Norman, Yolande

From: Williams.Laurie@epamail.epa.gov
Sent: Friday, July 24, 2009 8:04 PM
To: stephenbetsitty@navajo.org; 'ted22222@earthlink.net'; Brancard, Bill, EMNRD; bpostle@osmre.gov; Tenley.Clancy@epamail.epa.gov; Wetmore.Cynthia@epamail.epa.gov; Dale_Wirth@nm.blm.gov; dana.bahar@state.nm.us; Stralka.Daniel@epamail.epa.gov; davetaylornavajodoj@yahoo.com; Richmond.Dawn@epamail.epa.gov; dianemalone54@hotmail.com; djohnson@gjo.doe.gov; Dixon, Earle, NMENV; Adams.Elizabeth@epamail.epa.gov; Ty.Fatima@epamail.epa.gov; freidasw@juno.com; Eugene N. Esplain; GENE.LUCERO@lw.com; George.Padilla@bia.gov; Karr.Harrison@epamail.epa.gov; Allen.HarryL@epamail.epa.gov; Holland.Shepherd@state.nm.us; Lillie Lane; Gardner, Jane (GE, Corporate); Schoeppner, Jerry, NMENV; Johnnye Lewis Ph. D.; jpfeil@state.nm.us; Economy, Kathleen, EMNRD; lance.hauer@ge.com; Garcia-Bakarich.Luis@epamail.epa.gov; PerezSullivan.Margot@epamail.epa.gov; Butterwick.Mary@epamail.epa.gov; maryann.menetrey@state.nm.us; Dineyazhe.Michele@epamail.epa.gov; Fliegel, Myron; pasi_swa@hotmail.com; McAlister, Randall (GE, Corporate); Plieness, Ray; Tadesse, Rebecca; Bush, Richard; Terry.Robert@epamail.epa.gov; Robert_Moore@nm.blm.gov; Russ_MacRae@fws.gov; Jacobs.Sara@epamail.epa.gov; Stollman.Scott@epamail.epa.gov; sric.chris@earthlink.net; stephen_spencer@ios.doi.gov; stephen_spencer@ios.gov; Walker.Stuart@epamail.epa.gov; susan.lucasKmat@state.nm.us; toby.leeson@us.mwhglobal.com; Pauling, Tom; Norman, Yolande
Cc: Minor.Dustin@epamail.epa.gov; Bain.Andrew@epamail.epa.gov
Subject: NECR Interim Removal Action AOC - Part 1 of 4 - Final Documents
Attachments: NECR_IRA_AOC_072409.pdf

Hello All,
Attached please find the Administrative Order on Consent for the Northeast Church Rock Mine Site Interim Removal Action ("IRA AOC").
The IRA AOC was signed earlier today by UNC, GE and US EPA.
US EPA will work closely with both UNC/GE and Navajo Nation EPA representatives as we move forward with implementation of the selected removal action.

Because the pdf of the attachments to the IRA AOC are quite large, I will forward them to you in 3 follow-up emails.
Please contact Andy Bain ((415) 972-3167) or me ((415) 972-3867), if you have questions.
I will be out next week (July 27 - 31). However, if you have legal questions during that time, please feel free to contact Dusty Minor at (415) 972-3888.

Sincerely, Laurie Williams

Signed Administrative Order on Consent, Effective Date: July 24, 2009

Laurie Williams (ORC-3)
Assistant Regional Counsel
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105
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Facsimile: (415) 947-3570

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

IN THE MATTER OF: **Northeast Church Rock Mine Site** New Mexico United Nuclear Corporation and The General Electric Company, Respondents	**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR INTERIM REMOVAL ACTION** U.S. EPA Region 9 CERCLA Docket No. 2009-11 Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622

AMINISTRATIVE ORDER ON CONSENT INTERIM REMOVAL ACTION FOR NORTHEAST CHURCH ROCK MINE SITE

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and United Nuclear Corporation ("UNC") and General Electric Company ("GE") (collectively "Respondents"). This Settlement Agreement provides for Respondents' performance of an Interim Removal Action as defined in Paragraph 10 and other actions as provided herein as well as Respondents' reimbursement of certain response costs incurred by the United States at or in connection with the Northeast Church Rock Mine site (the "Site") located northeast of Gallup, New Mexico, in Sections 34 and 35, Township 17 North, Range 16 West and Section 3, Township 16 North, Range 16 West in McKinley County, New Mexico. The Site vicinity and the Mine Permit Area of the Site are shown in the Maps in Appendix A. Most of the Mine Permit Area lies within Navajo tribal trust lands administered by the Bureau of Indian Affairs on behalf of the Eastern Agency of the Navajo Nation. Newmont Realty Corp., a subsidiary of Newmont Mining Corporation, owns the mineral interests of certain land within the Mine Permit Area as a patented mining claim, and Respondent UNC owns patented mining claims on approximately 61 acres of the Mine Permit Area.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA").

