedules set forth below, and any previously-approved RD and/or RA Schedules.

8.2 RD Schedule

	Description of Deliverable / Task	¶ Ref.	Start Date	Finish Date
1	RDWP (includes HASP, ER/CP, and QAPP)	3.1 7.7(a) 7.7(b) 7.7(d)	Within 60 days after the Effective Date of the UAO (anticipated 5/17/18)	7/7/18
2	QAPP	3.1(i) 7.7(d)	5/17/18	1/31/2019
3	PDIWP (includes contents of an FSP)	3.3(a) 7.7(c)	Concurrent start with RDWP (5/17/18)	2/6/19
4	PDI Summary Report	3.4 7.7(e)	Within 90 days after completion of field sampling activities and testing of the relevant construction season but no later than January 1 of the following year.	TBD
5	Pre-final (95%) RD	3.9	Within 45 days after EPA approval of the PDI Summary Report	TBD
6	Final (100%) RD	3.10	Within 20 days after EPA approval on Pre-Final (95%) RD	TBD

*Applicable if work is not complete pursuant to ¶ 3.8 (Notice of Work Completion after PDI Summary Report) and Section 5 (RA Construction Complete).

8.3 RA Schedule

	Description of Deliverable / Task	¶ Ref.	Deadline
1	RAWP (includes RA FSPs)*	4.1, 7.7(c)	Within 45 days after EPA approval of the Final (100%) RD
2	Preconstruction Conference*	4.2(a)	Within 10 days after EPA approval of the RAWP
3	Start of Construction*		Within 30 days or by the beginning of the next construction Season following EPA's approval of the RAWP
4	Completion of Construction*		To Be Outlined in the RAWP
5	RA Completion Inspection	5.1(a)	Within 10 days after completion of construction
6	RA Report	5.1(c)	Within 45 days after RA Completion Inspection
7	Work Completion Report	5.3(b)	Within 90 days after Work Completion Inspection

*Applicable if work is not complete pursuant to ¶ 3.8 (Notice of Work Completion after PDI Summary Report) and Section 5 (RA Construction Complete).

9. STATE PARTICIPATION

9.1 Copies

TCI shall, at any time it sends a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to TCI, send a copy of such document to the State.

9.2 Review and Comment

The State will have opportunity for review and comment prior to:

- (a) Any EPA approval or disapproval under ¶ 7.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
- (a) Any approval or disapproval of the Construction Phase under ¶ 5 (RA Construction Completion), any disapproval of, or Notice of RA Completion under ¶ 5.2 (Notice of RA Completion), and any disapproval of, or Notice of Work Completion under ¶ 5.3 (Notice of Work Completion).

10. REFERENCES

10.1 Regulations and Guidance Documents

The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in ¶ 10.2:

- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
- (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
- (c) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
- (d) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G-90/001 (Apr. 1990).
- (e) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
- (f) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
- (g) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. Part 300 (Oct. 1994).
- (h) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
- (i) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
- (j) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (k) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).
- (l) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).
- (m) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).

- (n) Superfund Community Involvement Handbook, SEMS 100000070 (January 2016), <https://www.epa.gov/superfund/community-involvement-tools-and-resources>.
- (o) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (p) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).
- (q) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (r) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).
- (s) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), <https://www.epa.gov/geospatial/geospatial-policies-and-standards> and <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (t) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (u) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010).
- (v) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
- (w) Construction Specifications Institute's MasterFormat 2012, available from the Construction Specifications Institute, <http://www.csinet.org/masterformat>.
- (x) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), <https://www.epaossc.org/HealthSafetyManual/manual-index.htm>.
- (y) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (z) Focused Feasibility Study. CBS Operations, Inc., prepared by NewFields. July 26, 2013 and Focused Feasibility Study Addendum, Eagle Mine Site, prepared by NewFields. February 2017.
- (aa) Emergency Response/Contingency Plan, Eagle Mine Superfund Site, March 2014, prepared by ENVIRON International Corporation.
- (bb) EPA 1993. Record of Decision for Operable Unit Number 1, Eagle Mine Site. March 29.

- (cc) Eagle Mine Operable Unit Number 1 Partial Consent Decree and Final Statement of Work, filed June 1996.

10.2 Comprehensive Guidance

A more complete list may be found on the following EPA Web pages:

Laws, Policy, and Guidance: <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>

Test Methods Collections: <https://www.epa.gov/measurements/collection-methods>

10.3 Regulation or Guidance Modification

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

Appendix C

Eagle Mine RD/RA Consent Decree

Operation & Maintenance Statement of Work

Operable Unit 1

Eagle Mine Superfund Site

Minturn, Eagle County, State of Colorado

EPA Region 8

April 2020

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1. INTRODUCTION

A. Purpose of the SOW

This Statement of Work (SOW) sets forth the procedures and requirements for implementing the Work, specifically operation and maintenance activities (O&M) (as defined in the Remedial Design/Remedial Action Consent Decree (Settlement)).

B. Structure of the SOW

- (a) Section 2 (Community Involvement) sets forth the U.S. Environmental Protection Agency's (EPA's) and Settling Defendant's (SD's) responsibilities for community involvement.
- (b) Section 3 (Operation and Maintenance) sets forth SD's obligations regarding O&M of the OU1 Remedy.
- (c) Section 4 (Compliance Monitoring) sets forth points of compliance for the remedy that SD must meet.
- (d) Section 5 (Reporting) sets forth SD's reporting obligations.
- (e) Section 6 (Deliverables) describes the content of the supporting deliverables and the general requirements regarding SD's submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
- (f) Section 7 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding operation and maintenance of the OU1 Remedy.
- (g) Section 8 (State Participation) addresses the State of Colorado's (State's) participation.
- (h) Section 9 (References) provides a list of references, including URLs.

C. Scope of the OU1 Remedy – Completed

The Scope of the OU1 Remedy includes: the actions described in Section 9 “Selected Remedy” of the Record of Decision (ROD) for Operable Unit 1 (OU1) of the Eagle Mine Superfund Site (Site) issued by EPA on March 29, 1993; the actions described in “Site History, Contamination Problems, and Selected Remedy” of the Explanation of Significant Differences (ESD) for OU1 of the Site issued by EPA on September 1, 1999; and the actions described in Section 4.0 “Rationale for Amended Remedy” of the ROD Amendment for OU1 of the Site issued by EPA on September 28, 2017. The Scope of the OU1 Remedy includes:

