




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 26 2005

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Policy on Joint Repositories at Mixed-Ownership Hardrock Mine Sites
OSWER Directive

FROM: Thomas P. Dunne 
Deputy Assistant Administrator

TO: Regional Administrators I-X

Purpose:

I am pleased to transmit the attached Policy on Joint Repositories at Mixed-Ownership Hardrock Mine Sites. This memorandum presents the Office of Solid Waste and Emergency Response's (OSWER) policy on placement of hardrock mine waste in joint repositories at mixed-ownership, abandoned hardrock mine sites and mining-impacted watersheds. The policy was developed in collaboration with other federal agencies as part of OSWER's One Cleanup Program initiative.

The Regions are encouraged to use the criteria described in this policy memorandum and the sample Memorandum of Agreement (MOU) to work with Federal Land Managers (FLMs) (e.g., Department of the Interior – Bureau of Land Management and US Department of Agriculture – Forest Service), to consider the benefits of using joint repositories as a potential cleanup option to address human health and environmental risks at abandoned mixed-ownership hardrock mine sites.

Background:

For purposes of this guidance, mixed-ownership mine sites generally are those located partially on private land and partially on public land. There are numerous mixed-ownership, abandoned hardrock mine sites/mining-impacted watersheds. Where appropriate, Regions and FLMs should work together to conduct response actions that reduce risks to human health and the environment. Based on past experience where EPA and FLMs have coordinated response actions at joint repositories, it may be appropriate to consolidate and place waste in a common

mine waste repository located on private land, federal land, or both. In such cases, the Region should enter into a memorandum of understanding (MOU) with the relevant FLM to coordinate the agencies' respective exercise of their authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Executive Order 12580.

Historically, public lands have often been used to dispose of various wastes, including mining wastes. The Forest Service and the Bureau of Land Management (BLM) have developed general policies which restrict waste disposal, including mining wastes, on their lands, and both the Forest Service and BLM have issued policies allowing their participation in joint repositories. Consistent with these policies, the FLMs are willing to place waste repositories on federal lands and accept private waste being handled under EPA authorities if the agency agrees, in writing, that it will seek funding for its apportioned share of future response costs.

Implementation:

This memorandum encourages the Regions to use the attached policy and sample MOU to enter into site-specific joint repository agreements at mixed-ownership mine sites with FLMs in appropriate circumstances. The policy memorandum gives guidance on key issues that Regions should consider prior to entering any such agreements involving the use of a joint repository at such sites. If you have other questions, please e-mail or call Shahid Mahmud at Mahmud.Shahid@epa.gov or (703) 603-8789.

Attachments

cc: Superfund National Program Managers, Regions I-X
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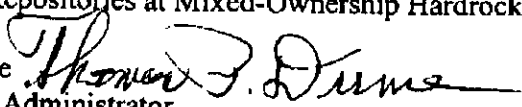
APR 26 2005

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

OSWER Directive 9200.4-38

MEMORANDUM

SUBJECT: Policy on Joint Repositories at Mixed-Ownership Hardrock Mine Sites

FROM: Thomas P. Dunne 
Acting Assistant Administrator

TO: Regional Administrators I-X

PURPOSE

This memorandum presents the Office of Solid Waste and Emergency Response's (OSWER) policy on placement of hardrock mine waste in joint repositories at mixed-ownership, abandoned hardrock mine sites and mining-impacted watersheds. Regions¹ are encouraged to work with Federal Land Managers (FLMs) in accordance with this policy to maximize the appropriate use of joint repositories located on public lands under the jurisdiction of FLMs (e.g., Department of the Interior – Bureau of Land Management, and Department of Agriculture – Forest Service), on private property, or both.² This policy has been developed as part of the One Cleanup Program Federal Environmental Workgroup initiative.