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

4. EPA and Respondents recognize that Respondents have voluntarily offered to perform this action, that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and, subject to the terms of this Settlement Agreement, agree to perform all actions required by this Settlement Agreement and any modifications thereto, and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms. By entering into this Settlement Agreement, Respondents do not consent or submit to and specifically deny any claims of jurisdiction by the Navajo Nation over Respondents.

5. Under this Settlement Agreement, Respondents will perform the Interim Removal Action ("IRA") as provided herein and described in the attached Work Plan. The parties may then discuss the terms of another Settlement Agreement or an Amendment of this Settlement Agreement, which, if executed, may provide, *inter alia* for Respondents' execution of additional

response actions on or near the Mine Permit Area and Red Water Pond Road, based upon the results of investigations performed pursuant to this Settlement Agreement and/or an Engineering Evaluation/Cost Analysis, and for payment of additional response costs for the Site.

II. PARTIES BOUND

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

7. As between Respondents GE and UNC, Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondent shall complete all such requirements.

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

9. EPA intends to consult with and coordinate with the Navajo Nation throughout the performance of the Work and implementation of this Settlement Agreement, and to take Navajo Nation's comments and concerns into consideration. EPA's failure to do so, however, will not affect Respondents' rights or obligations under this Settlement Agreement.

III. DEFINITIONS

10. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" or "Action Memo" shall mean the EPA Action Memorandum relating to the Site signed on July 23, 2009, by the Acting Regional Administrator, Region IX, or her delegate, and all attachments thereto. The Action Memorandum is attached as Appendix B.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

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

d. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred to prepare decision documents, the costs incurred pursuant to Section IX (Site Access), including all costs, attorneys fees, monies paid to secure access and any payment of just compensation, as well as any costs associated with EPA's assistance with relocation of residents, Section VIII (Emergency Response), and Paragraph 73 (Work Takeover). Future Response Costs shall also include all Interest, including but not limited to Interest that accrues pursuant to 42 U.S.C. § 9607(a) on Past Response Costs under this Settlement Agreement.

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

h. "Interim Removal Action" or "IRA" shall mean the response action described in the attached Action Memorandum.

i. "IRA Area" shall mean the areas of the Site at which the actions described in the Action Memo and Work Plan, Appendices B and C, respectively, will be performed.

i. "Mine Permit Area" shall mean the Northeast Church Rock Mine, a former uranium mine, and associated structures and lands, collectively encompassing approximately 125 acres, located approximately 16 miles northeast of Gallup, New Mexico near the intersection of State Highway 566 and Red Water Pond Road and located largely on Navajo tribal trust lands within the Eastern Agency of the Navajo Nation.

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

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

l. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

m. "Parties" shall mean EPA and Respondent.

n. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through the Effective Date, plus Interest on all such costs from the Effective Date through the date of the bill for such costs, unless Respondents fail to make timely payment, in which case Interest shall continue to accrue until the date of payment. Past Response Costs for purposes of this Settlement Agreement shall not include costs associated with the residential removals that have occurred at the Site prior to the Effective Date; however, all claims for such unrecovered cost amounts by the United States are hereby reserved, and nothing in this Settlement Agreement shall be a defense to recovery of such costs. Past Response Costs for purposes of this Settlement Agreement shall also be limited to at most $1.5 million; however, all claims for any unrecovered cost amounts above this $1.5-million limit are hereby reserved, and nothing in this Settlement Agreement shall be a defense to recovery of such costs.

o. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

p. "Respondents" shall mean the United Nuclear Corporation ("UNC") and the General Electric Company ("GE").

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

r. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto, which are listed in Section XXIX (Severability, Integration and Appendices). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

s. "Site" shall mean the Mine Permit Area and other areas where hazardous substances associated with the Northeast Church Rock Mine have been deposited, stored, disposed of, placed, or otherwise come to be located.

t. "State" shall mean the State of New Mexico.

u. "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).

v. "Work" shall mean all activities Respondents are required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

EPA hereby finds the following facts, which Respondents neither admit nor deny:

11. The Mine Permit Area is a mining area of approximately 125 acres. The majority of the Mine Permit Area of the Site was operated by Respondent UNC under the terms of a mineral lease with the predecessors of what is now Newmont Mining Corporation as owner of the mineral estate. The surface estate of this portion is owned by the United States in trust for the Navajo Nation. Respondent UNC owns an approximately 61-acre portion of the Mine Permit Area as a patented mining claim.