- (a) Installation of a conveyance and collection system to collect additional mine seepage along Rock Creek;
- (b) Diversion of Rock Creek upgradient of contaminated mine seepage;
- (c) Revegetation in the area of Roaster Pile 1 and associated drainage and monitoring of seep water quality below the Roaster Pile 1 area;
- (d) Rainfall/run-off monitoring at the waste rock piles (WRPs) and leachability tests on the waste rock, with evaluation of the data for possible future action;
- (e) Development of inspection and maintenance plan to ensure the long-term integrity of structures and facilities associated with the Site;
- (f) Implementation of institutional controls in the form of use restrictions for groundwater at Maloit Park, Gilman, Roaster Pile 5, the Consolidated Tailings Pile (CTP), Rex Flats and the Old Tailings Pile (OTP);
- (g) Accelerated re-vegetation at Rex Flats;
- (h) Rapid completion of the cap on the CTP, draining and capping of the historic pond, extraction and treatment of leachate/groundwater from the CTP extraction trenches, enhancement of the CTP extraction trenches and construction of a new up-gradient groundwater diversion structure;
- (i) Relocation of the town of Minturn drinking water wells;
- (j) Continued treatment of contaminated mine seepage and leachate/groundwater from the CTP at the water treatment plant (WTP) (until Site cleanup goals can be met without such treatment), dewatering of the treatment sludge and disposal of the dewatered sludge in on-Site lined cells on the CTP;
- (k) Long-term management to ensure continued compliance with Applicable or Relevant and Appropriate Requirements (ARARs);
- (l) Removal of the contaminated soils and sediments from the Maloit Park Wetlands, seepage control from the CTP and rapid addition of topsoil and vegetation;
- (m) Regular monitoring of surface water, groundwater, mine pool water within the mine workings and biota at key locations on the Site and downstream of the Site to determine progress toward cleanup goals;
- (n) The Liberty No. 4 Well reduces the flow to and the water level in the mine pool.

- (o) The collection of groundwater at Belden, at the mouth of Rock Creek and from the Mill Level of the mine during the early spring period of March and April (collected through early 2000s); and
- (p) Conveyance of the water to the existing Water Treatment Plant (WTP) for treatment.

D. Scope of the OU1 Remedy – Ongoing

In addition to the completed remedial actions summarized above, some remedial activities at the Site are ongoing. Ongoing remedial activities include:

- (a) 100 to 300 gallons of water per minute are treated daily at the WTP, including mine pool water from within certain mine workings and the mill level in Belden, and groundwater from collection trenches at the CTP. Water from Waste Rock Pile 8 (WRP8) is treated seasonally;
- (b) 90 to 150 gallons per minute of clean water pumped through the Liberty No. 4 Well is diverted away from the mine pool;
- (c) Inspections of the conveyance and collection systems are conducted five days per week with necessary maintenance and repairs conducted as needed;
- (d) The collection system at WRP8 is inspected and repaired as necessary to maintain operation; and
- (e) Sampling, reporting and compliance monitoring for Colorado Discharge Permit System (CDPS) permits or Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Permit Equivalent Documents (PED) at the WTP and the Liberty No. 4 Well are performed as required.
- (f) Sampling of the river per Compliance Monitoring Plan to monitor compliance with surface water ARARs identified in OU1 ROD and OU1 ROD Amendment.

E. OU1 Remedy Compliance

SD will implement the OU1 Remedy as defined in the Settlement, which includes all remedy components from the OU1 ROD, the OU1 ESD, and the OU1 ROD Amendment. SD will also implement all ongoing O&M requirements for these remedial components.

F. Definitions

The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Settlement, have the meanings assigned to them in CERCLA, in such regulations, or in the Settlement, except that the term “Paragraph” or “¶” means a paragraph of the SOW, and the term “Section” means a section of the SOW, unless otherwise stated.

2. COMMUNITY INVOLVEMENT

A. Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. In 2006, EPA developed a Community Involvement Plan (CIP) for the Site. Pursuant to 40 C.F.R. § 300.435(c), EPA is revising the existing CIP to describe further future public involvement activities during SD's performance of the Work that are not already addressed or provided for in the existing CIP.
- (b) If requested by EPA, SD will participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. SD's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any Community Advisory Groups, (2) any Technical Assistance Grant recipients and their advisors, and (3) other entities to provide a reasonable opportunity for review and comment. EPA may describe in its CIP SD's responsibilities for community involvement activities. All community involvement activities conducted by SD at EPA's request are subject to EPA's oversight.

3. OPERATION AND MAINTENANCE

A. Operation, Inspection and Maintenance Plan

Within 180 days of the Effective Date of the Settlement, SD will submit an Operation, Inspection and Maintenance Plan (OIMP) for EPA approval. The OIMP must include all required components listed in this Section. In addition, the OIMP must provide detailed operational information for all critical OU1 Remedy components including bulkheads, pipes, valves, pipelines, elevated trestles, pumping wells, monitor wells, manholes, remote collection systems, collection basins, trenches, culverts, ditches, pumps, ponds, on-site access roads, equipment sheds, structures, and the WTP. The OIMP must include specific reference to operation and maintenance of constructed remedy components, equipment details, description of key personnel and responsibilities, description of routine maintenance activities, description of operational problems, inspection frequency (routine and detailed), inspection procedures, inspection criteria, inspection reporting and repair procedures, and contingencies.

- (a) Mine Pool – water levels will be monitored in the mine pool using a redundant measuring system of hydrostatic pressure in the Mine Draw Down (MDD) pipeline and either (1) a newly installed monitoring well in the Bleakhouse workings, (2) a manual gage on the pipeline in Adit 5 or (3) SD may propose an alternative second system. The redundant measuring systems must be compared and reported in the Annual Report submitted to EPA and CDPHE. A baseline

dataset of one year of monthly measurements using the redundant measuring system must be collected in the year following the effective date of this CD;

- (b) Bulkheads – SD will visually inspect all accessible bulkheads prior to Five Year Reviews (FYR). SD will provide the inspection results to EPA and the State (collectively, the Agencies) 6 months in advance of the due date for the FYR. SD must report bulkhead pressures in Annual Reports. If bulkheads are inaccessible, within 6 months of the inspection results, SD will consult with the Colorado Division of Reclamation, Mining and Safety to develop an approach for bulkhead assessment, then coordinate with EPA and CDPHE to develop a detailed strategy to implement the approach, then provide a work plan for rehabilitation within 270 days of the consultation with DRMS to allow for bulkhead access to EPA for EPA approval.
- (c) Waste Rock Piles – SD will inspect all WRP ditches within 180 days of the Effective Date of the Settlement and provide documentation to the Agencies on the current condition of each ditch within 180 days of the inspection. Ditches in need of repair (e.g., not properly diverting rainfall/runoff away from the waste rock) will be identified by SD. Within 6 months of the inspection that identifies ditches in need of repair, SD will submit a work plan to repair ditches for EPA approval. Subsequent WRP ditch inspections will be performed and documented annually in the annual report by the SD.
- (d) Waste Rock Pile 8 Collection System – SD will inspect and maintain collection systems at and below WRP8 to convey all collected flow to WTP without overflowing the hardened channel/berm or mixing with Rock Creek. Inspections will be performed as frequently as necessary, but at a minimum of once prior to spring runoff flow, once per week during active spring runoff flow, and once at the end of spring runoff flow. If overflows or uncaptured seepage are observed by SD or either Agency, SD will characterize material, and if deemed necessary by EPA, submit a work plan to EPA for approval to replace or reconstruct the collection systems. SD may submit a work plan to the Agencies for approval for capping, in-situ treatment or removal of WRP8, to reduce the amount of water collected and conveyed to the WTP for treatment and to reduce the need for maintenance on the WRP8 collection systems.
- (e) Belden and Rock Creek Groundwater Extraction – SD will operate and maintain a reliable system or systems to intercept, collect and treat contaminated groundwater entering the Belden reach of the Eagle River, which includes the area at the mouth of Rock Creek during the early spring melt period as necessary to attain surface water ARARs.
- (f) Consolidated Tailings Pile –
 - (1) SD will visually inspect the CTP cover and side slopes for damage from erosion and settlement annually. Should damage occur, SD will submit a

work plan to EPA for approval to repair the damage, including regrading/filling as needed and revegetation.