Based on the criteria described in this memorandum, OSWER encourages Regions to consider the benefits of using joint repositories as a potential cleanup option to address human health and environmental risks at abandoned mixed-ownership, hardrock mine sites, and/or mining-impacted watersheds. In appropriate circumstances, the use of a common mine waste repository allows one agency to be designated as the lead agency for the repository and allows the use of inter-agency agreements (e.g., pursuant to the Economy Act) to share costs, with potentially significant cost savings related to full-time equivalents (FTEs), response, and contracting.

¹Unless otherwise indicated, the term "Region" in this guidance means an EPA Region.

² It is anticipated that there may be sites where the most appropriate location of the joint mine waste repository includes both private and Federal land.

BACKGROUND

For purposes of this guidance, mixed ownership mine sites generally are those located partially on private land and partially on public land.³ There are numerous mixed-ownership, abandoned hardrock mine sites/mining-impacted watersheds. The Forest Service estimates, for example, that there are over 200 such sites in its Region 1 (Montana, North Dakota, Northern Idaho, and Northwestern South Dakota) that could require a repository for their wastes.

Where appropriate, Regions and FLMs should work together to conduct response actions that reduce risks to human health and the environment.⁴ Based on past experience where EPA and FLMs have coordinated response actions at joint repositories, it may be appropriate to consolidate and place waste in a common mine waste repository located on private land, federal land, or both.⁵ In such cases, the Region should enter into a memorandum of understanding

³ The United States has taken the position and courts have held that the General Mining Law (GML or the 1872 Mining Law) allows a person to establish private rights to mine minerals on federally-owned land by staking a claim to the land. The claimant gains the rights to beneficial use of the property incident to mining, but the fee simple title remains with the federal government. The claim is considered private property, is taxable, and can be sold, leased, bequeathed, etc. If the claim is abandoned or otherwise becomes invalid, all of the property rights revert to the federal government under the control of the FLM. Furthermore, a claimant may, through a process called "patenting," buy the fee simple interest from the federal government and own the property in its entirety. If the owner of this patented property abandons it, the property does not revert to the United States, but remains private land. The effect of the GML is that thousands of former mine sites are now private properties ("inholdings") within the external boundaries of federal lands managed by FLMs.

⁴Where appropriate, Regions also should coordinate with relevant state agencies as provided in Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (for example, 40 CFR §300.435 and Subpart F).

⁵ In some instances, EPA has placed mining wastes from CERCLA clean-ups in repositories located on private lands. These repositories may co-mingle wastes, and in some circumstances may also involve the co-disposal of mine waste from federal lands. For example, at the Luttrell Pit in Montana (EPA Region 8, Forest Service Region 1 and BLM - Montana) and the Stibnite Mine in Idaho (EPA Region 10 and Forest Service Region 4) mine wastes from both private and federal lands will be deposited into a joint repository located on private lands. For each of these Sites, EPA and the FLMs entered into a repository agreement under which the FLM agreed to seek funding for its apportioned share of future response costs in the event of a repository failure based on the volume of mine waste contributed to the repository from federal lands.

(MOU) with the relevant FLM to coordinate the agencies' respective exercise of their authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Executive Order 12580.

Historically, public lands have often been used to dispose of various wastes, including mining wastes. In some instances, the legal status of mine waste abandoned on federal lands may be complicated.⁶ The Forest Service and the Bureau of Land Management (BLM) have developed general policies that restrict waste disposal, including mining wastes, on their lands, and both the Forest Service and BLM have issued policies allowing their participation in joint repositories.⁷ Consistent with these policies, the FLMs are willing to place waste repositories on federal lands and accept private waste being handled under EPA authorities in appropriate circumstances.⁸

DEFINITIONS

For the purposes of this policy, Regions should use the following definitions.

Joint Mine Waste Repository – A joint mine waste repository is defined as an engineered on-site disposal unit, located on either federal or private lands, or both, where wastes from both private lands and federal lands, generated from extraction, beneficiation and mineral processing (as defined by 40 CFR §261.4(b)(7)), are disposed or placed.