12. The Mine Permit Area is adjacent to the UNC NPL site ("the Mill Site"), which Respondent UNC is remediating under the oversight of the Nuclear Regulatory Commission and Region 6 of the EPA. The Mine Permit Area was one of the sources of uranium ore for the adjacent UNC site. Respondent UNC operated the mine from approximately 1967 to 1982. The mining operations consisted of two underground mine shafts, a series of vent holes, and support facilities. The Site currently includes uranium mine waste piles, several former ponds and former sand fill (mill tailings) storage areas, a debris pile and other prior support activities areas. The conditions at the Site present a risk of potential releases of hazardous substances to the air, surrounding soils, sediments, surface water, and ground water. Kerr McGee Corporation operated another former uranium mine situated in close proximity to the Site. Materials from the Kerr-McGee operation were reportedly dispersed on Red Water Pond Road by the haul trucks on their way to the Kerr McGee mill or the road bed may be constructed of waste ore.

13. The State's Mining and Minerals Division asserted jurisdiction over the mine under the New Mexico Mining Act in 1994. In August 2004, the New Mexico Environment Department issued a letter requiring a groundwater abatement plan to Respondent UNC. In January 2005, the Navajo Nation communicated to the State the Nation's determination that the majority of the Mine Permit Area is on lands that were assigned to the Navajo Nation in the 1880s.

14. Under a 1991 Memorandum of Agreement between the Navajo Nation and EPA Regions 6, 8 and 9, EPA Region 9 has the lead on any EPA response action on lands within the Navajo Nation. On March 11, 2005, the Navajo Nation requested that the EPA take the jurisdictional lead on overseeing the reclamation and remediation of the Site, pursuant to the Memorandum of Agreement. The State of New Mexico has agreed to defer to EPA Region 9 enforcement with respect to the Site.

15. The Mine Permit Area is subject to a National Pollutant Discharge Elimination System ("NPDES") General Storm Water Permit, effective September 29, 2008, issued by U.S. EPA.

16. Portions of the Mine Permit Area were subject to a source materials license from the U.S. Nuclear Regulatory Commission ("NRC"). In 1987, NRC issued a memorandum stating the following: "Based on the equilibrium ratio data, UNC concluded that remaining Ra-226 levels in excess of the Criterion 5 limit result from low grade ore or mine waste. In addition, staff review of the data for areas exceeding 7 pCi/g indicates the U-nat valued are significantly higher than the low values which would be expected from tailings. Based on the equilibrium ration and U-

nat data provided by the licensee, the staff concludes that UNC has adequately removed remaining byproduct material from the mine site. No further action is therefore necessary."

17. Residences to the northeast of the Mine Permit Area and west and southwest of the former Kerr-McGee Mine may have been impacted by releases of hazardous substances and contaminants transported by wind, historic dewatering of mining operations, and runoff during snow, rain and flood events.

18. EPA has detected elevated levels of alpha radiation at the Site and radium-226 in the surface soils. Radium is a "hazardous substance" as defined by section 101(14) of CERCLA.

19. This Settlement Agreement reserves and does not address investigation and cleanup of groundwater, among other items. Drinking water from the Mariano Lake Chapter public water supply is available to residents to the northeast of the Mine Permit Area.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

20. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Northeast Church Rock Mine is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

c. Each of the Respondents is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent UNC is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for performance of response actions and for response costs incurred and to be incurred at the Site.

i. Respondent UNC is an "owner" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

ii. Respondent UNC was the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

iii. In 1997, Respondent UNC became a wholly-owned, indirect, subsidiary of Respondent GE. Respondent GE is providing financial assurance for the Work and, as a Respondent, guarantees performance of the Work.

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

f. The Interim Removal Action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

g. The Interim Removal Action required by this Settlement Agreement meets the criteria for a removal action under Section 300.415(b) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

21. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

22. Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within thirty (30) days of the Effective Date. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least seven (7) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within thirty (30) days of EPA's disapproval. The proposed contractor(s) must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by EPA. EPA hereby approves the use of Respondents existing contractors MACTEC Development Corporation and MWH Americas.

23. Respondents have designated a Project Coordinator for this Project:

Lance Hauer, Project Manager
Corporate Environmental Programs
The General Electric Company
640 Freedom Business Center
King of Prussia, PA 19406
(610) 992-7972
Email: "Lance Hauer" <lance.hauer@ge.com>
To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within fifteen (15) days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by the Respondents.

