SDMS Document ID
2001400

2005 DEC 20 PM 4:31
FILED
EPA REGION VIII
HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

IN THE MATTER OF:
American Fork Site
Utah County, Utah

Trout Unlimited, Inc.

Respondent

ADMINISTRATIVE ORDER ON
CONSENT FOR REMOVAL ACTION

U.S. EPA Region 8
CERCLA Docket No.

Proceeding Under Section 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9622(a)

TABLE OF CONTENTS

I.	Jurisdiction and General Provisions	3
II.	Definitions	3
III.	Statement of Facts and Conclusions of Law	5
IV.	Respondents Certification	7
V.	Order	8
VI.	Designation of Contractor, Project Coordinator, and On-Scene Coordinator	8
VII.	Work to be Performed	9
VIII.	Assurance of Ability to Complete Work	11
IX.	Site Access	12
X.	Access to Information	12
XI.	Record Retention	13
XII.	Compliance with Other Laws	13
XIII.	Emergency Response and Notification of Releases	14
XIV.	Authority of On-Scene Coordinator	14
XV.	Payment of Response Costs	14
XVI.	Dispute Resolution	16
XVII.	Force Majeure	17
XVIII.	Covenant Not to Sue by EPA	17
XIX.	Reservations of Rights by EPA	18
XX.	Covenant Not to Sue by Respondent	19
XXI.	Parties Bound	20
XXII.	Other Claims	20
XXIII.	Contribution Protection	21
XXIV.	Indemnification	21
XXV.	Modifications	22
XXVI.	Notice of Completion of Work	22
XXVII.	Public Comment	22
XXVIII.	Severability/Integration/Appendices	23
XXIX.	Effective Date	23

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Trout Unlimited, Inc. ("Respondent"). This Order provides for the performance of Phase 1 of a removal action by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with property including the Pacific Mine Waste Rock Pile, the Pacific Mill Site, the Blue Rock Mine Waste Rock Pile, and the Scotchman No. 2 Mine Waste Rock Pile, all located on the North Fork of the American Fork River, in American Fork Canyon, Utah County, Utah. This Order reflects the current unique circumstances and is not intended to serve as a model for any other administrative order or agreement.

2. This Order is issued under the authority vested in the President of the United States by Sections 106(a), 107(a) and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9622(a), as amended ("CERCLA") and the inherent authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. EPA has notified the State of Utah (the "State") of this action.

4. Respondent is undertaking this project and entering into this AOC to address impacts of abandoned mine sites on the American Fork River Watershed environment and its cold water fisheries, because of its organizational interest in the health of watersheds and fisheries generally and the American Fork in particular. Respondent is volunteering to perform this work and does not intend to purchase property at the Site. The anticipated cost of Respondent's work is $45,000 or less. Respondent will receive no financial benefit from performing the work outlined in this order. It is EPA's determination that Respondent will do the cleanup work properly so long as it follows the requirements set forth in the Work Plan. The purpose of this Order is to settle and resolve, subject to reservations and limitations contained in Sections XI (Record Retention), XX (Covenant Not to Sue by Respondent), and XXI (Parties Bound), any potential liability of the Respondent under CERCLA, 42 U.S.C. § 9601, et seq., for the Existing Contamination at the Site property which might otherwise result from performance of cleanup by Respondent on the Site property.

5. Respondent's entry into this Order and the actions undertaken by the Respondent in accordance with the Order, does not constitute an admission of any liability by the Respondent.

6. As described in Paragraph 4, Respondent is undertaking the work contemplated by this Order solely because of the environmental benefits of that work, and EPA finds that the resolution of any potential future liability, in exchange for work being done by the Respondent, is of substantial benefit and in the public interest.

II. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order 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 Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum"shall mean the EPA Action Memorandum relating to the Site signed on October 6, 2005 by the Regional Administrator, EPA Region 8, or his/her delegatee, and all attachments thereto. The "Action Memorandum" is attached as Appendix 1.

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 Order, 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 Order as provided in Section XXIX.

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

f. "Existing Contamination" shall mean any hazardous substances or pollutant or contaminant, present or existing on or under the Site as of the effective date of this Order, including any subsequent migration of any such substances presently on or under the Site.

g. "UDEQ" shall mean the Utah Department of Environmental Quality and any successor departments or agencies of the State.

h. "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 Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 40 (emergency response). Respondent shall not be liable for any Future Response Costs over $4,000.

i. "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.

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. "NCRS" shall mean Natural Resource Conservation Service, United States Department of Agriculture.

l. "Order" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

m. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

n. "Parties" shall mean EPA and Respondent.

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. "Respondent" shall mean Trout Unlimited, Inc.

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

r. "Site" shall mean the Pacific Mine site, encompassing approximately 3 acres, including the Pacific Mine Waste Rock Pile, the Pacific Mill Site, the Blue Rock Mine Waste Rock Pile, and the Scotchman No. 2 Mine Waste Rock Pile, all located on the North Fork of the American Fork River in American Fork Canyon, Utah County, Utah and depicted generally on the map attached as Exhibit 1 to Appendix 1.

s. "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); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous material" under Utah Code Section 19-6-302.

t. "Work" shall mean all activities Respondent is required to perform under this Order.

u. "Work Plan" shall mean the Stage Construction Work Plan for implementation of the removal action, as set forth in Appendix 2 to this Order, and any modifications made thereto in accordance with this Order.