⁶Because of the unique nature of the ownership rights granted mining claimants under the 1872 Mining Law, the United States has taken the position and courts have held that the United States is not liable under CERCLA section 107 as an owner for mine contamination left behind on public lands by miners operating under the 1872 Mining Law. See United States v. Friedland, 152 F. Supp. 2d 1234 (D. Colo. 2001); United States v. ASARCO, Inc., et al., 280 F.Supp. 2d 1094 (D. Idaho 2003). These courts have also held that the United States is not liable under CERCLA section 107 as an "operator" as a result of the encouragement of mining by the Government during World War II. Furthermore, on June 24, 2003, the Director of the EPA's Federal Facilities Enforcement Office (FFEO) issued a policy memorandum entitled "Policy on Listing Mixed Ownership Mine or Mill Sites Created as a Result of the General Mining Law of 1872," providing guidance to Regional Docket Coordinators on how to treat "mixed ownership" mine or mill sites (created as a result of the 1872 Mining Law) for purposes of the CERCLA Section 120(c) Federal Agency Hazardous Waste Compliance Docket.

⁷According to the Forest Service and BLM, these policies include a requirement that the FLM enter into written repository agreements with their respective partner agencies that include a commitment to apportion future response costs based on the volume of mine waste contributed to the repository from federal lands compared to the volume contributed from private lands.

⁸According to the Forest Service and BLM, for joint repositories located on private lands under EPA authorities, the FLM will agree in writing to seek funding for its apportioned share of future response costs.

Abandoned/Inactive Mine Sites – Abandoned mines are sites where there is no longer an unpatented mining claim located under the GML, as amended (30 USC §22-54, 161, 162, 661-615). Inactive mines are sites where extraction, beneficiation or processing activity have been determined to be inactive or permanently stopped.

Mine/Mining Waste – Mine wastes include all wastes from extraction, beneficiation and mineral processing as defined by 40 CFR §261.4(b)(7). Mining wastes that may be placed in a joint mine waste repository include ore, waste rock, overburden, or mill tailings from hardrock mining sites.

Hardrock Mining Sites – Hardrock mining sites are defined as mines, mills, or watersheds where mining operations have been located and conducted under the GML. Also known as “locatable” minerals, hardrock minerals refer to minerals, that, for federal lands with public domain status in the United States, are acquired under the authority of the GML. These are typically the base and precious metal ores, ferrous metal ores, certain classes of industrial minerals, and uncommon varieties of sand, gravel and dimension stone.⁹

CRITERIA

By placing mine waste in a joint mine waste repository, the Region should recognize that it is entering into a potentially long-term relationship and that the joint repository may require operation and maintenance, post-removal site control, periodic inspections, and potential future response actions for many years to come. In considering whether to use a joint mining waste repository, Regions should consider a number of environmental, engineering and economic factors, including, but not limited to:

1. The topography, hydrology, and geomorphology of a proposed joint repository.
2. Potential increased risks to human health and the environment that could result if a joint repository is not utilized, such as a possible increased risk due to transport associated with off-site disposal of waste.
3. Whether the FLM has agreed to take adequate steps to ensure that a federal joint repository site will not be disturbed in a manner that could jeopardize its integrity.¹⁰

⁹This policy is not intended to apply to leaseable minerals (e.g., oil, gas, coal, oil shale, phosphate, sodium, potassium, sulfur, asphalt or gilsonite) or saleable mineral materials (e.g., common varieties of sand and gravel).