24. EPA has designated Andrew Bain, Remedial Project Manager in the Region 9 Superfund Division, and Harry Allen, On-Scene Coordinator in the Region 9 Superfund division, as its On-Scene Coordinators ("OSCs"). Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to both OSCs and to the Navajo Nation, by U.S. Mail, overnight mail, facsimile, or email, as follows:

Andrew Bain
U.S. EPA, Mail Code SFD-8-2
75 Hawthorne St.
San Francisco, CA 94105
Telephone 415-972-3167
Facsimile 415-947-3528
Email Bain.Andrew@epa.gov

and

Harry Allen (Alternate OSC)
U.S. EPA, Mail Code SFD-9-2
75 Hawthorne St.
San Francisco, CA 94105
Telephone 415-972-3063
Facsimile 415-947-3518
Email Allen.HarryL@epa.gov

and

David A. Taylor
Navajo Nation Department of Justice
P.O. Drawer 2010
Window Rock, AZ 86515
Telephone 928-871-6932
Fax 928-871-6200
Email davidataylor@navajo.org

Two hard copies of all Work Plan submittals shall be provided to Andy Bain, EPA Project Manager, at the address above, and one hard copy of all Work Plan submittals shall be provided to Stanley Edison of NNEPA at P.O. Box 2946, Window Rock, Navajo Nation, Arizona 86515. In addition, in all cases where a non-email submission is required or selected, an email shall also be sent with the same information, including an email to Stanley Edison of NNEPA at pasi_swa@hotmail.com.

25. EPA and Respondents shall have the right, subject to the requirements of this Section, to change their respective designated OSC(s) or Project Coordinator. Respondents shall notify EPA fifteen (15) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice. The Navajo Nation may change its contact person by written notice to EPA and Respondents.

VIII. WORK TO BE PERFORMED

26. Respondents shall perform, at a minimum, all actions necessary to implement the Interim Removal Action, as described in the attached Work Plan, Appendix C. The actions to be implemented generally include, but are not limited to, the following:

(a) Excavation: excavation of all soils and sediments contaminated with Radium 226 above the Interim Response Action off-site action level of 2.24 pCi/g in designated areas and step-out areas,

(b) Regrading and Waste Deposition: regrading of the NECR-1 waste pile and placement of newly excavated soils on the waste pile,

(c) Regrading/Cover/Drainage: regrading and covering with clean fill of the NECR-1 waste pile to reduce the chances of drainage of contaminants onto the side slopes and to convey surface drainage into the area designated as Pond 3,

(d) Temporary Relocation and Services: provide temporary relocation and temporary relocation services for residents of 3 home sites on the reservation lands in proximity to the Work,

(e) Investigation: conduct limited sampling of the segment of Red Water Pond Road beginning immediately south of the west-east running arroyo (Unnamed Arroyo #2) and continuing approximately 2,000 feet south, to the intersection of Highway 566 and Red Water Pond Road, as well as the vicinity immediately surrounding the Road to determine which portions of this area are in need of remediation,

(f) Revegetation: backfill, as necessary, with clean fill and revegetate areas impacted by the Interim Remedial Action, and

(g) Confirmation Sampling: Conduct confirmation sampling at a 5% frequency and a minimum of 20 samples prior to backfilling

All Work will be conducted in compliance with all regulatory requirements, including but not limited to the Applicable, Relevant and Appropriate Requirements ("ARARs") identified in EPA's Action Memo for the Interim Removal Action, provided as Appendix B, as well as in accordance with the Health and Safety Plan developed pursuant to this Settlement Agreement.

27. Work Plan Approval Respondents have submitted to EPA a Work Plan provided as Appendix C ("Approved Work Plan"), which is hereby incorporated by this reference, for performing the Interim Removal Action. This Work Plan is hereby approved. Within 10 days after the Effective Date, Respondents shall submit a schedule of activities ("Schedule") for EPA approval.

28. Submittals, Approvals and Implementation EPA, after consultation with NNEPA, has approved the Approved Work Plan, but may approve, disapprove, require revisions to, or modify, in whole or in part, all documents submitted under this Settlement Agreement (collectively, "Submittals"), provided such revisions or modifications do not materially expand the scope of the Work Plan. EPA has agreed to provide its review of and responses to all submittals within 2-weeks time. This two-week period shall begin on the date each submittal is e-mailed to EPA. Respondents may request a shorter review and response from EPA for any particular submittal, and EPA agrees to consider such requests. If EPA requires revisions, Respondents shall submit a revised Submittal within 30 days of receipt of EPA's notification of the required revisions. Respondents shall implement the Submittal as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Submittal, the Schedule, and any subsequent modifications shall be deemed incorporated into and become fully enforceable under this Settlement Agreement. All Work under this Settlement Agreement and/or the Interim Removal Work Plan shall be conducted in accordance with the provisions of this Order, CERCLA, the NCP and relevant EPA guidance. Respondent shall not commence any Work, except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of any Work Plan developed hereunder until receiving EPA approval.