- (2) SD will visually inspect the CTP cover annually for signs of invasive species, which may include deep-rooted vegetation and/or burrowing rodents. Should infestation occur, prior to taking action, SD will notify EPA of plans to repair the damage and eliminate the invasive species per methods outlined in the OIMP.
 - (3) SD will maintain all components of the extraction trench systems in working condition. CTP extraction trench systems include the North Trench (approximately 630-foot long trench constructed in east-west direction across the flowpath of groundwater exiting the CTP area toward Maloit Park) and the East Trench (approximately 400-foot long trench constructed along the terminal moraine which forms the eastern embankment of the CTP and topographically separates the CTP from the Eagle River). Periodic cleaning of the force main and other associated components will be conducted when pressure increases in the force main by 25% above established baseline levels.
 - (4) SD will install and maintain emergency notification systems to alert when pumps in either trench fail or excess water fills the sump within 180 days of the Effective Date of this Settlement.
 - (5) SD will develop and submit a Trench Evaluation Report to EPA for approval in 2020. Trench O&M protocols will be outlined in the OIMP and SD will propose trench performance assessment methodologies following approval of the Trench Evaluation Report.
- (g) Upgradient Diversion Trench –
- (1) SD will develop, as part of the OIMP, new inspection and O&M procedures for the Upgradient Diversion Trench (UGDT), which will include field monitoring for specific conductivity and pH, and operational constraints based on the field measurements.
 - (2) SD will operate the UGDT in accordance with the procedures above (g)(1).
 - (3) SD will perform an annual inspection of the UGDT to ensure that the UGDT is functioning as designed. SD will report the inspection results in the Annual Report.
- (h) Mine Water Transport Pipeline –

- (1) SD will maintain the primary Mine Water Transport Pipeline (MWTP), which consists of the new primary piping segment extending from Belden to Rock Creek, the sole piping segment between Rock Creek and the southern edge of Rex Flats, the piping segment located at ground level traversing Rex Flats, and the piping segment extending from the Eagle River crossing to WTP, to convey flow from all collected sources to the WTP year-round. If primary MWTP flow is reduced to levels that are unable to convey collected water and maintain mine pool at specified level, SD will restore flow capability by any method chosen by the SD and approved by EPA. SD will annually demonstrate that the redundant MWTP, which consists of the piping segment located on the trestle and the secondary piping segment extending from Rock Creek into Belden, can flow by removing flanges and utilizing contingency flow path to transport water to the WTP.
- (2) If SD can demonstrate that the pump back system is operational, the redundant pipeline on the elevated trestle may be abandoned, pending submittal of a WP to EPA and approval by EPA.
- (3) SD retains flexibility to shut in primary and redundant MWTP flows, pending prior approval by EPA, and dependent upon:
 - (i) Mine pool elevation requirement
 - (ii) Documentation of reason for shutdown
 - (iii) Procedures for freeze protection during winter months.
- (4) SD will notify the Agencies by telephone or email within 3 days when blockages occur of the active MWTP (primary or redundant, whichever is flowing) that limit flow rate to less than 100 gpm and what actions will be taken to mitigate the blockage.
- (5) SD will conduct daily visual inspections of the active MWTP (primary or redundant, whichever is flowing) at least 5 times per week until such time that an effective remote monitoring system is approved by EPA, installed and operational. Until such time, SD will load inspection logs in an electronic repository proposed by SD.
 - (i) Trestle – When in use as a flow path, SD will visually inspect at least 5 times per week the trestle and maintain the trestle to support the MWTP. If access is limited by weather, SD may inspect from a greater distance using binoculars unless remote monitoring of this section of the MWTP is established.
 - (1) No visual leakage from the pipeline is permitted. If leakage is identified, SD will report via protocols outline in the ER/CP. Visual leakage is

defined as pooled water beneath the trestle, stained snow during winter months, visible water emanating from the trestle and/or clustered icicles during winter months.

- (2) Structural integrity of all wooden sections of the trestle will be documented by SD's certified structural engineer prior to each FYR preparation. If repairs are necessary, SD will conduct such repairs within one calendar year of EPA determination such repairs are necessary. Documentation of the structural engineer's report will be provided to the Agencies at least 6 months before the FYR is due.
 - (3) SD will identify dead trees annually near the trestle to eliminate the threat of damage to the trestle and remove dead trees within 30 days of identification, weather permitting.
 - (4) If SD plans to use the trestle as a redundant MWTP, then SD will visually inspect the trestle 5 days a week when it contains flow, as stated above. Additionally, if it is a redundant MWTP, SD will demonstrate annual flow capability as outlined in 3.1.i.
- (j) Surge Ponds – SD will visually inspect the surge pond liners annually by lowering water levels in the ponds and conducting a visual inspection. A more thorough inspection of the liners will be performed once every 10 years and will include testing of the liner material by a materials testing laboratory. A minimum of two coupons will be cut from each equalization pond in areas not typically submerged and exposed to the elements. The coupons will be submitted to a qualified materials testing laboratory for analysis of the following parameters at a minimum: thickness, density, carbon black content, melt flow index, tensile properties, high pressure oxidative induction time, and single-point notched constant tensile load (SP-NCTL) stress crack resistance. The results of the testing will be provided to the Agencies. Within 6 months of the annual visual inspection or more thorough 10-year inspection, if needed, SD will submit a work plan for repairs to EPA for approval prior to commencing work. Upon work completion, SD will provide a report that documents the repairs as-built diagrams to the Agencies
- (k) Culverts – SD will maintain all culverts identified in Attachment A as owned by SD to allow for conveyance of water without overflow. For culverts identified as required for the remedy and owned by another party, SD will use its best efforts to obtain an agreement with the party requiring that party to maintain the culvert to allow for conveyance of water without overflow. In the event SD cannot obtain an agreement with the party, EPA will assist in requiring the party to maintain its culvert. Sediment removed from any culvert identified in Attachment A will be handled on a site-specific basis.
- (l) Water Treatment Plant –