¹⁰Mining wastes from historic mines may contain gold or other valuable minerals in amounts recoverable with modern technologies. Under the GML, unless the land is “withdrawn from mineral entry,” a miner can claim the joint repository site and, potentially, mine it. Both the Forest Service and BLM have authority to take appropriate action to ensure that re-mining or other activities do not jeopardize the integrity of the joint mine waste repository. The Forest

4. If the repository is to be constructed by the FLM, the Region should review and determine that all design and construction specifications of the joint repository meet EPA's view of what constitutes best engineering practices established for such waste containment units. Similarly, for sites on private land, the Region should provide the FLM an opportunity to review and determine that all design and construction specifications of the joint repository meet the FLM's view of what constitutes best engineering practices established for such waste containment units.
5. If the joint repository is to be undertaken as a removal action, the Region should prioritize the funding needs for other sites in the Region versus funding the particular joint repository under consideration.¹¹
6. The Region should consider whether cost savings associated with a joint repository could allow additional cleanup work to be achieved in the Region at other sites.
7. Whether there are viable private potentially responsible parties (PRPs) that will pay for the costs associated with their portion of the waste being disposed of in a joint repository, including post-removal site control and possible failure of the joint repository in the future.
8. The cost-effectiveness for the federal government as a whole if a joint repository is not used by EPA and the FLM (so that both agencies end up paying for the construction of separate repositories or off-site disposal).
9. The state's position on payment of costs associated with operation and maintenance, post-removal site control, and other expenses.

Service and BLM are currently developing internal guidance on this issue. If the joint repository is re-mined, EPA generally should terminate the joint repository agreement and will not seek funding for a response action at a joint mine waste repository in the event of a failure. For sites on private land, EPA should ensure that re-mining or other activities do not jeopardize the integrity of the joint mine waste repository. It should be noted that if a joint mine waste repository on private land is re-mined, the FLM also has the option to terminate the joint repository agreement and not seek funding for a response action at the repository in the event of a failure.

¹¹ If the Region undertakes a joint repository pursuant to CERCLA authority to conduct removal actions, it should consider the relevant statutory criteria (such as CERCLA section 104(c)(1)), the National Contingency Plan (NCP), and appropriate Agency guidance. For example, the NCP states that "... provision for post-removal site control following a Fund-financed removal action ..[should] be made prior to initiation of the removal action." 40 C.F.R. §300.415(k). The Region should use all relevant existing criteria and determine if it will use its removal advice of allowance to fund such an action.

SAMPLE MOU

Where the Region believes, based on the criteria described above, it is appropriate to enter into an MOU with an FLM to use a joint repository, it should consider the sample MOU attached to this guidance, which among other things, addresses:

1. An appropriate financial arrangement to allocate responsibility for response costs associated with construction, post-removal site control, and potential repository failure. For example, the share of such costs could be allocated on the basis of the volume of mine waste contributed, either from a private site land into a joint repository located on federal land or from federal land into a joint repository located on private land.¹² For a joint repository located on federal land, the Region should provide adequate assurance in the repository MOU, to the extent allowed by applicable legal provisions such as the Anti-Deficiency Act, 31 U.S.C. § 1341, that EPA will seek funding based on the apportioned share of mine waste from private lands to provide an appropriate response action in the event of future failure of the joint repository. In determining whether it is appropriate to seek such funding, the Region should consider if the FLM has taken all necessary steps to prevent activities that disturb the integrity of the joint repository.¹³

2. Appropriate assurances that EPA or the FLMs will take all necessary steps to: a) maintain the integrity and protectiveness of the joint repository with regard to all wastes placed in that repository; and, b) ensure that the repository will not be disturbed.

3. An appropriate termination provision that recognizes either party's right to withdraw from the MOU for good cause. What constitutes "good cause" depends on site-specific circumstances and should be determined on a case-by-case basis; however, re-mining of the repository, whether located on private or federal land, generally would constitute good cause to terminate the MOU.

¹² The apportionment of future costs between EPA and the FLM may be based on the waste placed in the repository from private land, which is the responsibility of EPA, and the waste placed in the repository from federal land, which is the responsibility of the FLM. While the volume of mine waste from private land versus the volume of waste from federal land could be the basis of the apportionment, other factors (e.g, density, contaminant concentration, etc.) may be appropriate and the actual cost allocation formula for the site should be determined on a case-by-case basis.