29. Health and Safety Plan. Within seven (7) days after the Effective Date, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

30. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance, after consultation with NNEPA, regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondents shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA and/or the NNEPA, Respondents shall allow EPA and/or the NNEPA, or their authorized representatives, to take split and/or duplicate samples. Respondents shall notify EPA not less than fifteen (15) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

d. Respondents shall submit validated data to EPA electronically (MS Office compatible) within two (2) business days of its receipt by Respondents.

31. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondents shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondents shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

32. Reporting.

Unless otherwise directed in writing by the OSC, Respondents shall submit a written progress report to EPA and NNEPA concerning actions undertaken pursuant to this Settlement Agreement every month after the Effective Date of this Settlement Agreement until termination of this Settlement Agreement. These reports shall describe all significant

developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

a. Respondents shall submit three (3) copies of all plans, reports or other submissions required by this Settlement Agreement or any approved work plan, with two copies to be sent to US EPA and one copy to be sent to NNEPA. Upon request by EPA, Respondents shall submit such documents in electronic form whenever feasible.

b. Any Respondent who owns or controls real property at the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the Navajo Nation of the proposed conveyance, including the name and address of the transferee. Any Respondent who owns or controls real property at the Site also agrees to require that their successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

33. Final Report. Within ninety (90) days after receipt of analytical results, Respondents shall submit for EPA review and approval after consultation with NNEPA, a final report (the Interim Removal Action Report) summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, to the extent applicable, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports", and with "Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and all manifests and permits generated during the removal action. The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is 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."

34. Off-Site Shipments

a. Respondents shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and

to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the removal action. Respondents shall provide the information required by subparagraph a. and b. of this paragraph, as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence. Off-site transfers of laboratory samples and wastes pursuant to 40 C.F.R. § 300.440(a)(5) are not subject to the requirements of this subparagraph.

IX. SITE ACCESS

35. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondents, Respondents shall, commencing on the Effective Date: (1) provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement, and (2) provide the NNEPA and its designated representatives, including technical contractors, with access at all reasonable times to the Site, or such other property, for the purpose of overseeing, observing, monitoring, and taking split samples, during any EPA activities related to this Settlement Agreement.

36. With regard to access to the residences and residential yards to the northeast of the Mine Permit Area, Respondents shall consult with EPA and NNEPA on a coordinated access approach, which will include EPA and NNEPA making the initial effort to obtain necessary access agreements. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within fifteen (15) days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA and the Navajo Nation if, after using their best efforts, Respondents are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing

Respondents efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs). NNEPA will provide the Navajo Nation's authorization to access Navajo lands in the form of an appropriately executed authorization letter.

37. Commencing on the Effective Date of this Settlement Agreement, Respondents shall refrain from using the IRA Area in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response measures to be implemented pursuant to this Settlement Agreement. Such restricted or prohibited activities in the IRA Area include, but are not limited to, excavation in the areas of the treatment ponds (i.e. Ponds #1, 2, 3 and 3a) or waste pile(s) in the Mining Permit Area or disturbance of any soils in any manner in such areas that might cause a release of wastes, except as provided for under this Settlement Agreement or any other Orders under CERCLA EPA has issued to or entered into with UNC with respect to the NECR Mine Site. Should Respondents be required to take any action under a storm water permit that Respondents believes may conflict with this Paragraph, Respondents shall consult with EPA prior to taking such action, and shall work with EPA, after consultation with NNEPA, to minimize soil disturbance or other adverse consequences of such action.

38. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

39. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make reasonably available to EPA, for purposes of investigation or information gathering, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

40. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public and the Navajo Nation

may be given access to such documents or information without further notice to Respondents, as provided in 40 C.F.R. Part 2 Subpart B.

41. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information required to be submitted under this Settlement Agreement shall be withheld on the grounds that they are privileged.

42. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site generated on or after January 1, 2005.

XI. RECORD RETENTION

43. Until 7 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondents shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in their possession or control or which come into their possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 7 years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

44. At the conclusion of this document retention period, Respondents shall notify EPA and the Navajo Nation at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or the Navajo Nation, Respondents shall deliver any such records or documents to EPA or the Navajo Nation. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no final documents, reports or other information created or generated under this Settlement Agreement shall be withheld on the grounds that they are privileged.