- (1) SD will establish an inspection and maintenance schedule for critical components of the WTP within 90 days of the Effective Date of the Settlement. This will be documented in a maintenance program, which will be used to track and report on maintenance work orders.
 - (2) SD will alert the Agencies by telephone or email of unplanned treatment system shut downs, upsets or non-routine maintenance activities lasting more than 12 hours within 3 days of such occurrences.
 - (3) SD will annually provide documentation of WTP refurbishment projects completed during each calendar year and planned refurbishment projects for the upcoming year to the Agencies. SD will submit documentation by December 31st of each calendar year.
- (m) Sludge Disposal – Prior to FYRs, SD will monitor the remaining capacity of the sludge cell. When it reaches 75% capacity, SD will submit a work plan for EPA approval for closure of the sludge cell, which includes plans for future sludge disposal. The remaining capacity of the sludge cell calculation will be provided to the Agencies at least 6 months before the FYR is due.
- (n) Permanent on-Site repository (formerly known as the Temporary or Temp Cell) – SD will construct and maintain a permanent on-Site repository at the CTP to receive waste from Site maintenance activities, if the current Temp Cell is closed. SD will submit a work plan for the closure of the Temp Cell and construction of a new on-Site repository for EPA approval 90 days prior to closure of the Temp Cell.
- (o) Trespassing/Signage - SD will immediately notify law enforcement of trespassing incidents and will maintain a log of trespassing occurrences to be transmitted to the Agencies and the property owner monthly via email. Following installation of perimeter signage by the property owner, the SD will notify the Agencies and property owner of any necessary signage repairs identified during routine inspections.
- (p) Belden Cribbing – The Belden Cribbing are formed by concrete blocks constructed by the EPA Removal Program upstream of the Eagle Mine Site to prevent waste rock from being mobilized into the Eagle River. For a period of five years after the Effective Date of the Consent Decree, SD will remove blocks from the Eagle River dislodged by avalanches. SD will place blocks removed from the Eagle River along the road adjacent to the lowermost concrete block wall. SD will submit a work plan for EPA approval prior to conducting any work specifying their technical approach for configuring the blocks along the road. At the end of the five-year period, SD shall have no further obligation to remove any additional Cribbing blocks which may be released or otherwise come to be located in, or along the banks of, the Eagle River.

4. COMPLIANCE MONITORING

A. Compliance Monitoring Plan

Within 180 days of the Effective date of the Settlement, SD will submit a Compliance Monitoring Plan (CMP) for EPA approval. The CMP must include all required components listed in this Section.

- (a) Surface Water –
 - (1) SD will conduct surface water sampling/reporting to document compliance with applicable surface water standards for Eagle River and Cross Creek.

- (b) Groundwater –
 - (1) SD will conduct groundwater sampling/reporting to document conditions.

- (c) Mine Pool –
 - (1) SD will maintain the mine pool water table elevation below 8,475 feet Mean Sea Level (MSL) under normal operating conditions, and 8,485 feet MSL, if the mine pool is needed for temporary storage capacity due to WTP or Liberty Well issues. A temporary storage condition will be limited to 3 months, even if mine pool elevation is below 8,485 feet MSL, unless written request for extension of temporary storage condition is received and approved by EPA. If temporary storage condition is found to be necessary, SD will notify the Agencies within one week of determination.
 - (2) SD will maintain bulkhead pressures at levels below the hydrostatic head design pressures in Table 3 below.
 - (3) Per the 1993 OU1 Record of Decision, SD must conduct regular monitoring of the mine pool. To accomplish this, SD will collect and analyze a water quality sample from the MDD at Rock Creek for the metals listed in Table 1 on an annual basis.
 - (4) SD will conduct water level monitoring that will demonstrate the remedial systems are functioning as designed.

- (d) Liberty Diversion –
 - (1) SD will operate and maintain the Liberty No. 4 Well, or similar system, that intercepts and diverts clean groundwater before it enters the mine

pool. The system must be demonstrated to be capable of pumping at least 50 gpm and operated in a manner that results in the diversion of a minimum 45 million gallons per year. The well should be operated continuously. If the pump ceases operation for more than 24 hours, SD must notify the Agencies within 24 hours. Notification should include plans to get the Liberty Diversion back on line.

- (2) SD will ensure that the water quality of the discharge from the Liberty No. 4 Well will comply with all terms and conditions of the CDPS Permit issued by the Colorado Water Quality Control Division or CERCLA PED issued under the Settlement.
 - (3) SD will conduct continuous conductivity and flow monitoring of the discharge from the Liberty No. 4 Well, when weather permits. Continuous monitoring data will be downloaded from datalogger weekly. If conductivity values indicate that over pumping has induced a reverse gradient from the mine pool, SD will reduce the pumping rate to restore the gradient.
 - (4) If SD chooses to plug the Liberty Drift, SD will submit a work plan outlining plans to plug the drift. EPA approval is required prior to any action being undertaken to plug the drift. The work plan must include specifications on closure plans and contingency plans for failure.
- (e) Consolidated Tailings Pile Groundwater Extraction Systems –
- (1) SD will demonstrate that existing East Trench or comparable system collects and conveys to WTP a minimum of 100,000 gallons per month and existing North Trench or comparable system collects and convey to WTP a minimum of 150,000 gallons/month.
 - (2) SD may submit, for review and approval by EPA, a proposal to reduce the minimum flow requirement above and/or duration of pumping based on a demonstration that a lower extraction rate is protective of Cross Creek and the Eagle River. Any proposal must include a demonstration that the water quality standards applicable to the reach and season are attainable at the lower pumping rate.
 - (3) SD will monitor water levels in piezometer ET-1. SD will demonstrate that the system is operating as designed by analyzing groundwater level data in Annual Reports and assessing pumping rates.
 - (4) SD will collect a water quality sample annually from each extraction trench and analyze for the metals listed in Table 1. Sample results will be reported in the annual report.

- (f) Water Treatment Plant –
- (1) SD will maintain and operate the WTP in accordance with the CDPS Permit or CERCLA PED.
 - (2) SD will attempt to employ on-Site a lead water treatment plant operator, who will be at least a Class B certified Industrial Wastewater Treatment Plant Operator in the State of Colorado. The lead operator will have a minimum of two years of experience working at a facility of similar size and complexity, including at least one year within the last 5 years. When such a certified operator is not employed on-Site, plant procedures will specify delegation rules for on-Site activities. Delegation rules will be documented and submitted in a stand-alone delegation plan submitted to the Agencies for EPA approval within 30 days of the Effective Date of the Settlement.
 - (3) The operator will be responsible for carrying out the day-to-day operations, managing the facility operations and personnel, and ensuring that the WTP complies with effluent limits and releases to the environment do not occur. In addition, the operator is responsible for overseeing the daily inspections of the collection and conveyance system.
 - (4) Planned shutdowns for maintenance may occur when sufficient capacity is available in the surge ponds and/or the mine pool.
 - (5) Bypasses of untreated acid mine drainage at the WTP to the Eagle River are prohibited, unless:
 - (i) The bypass is unavoidable to prevent loss of life, personal injury, or severe property damage; and
 - (ii) There were no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance.
 - (6) If the SD knows in advance of the need for a bypass at the WTP, a notice will be submitted, at least 10 calendar days before the date of the bypass, to the Agency. The bypass will be subject to EPA approval and limitations imposed by EPA. Violations of requirements imposed by EPA will constitute a violation of the CERCLA PED.