¹³ For example, it would not be appropriate for EPA to seek funding for a response action at a joint mine waste repository in the event of a failure resulting from re-mining of the repository. In such a case, the mine operator may be pursued under CERCLA to pay for or conduct the response action.

IMPLEMENTATION:

OSWER encourages the Regions to use the attached sample MOU to enter into site-specific joint repository agreements at mixed-ownership mine sites with FLMs in appropriate circumstances. This policy memorandum gives guidance on key issues that Regions should consider prior to entering any such agreements involving the use of a joint repository at such sites.

Attachment

cc: Superfund National Policy Managers (Regions I-X)
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NOTICE: This document provides guidance to EPA staff. It does not, however, substitute for EPA's statutes or regulations, nor is it a regulation itself. Thus it cannot impose legally-binding requirements on EPA, states, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA may change this guidance in the future, as appropriate.

SAMPLE
MEMORANDUM OF UNDERSTANDING
between
ENVIRONMENTAL PROTECTION AGENCY REGION X
and
USDA-FOREST SERVICE REGION X
USDOI-Bureau of Land Management
Concerning
THE XXXXX MINE SITE/MINING DISTRICT

I. BACKGROUND

- A. The purpose of this Memorandum of Understanding (MOU) is to provide a framework for the U.S. Environmental Protection Agency (EPA) and the United States Department of Agriculture Forest Service (Forest Service) (or) United States Department of the Interior Bureau of Land Management (BLM) to coordinate response actions at the XXXXX Mine Site/Mining District in county/state (Site). EPA and the Forest Service/BLM recognize that, to expeditiously implement the necessary response actions at the Site, they should coordinate their respective authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.* This MOU also provides a process for resolving disputes between EPA and the Forest Service/BLM that may arise during such response actions. This MOU is not intended to address coordination regarding natural resource damage issues.
- B. Pursuant to CERCLA, the President has authority to respond to releases of pollutants, contaminants, and hazardous substances to protect the public health or welfare or the environment.
- C. Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President delegated authority to conduct various activities under CERCLA, including investigations and response activities (42 U.S.C. § 9604), abatement actions (42 U.S.C. § 9606), cost recovery (42 U.S.C. § 9607) and entering into agreements with potentially responsible parties (PRPs) for the PRPs to perform work (42 U.S.C. § 9622), to several executive departments and agencies, including the EPA and the United States Department of Agriculture (USDA)/United States Department of the Interior (USDOI).
- D. The Secretary of Agriculture/Secretary of the Interior has re-delegated the authorities under Executive Order 12580 to the Forest Service/BLM with respect to land and facilities under Forest Service/BLM jurisdiction, custody or control (hereinafter referred to as National Forest System or NFS lands/BLM lands). 7 C.F.R. § 2.60(a)(39) (for USDA) and Secretarial Order 3201 (for USDOI). The Secretary of Agriculture has redelegated the CERCLA Section 106 order

authority under Executive Order 13016 as set forth at 7 C.F.R. § 2.24(a)(10)(xv). The Secretary of the Interior has not redelegated the CERCLA Section 106 order authority under Executive Order 13016.