45. Respondents hereby certify that to the best of their knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records,

documents or other information (other than identical copies) relating to their potential liability regarding the Site since May 23, 2006 and that they have fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

46. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, tribal, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

47. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSCs or, in the event of their unavailability, the on-call OSC for the Emergency Response Section, of the Region 9 Superfund Division, 415-947-4400, of the incident or Site conditions. In the event that Respondents fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

48. In addition, in the event of any release of a hazardous substance from the Site in excess of reportable quantities, Respondents shall immediately notify the OSCs either in person or by phone at (415) 972-3167 and (415) 972-3063, the Region 9 Spill Response Center at 415-947-4400, and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

49. The OSCs, in consultation with NNEPA, shall be responsible for overseeing Respondents' implementation of this Settlement Agreement. Each OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSCs from the Site shall not be cause for stoppage of work unless specifically directed by the OSC. The lead OSC is Andrew Bain; Harry Allen is the alternate.

XV. PAYMENT OF RESPONSE COSTS

50. Payments for Past Response Costs.

a. Respondents shall pay EPA all Past Response Costs not inconsistent with the NCP that EPA has incurred with respect to the Site within forty-five (45) days of EPA's presentation of a bill with a cost summary for such costs. However, Respondents may contest such costs to the extent permitted by, and consistent with the procedures set forth in paragraph 53 and Section XVI (Dispute Resolution).

b. Payment shall be made to EPA by mailing a certified or cashier's check to the following address:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

All payments shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 09SR, and the EPA docket number for this action. Respondents shall also provide the specific reason for the payment, including that the payment is for Past Response Costs in response to a billing on a specified date.

If Respondents prefer to pay by Electronic Fund Transfer ("EFT"), they may request that EPA provide EFT instructions for making payments pursuant to this Settlement Agreement.

c. At the time of payment, Respondents shall send notice that such payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

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

Andrew Bain (Mail Code: SFD-6-2)
U.S. EPA Region 9
75 Hawthorne St.
San Francisco, CA 94105

d. The total amount(s) to be paid by Respondents pursuant to subparagraph a. of this

paragraph shall be deposited by EPA in the Northeast Church Rock Special Account within the EPA Hazardous Substance Superfund 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.

51. Payments for Future Response Costs, Including Interest.

a. Respondents shall pay EPA all Future Response Costs incurred related to or for the Interim Removal Action as described in the Action Memo and/or Work Plan not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondents shall make all payments within 30 days of receipt of each bill requiring payment. In the event that Respondents do not make timely payments, Interest and Stipulated Penalties may accrue

b. Respondents' Future Response Costs payments to EPA shall be made by mailing a certified or cashier's check to the following address:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

If Respondents prefer to pay by EFT, they may request that EPA provide EFT instructions for making payments pursuant to this Settlement Agreement.

c. All payments shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 09SR, and the EPA docket number for this action. Respondents shall also specify that the payment is for Future Response Costs and/or Interest, in response to a billing on a specified date.

d. At the time of payment, Respondents shall send notice that payment has been made to:

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

Andrew Bain (Mail Code: SFD-6-2)
U.S. EPA Region 9
75 Hawthorne St.
San Francisco, CA 94105

e. The total amount(s) to be paid by Respondents pursuant to subparagraph a. of this paragraph shall be deposited in the Northeast Church Rock Special Account within the EPA Hazardous Substance Superfund 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.

52. In the event that payments for Future Response Costs are not made within 30 days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. Interest on Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of the bill for those costs. In the event of a failure to pay Past Response Costs or Future Response Costs within 30 days of Respondents' receipt of a bill, Interest on Future Response Costs and additional interest on Past Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of 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 Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

53. Respondents may dispute all or part of a bill for Past Response Costs or Future Response Costs submitted under this Settlement Agreement, if Respondents alleges that EPA has made an accounting error, or if Respondents alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as agreed by the Parties. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 51 on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 51.d. above. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within ten (10) days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

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

55. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Past or Future Response Costs, they shall notify EPA in writing of their objection(s) within thirty (30) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have thirty (30) days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

56. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents

shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

57. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure.* For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, increased cost of performance, or failure to attain performance standards or action levels set forth in the Action Memorandum.

58. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within forty-eight (48) hours of when Respondents first knew that the event might cause a delay. Within seven (7) days thereafter, Respondents shall provide to EPA in writing 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; Respondents' rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

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

XVIII. STIPULATED PENALTIES

60. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 61 and 62, below, for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*).

"Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

61. Stipulated Penalty Amounts - Major.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 61.b:

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

b. Compliance Milestones

i. Failure to timely submit a final report meeting the requirements of Paragraph 33;

ii. Failure to make a payment when due.