- (7) Bypasses of untreated acid mine drainage from collection basin systems are prohibited, unless:
 - (i) SD demonstrates that bypassed waters meet effluent limits set in accordance with the CDPS Permit or CERCLA PED, whichever is applicable; or
 - (ii) Waters can be collected and contained in a temporary collection facility until the waters can be returned to the collection system via the collection location or piped to another portion of the collection system.
 - (8) If SD knows it will need to bypass the collection basin system in advance, SD will notify the Agencies in writing prior to implementing the bypass for EPA approval. If SD does not know of the need to bypass the collection basin system in advance, SD will notify the Agencies orally within 24 hours of initiating bypass and will provide written notice of the bypass within 5 days of implementation.
 - (9) If bypasses occur they will be evaluated against the criteria specified in the CDPS Permit, CERCLA PED, and/or Eagle River segment specific standards.
 - (10) SD will maintain up-to-date Standard Operating Procedures (SOP) that contain specific troubleshooting procedures for integrated components in written form at the WTP. SOPs will be made available to Agency personnel for review or inspection on request.
 - (11) Effluent monitoring data will be transmitted via NetDMR form to the Agencies to be uploaded to EPA's Integrated Compliance Information System (ICIS) electronic system.
- (g) Sludge Disposal – SD will remove ponded water resulting from snowmelt within the sludge disposal cell by July 30th of each year. SD will deliver this water to the WTP for treatment.

B. Other Items

- (a) Emergency Response/Contingency Plan
 - (1) General Requirements – The Emergency Response/Contingency Plan (ER/CP) must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ER/CP must include:

- (i) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (ii) If a reportable quantity of a contaminant is released, notification activities in accordance with ¶ 5.D(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under section 103 of CERCLA, 42 U.S.C. § 9603, or section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004; and
 - (iii) A description of all necessary actions to ensure compliance with the Settlement in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
- (2) Site-Specific Requirements – The ER/CP will describe procedures to be used in the event of an accident or emergency at the Site.
- (i) SD will comply with the 2018 ER/CP (Revision 1) and as updated.
 - (ii) SD will maintain a sign at the entrance road to the WTP with emergency contact information. SD will update the sign within 3 months of a change in information.
 - (iii) In an emergency, SD will follow the notification requirements of the ER/CP including, notification to CDPHE’s Project Manager, EPA’s RPM and the CDPHE Spill Line.
 - (iv) SD will immediately obtain all personnel, services, goods or supplies necessary to mitigate the emergency.
 - (v) If a bypass of untreated mine water occurs, SD will immediately notify EPA and CDPHE and initiate the call out procedure outlined in the ER/CP.
 - (vi) SD will submit an emergency report within 5 days following an emergency (aka 5-day report) to CDPHE’s Project Manager, EPA’s RPM, and CDPHE’s Water Quality Control Division Field Unit #2 Grand Junction office).
- (b) Vegetation –
- (1) SD will maintain healthy vegetation on the CTP cap, the OTP, Rex Flats and any other area of the Site where revegetation occurred. SD will

inspect these areas for the health of the vegetation annually. If bare areas exceed 100 square feet, SD will repair those areas.

- (2) If EPA-approved remedial activities related to Operable Unit 3 at the Site occur in areas of prior revegetation, revegetation activities will be conducted by the party conducting the OU3 remediation.
- (c) **Monitoring Well Abandonment** – Within 180 days of the Effective Date of the Settlement, SD will submit to EPA, for review and approval, a monitoring well abandonment plan. SD will select key monitoring wells in each areas of the Site for long-term monitoring. All other wells will be plugged and abandoned in compliance with ARARs.
- (d) **Shutdown Criteria** – Prior to the shutdown of any remedial system, SD can propose for EPA approval the shutdown of existing remedial systems at the Site. Existing systems can be discontinued when one of the following occurs:
 - (1) The mine pool water or groundwater quality improves such that direct discharge into the Eagle River does not cause surface water quality exceedances;
 - (2) The system is replaced by an equally effective system, including passive treatment systems;
 - (3) The source of contaminated water ceases flowing or flows at such a low volume that it does not cause surface water exceedances in the Eagle River; and/or
 - (4) The source affecting the water is removed and/or covered such that the runoff is no longer contaminated above levels requiring capture.

At any time, prior to taking any action regarding shutdown of existing systems, SD can propose alternate shutdown criteria for existing systems for EPA approval.

5. REPORTING

A. Data

- (a) SD will collect and submit the environmental samples as required by the CMP to an approved independent laboratory for analysis.
- (b) SD will provide a copy of all analytical results to the Agencies annually and will upload all environmental data to EPA's Scribe Database.

B. Discharge Monitoring Reports

SD will complete and submit monthly Discharge Monitoring Reports to the Agencies and upload the data to the ICIS system.

C. Annual Reports

SD will maintain all records related to the operation, inspection and maintenance of the OU1 Remedy and provide routine status updates. The Annual Report will cover the period of January 1 through December 31 of the preceding year, will be submitted by March 1 of the following year and will be a stand-alone document summarizing all OU1 activities at the Site during the calendar year, including, at a minimum:

- (a) Introduction
- (b) Surface Water Monitoring Data Summary
- (c) Eagle Mine Water Monitoring and Data Summary
- (d) Groundwater Monitoring and Data Summary
- (e) Effluent Monitoring Data for WTP and Liberty No. 4 Well
- (f) Summary of Site Activities (including Pipeline O&M, Emergency Response Activities, Site Inspections and Audits, WTP O&M, Liberty No. 4 Well O&M, and Community Involvement activities)
- (g) Summary of Completed Deliverables required by Enforcement Agreements
- (h) Planned Activities for Upcoming Year
- (i) Tables, Figures and Appendices

D. Emergency Response and Reporting

- (a) **Emergency Response and Reporting.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, SDs will: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 5.D(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the ER/CP, and any other deliverable approved by EPA under the SOW.
- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that SD is required to report pursuant to section 103 of CERCLA, 42 U.S.C.

§ 9603, or section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, SD will immediately notify the authorized EPA officer orally.

- (c) The “authorized EPA officer” for purposes of immediate oral notifications and consultations under ¶ 5.D(a) and ¶ 5.D(b) is the EPA Remedial Project Manager (RPM) as designated in the Settlement or the EPA Regional Duty Officer and the EPA National Response Center (if the RPM is unavailable).
- (d) For any event covered by ¶ 5.D(a) and ¶ 5.D(b), SD will, within 5 days after the onset of such event, submit a report to the Agencies describing the actions or events that occurred and the measures taken, and to be taken, in response thereto. For any event covered by ¶ 5.D(b), SD will within 30 days after the conclusion of such event, submit a report to the Agencies describing all actions taken in response to such event.
- (e) The reporting requirements under ¶ 5.D are in addition to the reporting required by CERCLA § 103 or EPCRA § 304 and must be consistent with the Settlement.

E. Off-Site Shipments

- (a) SD may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if SD complies with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. EPA will deem SD to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if SD 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).
- (b) SD may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, SD provides notice to the appropriate state environmental official in the receiving facility’s state and to the RPM. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The 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. SD also will notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. SD will provide the notice after the award of the contract for RA construction and before the Waste Material is shipped.
- (c) SD may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if SD complies with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, *EPA’s Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific

requirements contained in the ROD. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

6. DELIVERABLES

A. Applicability

SD will submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 6.2 (In Writing) through 6.4 (Technical Specifications) apply to all deliverables. Paragraph 6.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 6.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.