- E. The Forest Service administers National Forest System lands on behalf of the public/The BLM administers certain lands on behalf of the public. The Forest Service/BLM is, with certain limitations, delegated the President's CERCLA authority where a release of a hazardous substance is on or the sole source of the release is from a facility under the jurisdiction, custody or control of the Forest Service/BLM. Executive Order 12580, §§ 2(e)(1), and 4(b)(1). Executive Order 13016 amended Executive Order 12580 to authorize the Secretary of Agriculture/the Interior use of CERCLA Section 106, 42 U.S.C. § 9606, to address releases or threats of releases affecting lands and natural resources under the Forest Service's/BLM's custody, jurisdiction or control, subject to the concurrence of EPA's Administrator. Executive Order 13016, § 2.
- F. EPA has been delegated much of the President's CERCLA authority where a release or threat of release of pollutants, contaminants, and hazardous substances is on private property.
- G. The Site is a mixed-ownership hardrock mining site, located partially on private land and partially on National Forest System/BLM lands within the established boundaries of (XXX National Forest/BLM Management Unit). The National Forest System portion of the Site is administered by the XXX National Forest, XXX District. Or The BLM lands portion of the Site is administered by the BLM, District Office in XXX. The Site is located principally on federal/private land. A map of the Site is attached to and incorporated into this MOU as Attachment A.
- H. On (DATE), the EPA/Forest Service/BLM initiated a CERCLA response/enforcement action at the Site, consistent with CERCLA, the National Oil and Hazardous Substances Contingency Plan (NCP), 40 C.F.R. Part 300, and Executive Order 12580. [Description of the results/findings in the PA/SI, EE/CA; releases or threat of releases from mine features, mine waste at the Site]
- I. The parties have determined that a response action may be needed to reduce or remove the threat to human health and/or the environment at the Site. EPA and the Forest Service/BLM plan to address these releases/threats of releases of hazardous substances into the environment through the coordinated exercise of the agencies' respective CERCLA authorities.
- J. All response actions covered by this MOU shall be in accordance with the NCP, including assurances of state consultation by EPA for Parts II, III, and IV herein pursuant to 40 C.F.R. 300.435 and Subpart F for remedial actions and potential future State responsibility for operation and maintenance. Coordination with the state should also occur with any planned removal actions, in particular with regard to any future post-removal site control activities.

II. COORDINATION AND COOPERATION

- A. EPA and the Forest Service/BLM have designated the following persons to be involved in the day-to-day coordination, communications and decisions regarding the exercise of the agencies' respective authorities at the Site:

The Forest Service Project Coordinator (Forest Service PC)

The BLM Project Coordinator (BLM PC)

The USEPA Project Coordinator (EPA PC)

- B. EPA and the Forest Service/BLM will determine by mutual agreement which agency will be the lead agency, consistent with the NCP, for each parcel, project, or operable unit within the Site. Generally, EPA will be the lead for response actions involving a parcel, project or operable unit on private land, and the Forest Service/BLM will be the lead for response actions involving a parcel, project or operable unit on Forest Service/BLM lands. Each agency will notify and consult with the other as soon as practical regarding plans to change persons or positions.
- C. Generally, when undertaking joint cleanup actions pursuant to this MOU, the EPA will be responsible for the costs associated with response actions on or waste removed from private lands, and the Forest Service/BLM will be responsible for the costs associated with response actions on or waste removed from federal lands; provided that neither party waives, and each does specifically reserve any and all rights, causes of action or defenses. In the event that a future apportionment of costs between EPA and the Forest Service/BLM is required to address future response actions regarding any joint waste repositories located at this Site, the EPA and the Forest Service/BLM each agree, subject to Section IV.B of this MOU, to seek funding, as appropriate, for an apportioned share based on the volume of mine waste from private lands and federal lands, respectively, that has been placed in the joint mine waste repository. [Note: the actual allocation formula for the site should be made on a case-by-case basis]
- D. The EPA PC and the Forest Service/BLM PC shall coordinate with each other to implement response actions at the Site. This coordination should include reasonable prior notice of, and an opportunity to participate in, any scheduled meetings related to activities at the Site, and an opportunity to participate in any scheduled meetings with contractor(s), the State of XXX, other Federal, State and Tribal Natural Resource Trustees, or any significant on-Site activities. In the event that a meeting needs to be scheduled on shorter notice, the Forest Service PC/BLM PC or the EPA PC shall contact his/her counterpart and shall determine the counterpart's availability prior to scheduling the meeting.