62. Stipulated Penalty Amounts - Other. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents, failure to timely perform actions pursuant to this Settlement Agreement, or other noncompliance other than those specified in the preceding Paragraph:

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

63. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 73 of Section XX (Reservation of Rights), Respondents shall be liable for a stipulated penalty in the amount of $250,000.

64. 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: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Division Director level or higher, under Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate

violations of this Settlement Agreement.

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

66. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

A memo accompanying the payment shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 09SR, the EPA docket number for this action, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 24.

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

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

69. If Respondents fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 66. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 73 (Work

Takeover). Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

70. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Past Response Costs and Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section XV of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV and XVIII of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

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

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

a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;

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

d. criminal liability;

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

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

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry, or other Federal agencies, related to the Site.

73. Work Takeover.

a. In the event EPA determines that Respondents have (i) ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to the Respondents. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondents 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 subparagraph a. of this paragraph, Respondents have 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 portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this subparagraph b.

c. Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution), Paragraph 54, to dispute EPA's implementation of a Work Takeover under subparagraph b. of this paragraph However, notwithstanding Respondents' 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 subparagraph b. of this paragraph until the earlier of (i) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XVI (Dispute Resolution), requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XXVI (Performance Guarantee) of this Settlement Agreement in accordance with the provisions of Paragraph 91 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Respondents fail to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 88, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that Respondents shall p ay pursuant to Section XV (Payment of Response Costs).

XXI. COVENANT NOT TO SUE BY RESPONDENT

74. Except as provided in Paragraph 76, Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its response action contractors or employees, with respect to the Work, Future Response Costs, Past Response Costs or this Settlement Agreement, including, but not limited to:

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

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the New Mexico State Constitution, the Navajo Nation Code or the common law of the Navajo Nation, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

75. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 72(b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

76. Notwithstanding the foregoing, nothing in this Settlement Agreement shall be interpreted as waiving, abrogating, or resolving (1) any claims that Respondents have or may have based upon any alleged liability that the United States, including any department thereof, including without limitation the United States Department of Energy and the United States Department of Interior, any agency, branch or division thereof, including without limitation the United States Nuclear Regulatory Commission; or any predecessor or successor agency, has or may have for conditions at the Site pursuant to CERCLA Section 107 or 113, 42 U.S.C. §§ 9607 or 9613; or the Price-Anderson Act of 1957, 42 U.S.C. §§2014, 2210 and 2282a, which amended the Atomic Energy Act, 42 U.S.C. 2011 et seq.; or (2) any claims with respect to the Work, Future Response Costs, or this Settlement Agreement that Respondents may have against the United States pursuant to any contract between Respondents and the United States.

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

XXII. OTHER CLAIMS

78. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

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

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

XXIII. CONTRIBUTION

81. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, Past Response Costs and Future Response Costs.

82. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, agreed to resolve their liability to the United States for the Work, Past Response Costs and Future Response Costs.

83. Nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 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 any settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXIV. INDEMNIFICATION

84. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, 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 Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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

86. Respondents waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between Respondents 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, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

87. At least 7 days prior to commencing any on-Site work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that their 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 Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. PERFORMANCE GUARANTEE

88. In order to ensure the full and final completion of the Work, Respondents shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of $5,000,000 (hereinafter "Estimated Cost of the Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:

a. A surety bond unconditionally 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. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

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

e. A demonstration by Respondents that Respondents meet the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by Respondent GE, an indirect parent company of Respondent UNC,.

89. If at any time during the effective period of this Settlement Agreement, the Respondents provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 88(e) above, Respondents shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Settlement Agreement, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's responsible corporate official and independent certified public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of each such entity's fiscal year; and (iii) the notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section, references in 40 C.F.R. Part 264, Subpart H, to "closure,"

"post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Settlement Agreement, and the terms "current closure cost estimate" "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work.

90. In the event that EPA determines at any time that a Performance Guarantee provided by Respondents pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that Respondents become aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Respondents, within thirty days of receipt of notice of EPA's determination or, as the case may be, within thirty (30) days of Respondents becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 88 of this Settlement Agreement that satisfies all requirements set forth in this Section XXVI. In seeking approval for a revised or alternative form of Performance Guarantee, Respondents shall follow the procedures set forth in Paragraph 92(b)(ii) of this Settlement Agreement. Respondents' inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Settlement Agreement, including, without limitation, the obligation of Respondents to complete the Work in strict accordance with the terms hereof.