B. In Writing

Consistent with the Settlement, all deliverables under this SOW must be in writing unless otherwise specified.

C. General Requirements for Deliverables

All deliverables must be submitted by the deadlines in the Schedule, as applicable. SD will submit all deliverables to EPA in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in ¶ 6.D. All other deliverables will be submitted to EPA in the electronic form specified by the RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", SD will also provide EPA with paper copies of such exhibits.

D. Technical Specifications

- (a) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format that is compatible with the EPA software tool Scribe. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
- (b) 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 <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (d) Spatial data submitted by SD does not, and is not intended to, define the boundaries of the Site.

E. Certification

All deliverables that require compliance with this Paragraph must be signed by the SD's Project Coordinator, or other responsible official of SD, and must contain the following statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

F. Approval of Deliverables

(a) Initial Submissions

- (1) After review of any deliverable that is required to be submitted for EPA approval under the Settlement or the SOW, EPA will: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

- (b) **Resubmissions.** Upon receipt of a notice of disapproval under ¶ 6.F(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 6.F(a), SD will, within 30 days or such longer time as specified by EPA in

such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring SD to correct the deficiencies; or (5) any combination of the foregoing.

- (c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under ¶ 6.F(a) (Initial Submissions) or ¶ 6.F(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (2) SD will take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 6.F(a) or ¶ 6.F(b) does not relieve SD of any liability for stipulated penalties under the Settlement.

G. Supporting Deliverables

Within 180 days of the Effective Date of the Settlement, SD will submit each of the following supporting deliverables for EPA approval, except as specifically provided. SD will develop the deliverables in accordance with all applicable regulations, guidance, and policies (see Section 9 (References)). SD will update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.

- (a) **Health and Safety Plan.** The Health and Safety Plan (HASP) describes all activities to be performed to protect on site personnel and area residents from physical, chemical, and all other hazards posed by the Work. SD will develop the HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. §§ 1910 and 1926. EPA does not approve the HASP but will review it to ensure that all necessary elements are included and that the HASP provides for the protection of human health and the environment.
- (b) **Emergency Response/Contingency Plan.** The ER/CP must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERCP must include:
- (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Notification activities in accordance with ¶ 5.D(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under section 103 of CERCLA, 42 U.S.C. § 9603, or section 304 of the EPCRA, 42 U.S.C. § 11004; and

- (3) A description of all necessary actions to ensure compliance with the Emergencies and Releases Paragraph of the Settlement in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
- (c) **Field Sampling Plan.** The Field Sampling Plan (FSP) addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. SD will develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).
- (d) **Quality Assurance Project Plan.** The Quality Assurance Project Plan (QAPP) augments the FSP and addresses sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of SD's quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. SD will develop the QAPP in accordance with *EPA Requirements for Quality Assurance Project Plans*, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006); *Guidance for Quality Assurance Project Plans*, QA/G-5, EPA/240/R 02/009 (Dec. 2002); and *Uniform Federal Policy for Quality Assurance Project Plans*, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005). The QAPP also must include procedures:
- (1) To ensure that the Agencies and their authorized representative have reasonable access to laboratories used by SD in implementing the Settlement (SD's Labs);
 - (2) To ensure that SD's Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
 - (3) To ensure that SD's Labs perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010)) or other methods acceptable to EPA;
 - (4) To ensure that SD's Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;
 - (5) For SD to provide EPA with notice at least 7 days prior to any sample collection activity;

- (6) For SD to provide split samples and/or duplicate samples to EPA upon request;
- (7) For the Agencies to take any additional samples that they deem necessary;
- (8) For the Agencies to provide to SD, upon request, split samples and/or duplicate samples in connection with the Agencies' oversight sampling; and
- (9) For SD to submit to the Agencies all sampling and tests results and other data in connection with the implementation of the Settlement.

7. SCHEDULES

A. Applicability and Revisions

All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the Schedule set forth in Attachment C. SD may submit proposed revised Schedules for EPA approval. Upon EPA's approval, the revised Schedules supersede the Schedules set forth below, and any previously-approved Schedules.

8. STATE PARTICIPATION

A. Copies

SD will, at any time it sends a deliverable to EPA, send a copy of such deliverable to the State. EPA will, at any time it sends a notice, authorization, approval, disapproval, or certification to SD, send a copy of such document to the State.

B. Review and Comment

The State will have a reasonable opportunity for review and comment prior to any EPA approval or disapproval under ¶ 6.F (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval.

9. REFERENCES

A. Regulations and Guidance Documents

The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed below:

- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).

- (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
- (c) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
- (d) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G-90/001 (Apr. 1990).
- (e) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
- (f) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
- (g) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
- (h) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).
- (i) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. Part 300 (Oct. 1994).
- (j) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
- (k) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
- (l) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (m) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, 540-R-01-007 (June 2001).
- (n) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).
- (o) Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls (Apr. 2004).

- (p) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).
- (q) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).
- (r) Superfund Community Involvement Handbook, SEMS 100000070 (January 2016), <https://www.epa.gov/superfund/community-involvement-tools-and-resources>.
- (s) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (t) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).
- (u) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (v) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).
- (w) USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2 (amended Apr. 2007).
- (x) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), <https://www.epa.gov/geospatial/geospatial-policies-and-standards> and <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (y)
- (z) Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration, OSWER 9283.1-33 (June 2009).
- (aa) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (bb) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010).
- (cc) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
- (dd) Recommended Evaluation of Institutional Controls: Supplement to the "Comprehensive Five-Year Review Guidance," OSWER 9355.7-18 (Sep. 2011).

- (ee) Construction Specifications Institute's MasterFormat 2012, available from the Construction Specifications Institute, <http://www.csinet.org/masterformat>.
- (ff) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012).
- (gg) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012).
- (hh) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), <https://www.epaossc.org/HealthSafetyManual/manual-index.htm>.
- (ii) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (jj) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), <https://www.epa.gov/superfund/superfund-post-construction-completion>.

A more complete list may be found on the following EPA Web pages:

- (a) Laws, Policy, and Guidance: <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>
- (b) Test Methods Collections: <https://www.epa.gov/measurements/collection-methods>

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

10. ATTACHMENTS

A. Tables

Table 1: Water Quality Monitoring Parameters

Analyte	Sample Locations				
	Mine Pool (Adit 5)	East Trench	North Trench	CTP/OTP/Rex Flats Groundwater	Eagle River/Cross Creek/Rock Creek/Mine Pool
Arsenic	x	x	x		x
Cadmium	x	x	x		x
Copper	x	x	x		x
Zinc	x	x	x		x
Calcium					x
Magnesium					x

Notes:

- 1) This table represents the minimum required analytes. Special circumstances may merit addition of analytes.
- 2) The Liberty No. 4 Well discharge and the WTP discharge will be sampled for all analytes required in the most current version of the applicable CDPS permit. If a CERCLA PED is issued under the Settlement, then the CERCLA PED will govern sampling for each point source discharge.