- E. A schedule of activities for the Site should be established by EPA and the Forest Service/BLM, and be used for planning purposes. The schedule should be updated periodically (by a designated party) to reflect actual progress on work at the Site and current projections.
- F. EPA and the Forest Service/BLM should supply to each other copies of all documents related to Site work upon request. Such documents should include project proposals, sampling and analysis plans and work plans. Also, the EPA PC and the Forest Service PC/BLM PC should provide each other with copies of documents needed to fulfill the purposes of this MOU. The EPA PC and the Forest Service PC /BLM PC should cooperatively determine which documents related to the Site are to be copied and provided to the other agency, either directly by the agencies or by third parties. Where EPA or the Forest Service/BLM needs to obtain comments of the other party on a document, the EPA PC and Forest Service PC/BLM PC should cooperatively determine how and when those comments will be provided.
- G. For response actions on any parcels, projects or operable units that include and/or affect federal land and private property, EPA and the Forest Service/BLM should coordinate major decision points, such as:
 - (1) The scope of work to be performed and estimated costs;
 - (2) Project management procedures and contracts;
 - (3) Project design and construction specifications;
 - (4) Enforcement activities against PRPs;
 - (5) The establishment of a joint mine waste repository;
 - (6) Community relations activities; and
 - (7) Certifications of completion issued for response actions at the Site.
 - (8) Long term operations and maintenance/post removal site control; and
 - (9) Future response action in the event of a repository failure.
- H. The Forest Service PC/BLM PC should advise the EPA PC regarding any issues and concerns of special interest to the Forest Service/BLM. The Forest Service PC/BLM PC should assist the EPA PC in identifying and communicating with Forest Service/BLM personnel who can provide information concerning the Site as needed.
- I. Legal issues should be coordinated among EPA counsel and USDA/USDOl counsel, as appropriate.

III. Dispute Resolution

- A. Consultation between the EPA PC and the Forest Service PC/BLM PC should resolve the vast majority, if not all, technical issues between EPA and the Forest Service/BLM.
- B. If the EPA PC and the Forest Service PC/BLM PC do not reach agreement on a disputed item arising from activities at the Site, the issue should be elevated to the appropriate senior management at Forest Service/BLM and the EPA for further discussion and resolution.
- C. In reaching a final decision, when the EPA and the Forest Service/BLM do not agree, the Forest Service/BLM will have the responsibility for making decisions on federal lands and the EPA will have the responsibility for decisions on private property. All decisions must be consistent with CERCLA and the NCP. If either EPA or the Forest Service/BLM determines that a final decision has been made that is inconsistent with CERCLA or the NCP, that agency has the option of withdrawing from this MOU.

IV. Limitations and Duration of Agreement

- A. The Forest Service/BLM and EPA reserve their rights and authorities under CERCLA, as well as other laws, the NCP, and applicable Executive Orders. No provision of this MOU in any way limits those rights and authorities.
- B. Nothing in this MOU shall be considered as obligating EPA or the Forest Service/BLM to expend, or as involving the United States, in any contract or other obligation for the future payment of money. The parties recognize that each must operate within the requirements of the federal budget process and legal restrictions concerning obligations of funds. No provision of this MOU shall be construed to require the parties to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §1341.
- C. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority.
- D. This MOU is not intended to, and does not, create any right, benefit or trust obligation, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

- E. Nothing in this MOU shall restrict the Forest Service/BLM or EPA from participating in similar activities with other public or private agencies, organizations, and individuals.
- F. After giving 30 days written notice, either party may withdraw from this MOU for good cause, including the provisions set forth in Section III(C) above or if remaining at a joint repository takes place.
- G. This MOU may be executed in counterparts by each of the signatories. Each of the counterpart documents shall be deemed an original, but together shall constitute one and the same instrument.
- H. This MOU is effective upon the date signed by the last of the parties.

ENVIRONMENTAL PROTECTION AGENCY, REGION XX

Date: _____ By: _____

USDA FOREST SERVICE

Date: _____ By: _____

USDOJ BUREAU OF LAND MANAGEMENT

Date: _____ By: _____