91. The commencement of any Work Takeover pursuant to Paragraph 73 of this Settlement Agreement shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraph 88, and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 88(e), Respondents shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

92. Modification of Amount and/or Form of Performance Guarantee

a. Reduction of Amount of Performance Guarantee. If Respondents believe that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 88 above, Respondents may, on any anniversary date of entry of this Settlement Agreement, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Respondents shall submit a written proposal for such reduction to EPA that shall

specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Respondents shall follow the procedures set forth in Paragraph 92(b)(ii) of this Settlement Agreement. If EPA decides to accept such a proposal, EPA shall notify the petitioning Respondents of such decision in writing. After receiving EPA's written acceptance, Respondents may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Respondents may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 88 or 90 of this Settlement Agreement.

b. Change of Form of Performance Guarantee.

i. If, after entry of this Settlement Agreement, Respondents desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Respondents may, on any anniversary date of entry of this Settlement Agreement, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in subparagraph (b)(ii) of this paragraph. Any decision made by EPA on a petition submitted under this subparagraph (b)(i) shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement Agreement or in any other forum.

ii. Respondents shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Respondents shall submit such proposed revised or alternative form of Performance Guarantee to the OSCs in accordance with Paragraph 24 of this Settlement Agreement, with a copy to Harrison Karr, Assistant Regional Counsel, USEPA Region 9, Mail Code ORC-3, 75 Hawthorne St., San Francisco CA 94105. EPA shall notify Respondents in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Respondents shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Respondents shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Regional Financial Management Officer within thirty days of receiving a written decision approving the proposed revised or alternative

Performance Guarantee in accordance with Paragraph 24 of this Settlement Agreement, with a copy to Harrison Karr, Assistant Regional Counsel, USEPA Region 9, Mail Code ORC-3, 75 Hawthorne St., San Francisco CA 94105.

c. Release of Performance Guarantee. If Respondents receive written notice from EPA in accordance with Section XXVIII (Notice of Completion of Work) that the Work has been fully and finally completed in accordance with the terms of this Settlement Agreement, or if EPA otherwise so notifies Respondents in writing, Respondents may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Respondents shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Respondents may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XXVII. MODIFICATIONS

93. The OSC may make modifications to any plan or schedule in writing or by oral direction, provided such modifications do not materially expand the scope of the Work Plan. Any oral modification will be memorialized in writing by EPA promptly and provided to Respondents and the Navajo Nation, but shall have as its effective date the date of the OSCs oral direction to Respondents' representative. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties. EPA and Respondents may agree to modify the Work Plan to include additional response actions to address Red Water Pond Road after completion of the investigation.

94. If Respondents seek permission to deviate from any approved work plan or schedule Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to paragraph 93.

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

XXVIII. NOTICE OF COMPLETION OF WORK

96. When EPA determines, after consultation with NNEPA, and after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including payment of Future Response Costs or record retention, EPA will provide written notice to Respondents. If EPA determines, after consultation with NNEPA, that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies. Respondents shall correct the deficiencies and shall submit a modified Final Report

in accordance with the EPA notice. Failure by Respondents to correct the deficiencies as directed by EPA shall be a violation of this Settlement Agreement.

XXIX. SEVERABILITY, INTEGRATION and APPENDICES

97. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondents have sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondents shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

98. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A: Maps of Site and Vicinity
Appendix B: Action Memorandum dated July 23, 2009 ("Action Memo")
Appendix C: Approved Work Plan

XXX. EFFECTIVE DATE

99. This Settlement Agreement shall be effective upon signature by the Assistant Director of the Superfund Division, U.S. EPA Region 9 or her delegatee.

The undersigned representative(s) of Respondents and each of them certify that s/he are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party s/he represents to this document.

Agreed this ____ day of_____, 2009.

For Respondent United Nuclear Corporation

BY: _____

(Print/Type Name)_____

(Title)_____

Agreed this 24 day of July, 2009.

For Respondent General Electric Company

BY: Jane W Gardner

(Print/Type Name) Jane W Gardner

(Title) Senior Counsel Strategic Advisor
GE Corporate Environmental Programs

The undersigned representative(s) of Respondents and each of them certify that s/he are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party s/he represents to this document.

Agreed this 24 day of July, 2009.

For Respondent United Nuclear Corporation

BY: _____

(Print/Type Name) Stephen D. Hill

(Title) President

Agreed this ___ day of_____, 2009.

For Respondent General Electric Company

BY: _____

(Print/Type Name)_____

(Title)_____

It is so ORDERED and Agreed this 24th **day of** July **, 2009.**

BY: _____

Assistant Director, Superfund Division
Partnerships, Land Revitalization & Cleanup Branch
U.S. Environmental Protection Agency, Region 9

ELIZABETH J ADAMS