Table 2: Compliance Requirements

Requirement	Compliance Criterion
Submit all Plans	Review/Approval by Agency
Submit all Reports	Review/Approval by Agency
Submit all Work Plans	Review/Approval by Agency
Collect/Analyze Required Water Quality Samples (from Adit 5, UGDT, North Trench/East Trench)	Yes/No samples collected according to SAP/QAPP and results reported in Annual Reports/Database
Attain Water Quality Standards	Use 303(d) listing methodologies to compare surface water samples to water quality standards
Mine Pool Elevation	Mine pool must be below 8,475 ft msl unless Emergency Storage condition has been approved by agency
Redundant Mine Pool Elevation Monitoring	Redundant systems are being used and data reported are within 10% of each other
Bulkhead Inspections/Bulkhead Pressure	Inspections are being conducted and reported pressure readings are below the Hydrostatic Head design pressures shown in Table 3
Compliance with OIMP	Failure to conduct inspections, properly operate, maintain or repair any of the features as required by the OIMP

Groundwater Level Measurements at East Trench, North Trench, UGDT, Belden	Groundwater levels must be measured and reported in the Annual Reports. Data should be analyzed in the Annual Reports to demonstrate the efficacy of the applicable extraction system.
Liberty No. 4 Well Operation	Annual extraction rates should exceed 45 million gallons
Liberty No. 4 Well Discharge	Comply with conditions/requirements of CDPS permit or CERCLA PED
East Trench Extraction Rate	100,000 gallons per month
North Trench Extraction Rate	150,000 gallons per month
Mine Water Transportation Pipeline flowrate	Report flowrates in monthly reports, if below levels able to convey collected water and maintain mine pool at specified level, repair or replace the pipeline.
Water Treatment Plant	Maintain the WTP in accordance with the OIMP
Discharge Requirements	Comply with conditions/requirements of CDPS permit or CERCLA PED DMR data uploaded to ICIS
Operational Requirements	Maintenance program required, notification of shut downs, lead operator, SOPs, UPCPs available on request

Table 3: Bulkhead Design Parameters

Bulkhead Location	Bulkhead Thickness	Bulkhead Height	Bulkhead Width	Bulkhead Gauge Elevation (ft msl)	Hydrostatic Head Design (ft)	Mine Pool Elevation 8/2015 (ft msl)	Design Mine Water Elevation (ft msl)
Bleakhouse Workings							
Adit No. 5	6 ft 9 in	8 ft 8 in	7 ft 6 in	8434	327	8462	8761
Adit No.6	8 ft 4 in	8 ft 0 in	8 ft 0 in	8300	500	8462	8800
Adit No.7*	5 ft 0 in	Varies 7 to 8 ft	5 ft ±	8524	152	8462	8676
Adit No.140*	6 ft 9 in	Varies 7 to 8 ft 6 ft 9 in	9 ft ±	8496	208	8462	8704
Tip Top/Ben Butler Workings							
Ben Butler	8 ft 0 in	5 ft 10 in	5 ft ±	8426	348	8436	8774
Tip Top #1	7 ft 6in	6 ft 2 in	7 ft ±	NA	360	8436	8780
Tip Top #2	9 ft 2 in	7 ft 6 in	7 ft ±	NA	360	8436	8780
Tip Top #3	3 ft 8 in	6 ft 10 in	7 ft ±	8420	360	8436	8780

B. Culvert List and Figure

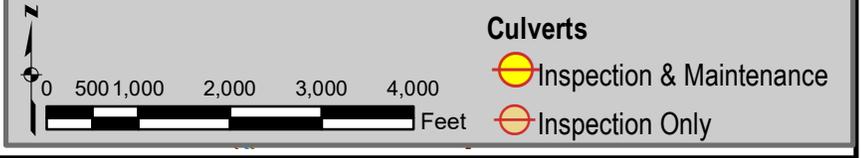
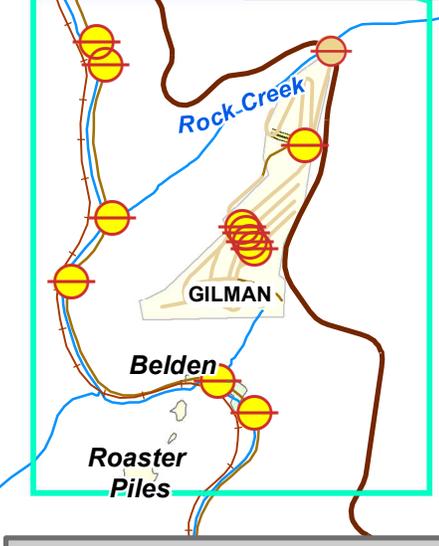
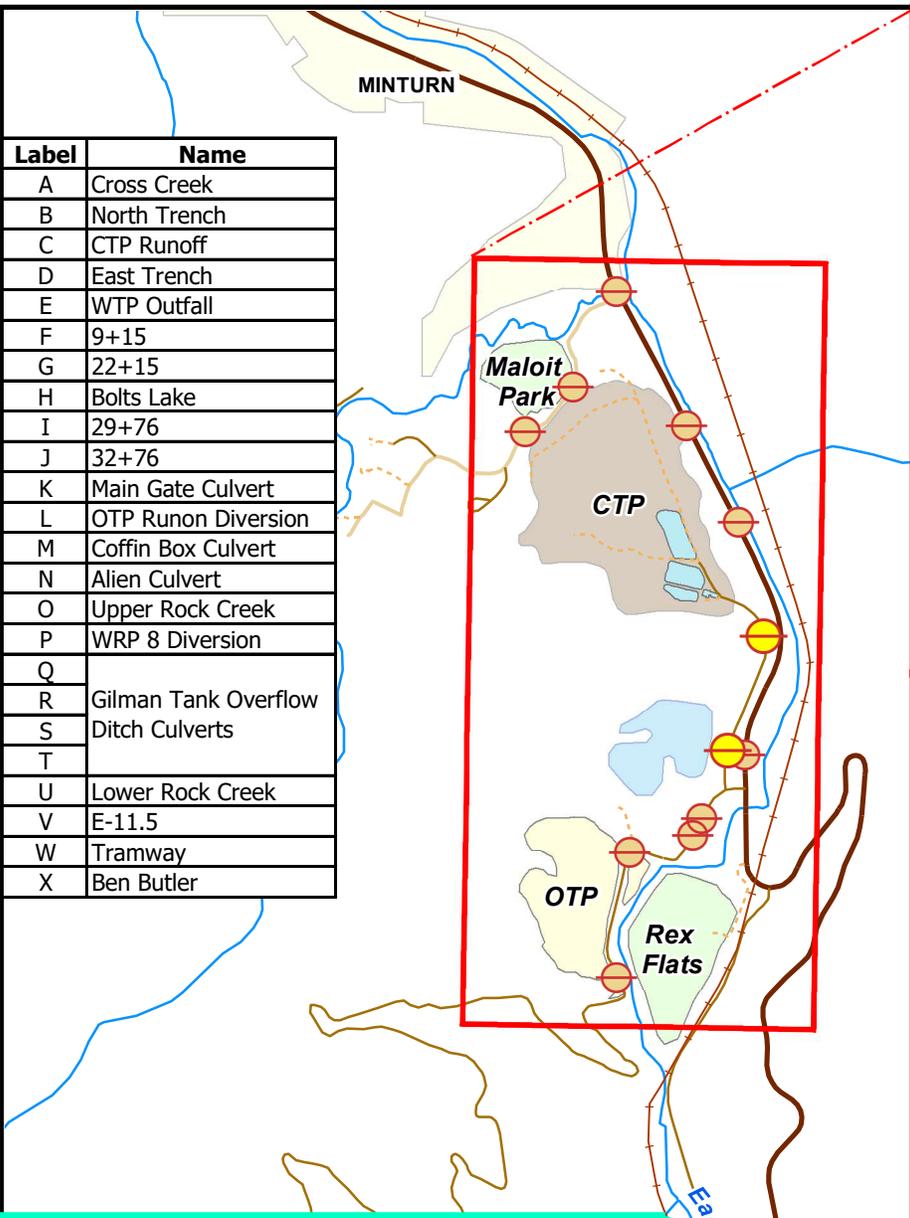
Culverts in/around OU-1 of the Eagle Mine Site

Label	Name	Location	Owner	Condition	Required for the Remedy
A	Cross Creek	Highway 24	CDOT	open	no
B	North Trench	Maloit Park	County	open	yes
C	CTP Runoff	Maloit Park	County	open, near ski school	yes
D	East Trench	Highway 24	CDOT	open	yes
E	WTP Outfall	Highway 24	CDOT	open	yes
F	9+15	WTP Access Road	BMP	near CO#2	no
G	22+15	WTP Access Road	BMP	open, Bolts lake drain, near CO#6	no
H	Bolts Lake	Highway 24	CDOT	open, ditch extends from 22+15	no
I	29+76	Tigiwon Road	County	open	no
J	32+76	Tigiwon Road	County	open	no
K	Main Gate Culvert	Tigiwon Road	County	open, near main OTP gate	yes
L	OTP Runon Diversion	Tigiwon Road	County	open, near Nova Guides camp	yes
M	Coffin Box Culvert	Eagle River Canyon	UPRR	open, located near coffin box cleanout port above 2 Mac	no
N	Alien Culvert	Eagle River Canyon	UPRR	open, just downstream of Alien man hole	no
O	Upper Rock Creek	Highway 24 (Gilman)	CDOT	open	no
P	WRP 8 Diversion	Gilman	CBS	open, abuts north edge of WP 8 waste slope	yes
Q	Gilman Tank Overflow Ditch Culverts	Gilman	BMP	#1 - northernmost downslope	yes
R				#2 - downslope	yes
S				#3 - upslope	yes
T				#4 - southernmost upslope	yes
U	Lower Rock Creek	Eagle River Canyon	CBS	open, Rock Cr diversion from Cowboy pond to EDS	yes
V	E-11.5	Eagle River Canyon	UPRR	open, upstream of confluence w Rock Creek	no
W	Tramway	Belden	UPRR	plugged; maintain as a sediment catchment basin	yes
X	Ben Butler	Belden	UPRR	open	yes

Notes:

Culvert operated by CDOT or Eagle County and therefore the culvert will be inspected only. Any maintenance will be conducted by the owner or owner designee.

Label	Name
A	Cross Creek
B	North Trench
C	CTP Runoff
D	East Trench
E	WTP Outfall
F	9+15
G	22+15
H	Bolts Lake
I	29+76
J	32+76
K	Main Gate Culvert
L	OTP Runon Diversion
M	Coffin Box Culvert
N	Alien Culvert
O	Upper Rock Creek
P	WRP 8 Diversion
Q	
R	Gilman Tank Overflow
S	Ditch Culverts
T	
U	Lower Rock Creek
V	E-11.5
W	Tramway
X	Ben Butler



C. O&M SOW Schedule

	Action or Deliverable	Due Date	Actual Date
1	Operation, Inspection and Maintenance Plan	Within 180 days of Effective Date of CD	
2	One year monthly measurements mine pool - redundant measuring system	Begin one year period within 90 days of Effective Date of CD	
3	Accessible Bulkhead Inspection Report	6 months before 5 year review due date (next 5YR due: Sept 18, 2023)	
4	Inaccessible bulkhead consultation with CO DRMS	Within 6 months of Accessible Bulkhead Inspection Report	
5	Strategy for inaccessible bulkhead assessment, WP based on strategy	Within 270 days of consultation with DRMS	
6	Waste Rock Pile Ditch Inspection	Within 180 days of Effective Date of CD, annually thereafter	
7	Waste Rock Pile Ditch Inspection Report	Within 180 days of Inspection	
8	Work Plan for waste rock pile ditch repair	Within 6 months of Waste Rock Pile Ditch Inspection	
9	Work Plan for CTP Repair	Within 90 days following identification of CTP cover or side slope damage	
10	CTP inspection for erosion/damage	Annually	
11	Install/maintain emergency notification systems at East and North Trenches at CTP	Within 180 days of Effective Date of CD	
12	CTP Groundwater Trench Evaluation Report	Calendar Year 2020	
13	Pipeline abandonment plan - trestle	Pending demonstration that pump back system is operational	
14	Structural engineer evaluation of trestle (if trestle is not abandoned)	6 months before 5 year review due date (next 5YR due: Sept 18, 2023)	
15	Visual inspection of surge pond liners	Annually	
16	Work Plan for repairs to liners	Within 6 months of annual inspection	
17	Inspection and Maintenance Program for critical components of the WTP	Within 90 days of Effective Date of CD	
18	Documentaion of refurbishment projects at WTP	Annually by December 31st	
19	Work Plan for Closure of sludge cell	When sludge cell reaches 75% capacity	
20	Report on remaining capacity of sludge cell	6 months before 5 year review due date (next 5YR due: Sept 18, 2023)	
21	Work Plan for closure of Temp Cell and construction of new on-Site repository	90 days prior to Temp cell closure	
22	Compliance Monitoring Plan	Within 180 days of Effective Date of CD	
23	Work Plan to plug Liberty drift	Prior to any proposed action	
24	Operator in Charge delegation plan	Within 30 days of Effective Date of CD	
25	Remove ponded water from sludge cell	Annually by July 30th	
26	Monitoring Well Abandonment Plan	Within 180 days of Effective Date of CD	
27	Remedial Component Shutdown Plan	Prior to any proposed shutdown	
28	Analytical Results	Annually	
29	Discharge Monitoring Reports - WTP and Liberty Well	Monthly	
30	Annual Report	Annually by March 1	
31	HASP	Within 90 days of Effective Date of CD	
32	Emergency Response/Contingency Plan	Within 90 days of Effective Date of CD	
33	Field Sampling Plan	Within 90 days of Effective Date of CD	
34	Quality Assurance Project Plan	Within 90 days of Effective Date of CD	
35	Belden Cribbing Work Plan	Prior to conducting work	