III. STATEMENT OF FACTS AND CONCLUSIONS OF LAW

8. The Respondent, Trout Unlimited, Inc., is a nonprofit corporation organized under the laws of the state of Michigan. Trout Unlimited's stated mission is to conserve, protect, and restore North America's cold water fisheries and their watersheds. Respondent is undertaking this project to address impacts to the American Fork River Watershed environment and cold water fisheries because of its institutional interest in those fisheries and because of the environmental benefits of the project. Trout Unlimited and EPA also seek to demonstrate how conservation groups and EPA can accomplish the clean-up of abandoned mines in a collaborative fashion.

9. The Pacific Mine Site is located near the North Fork of the American Fork River, in American Fork Canyon, Utah County, Utah.

10. The Pacific Mine Site is owned entirely by Snowbird Corporation, a Utah limited partnership, or related entities. Snowbird Corporation is not a party to this Order.

11. The Site includes waste rock piles located on 3 historic mining sites and a mill site in the American Fork Mining District in the Mineral Basin area. The mines are the Pacific Mine, the Scotchman No. 2, and the Blue Rock. The Pacific Mill is also within the project area. Mining features found at the sites include waste rock dumps and plugged adits. The mill site consists of crumbling concrete foundations and contaminated soils. Also, some concrete pillars and foundations, and timber cribs are found at the work sites. Remnants of old buildings and their foundations are evident near the Pacific Mine on private property within the project area.

12. Studies performed by and for the Uinta National Forest of the National Forest Service have documented that waste rock and soils at the three mines and the mill site contain elevated concentrations of arsenic, cadmium, copper, lead, zinc and other heavy metals that are higher in concentration than would normally occur naturally in rocks and soils in this region. These studies have documented the threat of release of these contaminants.

13. Humans and wildlife are at risk from exposure to the waste materials at the Pacific Mine Site. In particular, current and future recreational users of the four areas comprising the Pacific Mine Site may be exposed to waste materials and dust containing arsenic, cadmium, copper, lead and zinc via the inhalation and ingestion pathways. Terrestrial organisms and plant communities may also suffer adverse effects from exposure to these waste materials. Run-off from copper and zinc at these areas may impair the water quality, recreational fisheries and overall health of the American Fork River.

14. The above threats to humans and wildlife at the Pacific Mine Site have been documented in an engineering evaluation/cost analysis ("EE/CA"), dated December 2004, Exhibit 3 to Appendix 1, prepared by Respondent. The EE/CA has been approved by EPA.

15. EPA's removal decision for the Pacific Mine site is embodied in an Action Memorandum, executed on October 6, 2005, Appendix 1.

16. Based on the facts set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Site 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. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. EPA has not named Respondent as a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and does not have information indicating that Respondent is liable for performance of response action and for response costs incurred and to be incurred at the Site. However, once Respondent executes this Order, it will be responsible to complete the Work as more fully outlined below.

e. EPA has the authority to enter into this agreement as provided under Sections 104, 106(a), 107 and 122(a) of CERCLA, 42 U.S.C. § 42 U.S.C. 9604, 9607(a), 9607(a), and 9622(a). EPA finds that Respondent will properly implement the Work described in the Stage Construction Work Plan ("Work Plan") within the meaning of Section 122(a) of CERCLA, 42 U.S.C. § 9622(a).

f. The conditions described in Paragraphs 8-16 of Section III (Statement of Facts and Conclusions of Law) 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).

g. The removal action required by this Order is necessary to protect the public health or welfare or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

IV. RESPONDENT'S CERTIFICATION

17. Respondent certifies, to the best of its knowledge and belief, that it has fully and accurately disclosed to EPA all information known to Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances or pollutants or contaminants at or from the Site. The Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If EPA determines that information provided by Respondent is not materially accurate and complete, EPA will notify

Respondent of such problems, and Respondent will rectify the inaccuracy or incomplete information.

V. ORDER

18. Based upon the foregoing Statement of Facts and Conclusions of Law, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Order, including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

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

19. Respondent 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 45 days of the Effective Date. Respondent 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 14 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 Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 14 days of EPA's disapproval.

20. Respondent designates and EPA approves of Ted Fitzgerald as its Project Coordinator. The Project Coordinator shall be responsible for administration of all actions by Respondent required by this Order. Respondent shall submit to EPA the designated Project Coordinator's contact information. 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, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within a reasonable time following EPA's disapproval. Receipt by Respondent' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondent.

21. EPA has designated Peter Stevenson of the EPA Region 8 Site, Office of Ecosystems Protection and Remediation, Preparedness, Assessment, and Emergency Response Program, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the OSC at Peter Stevenson, 8EPR-SA, U.S. EPA Region VIII, 999 18th Street, Suite 300, Denver, CO, 80202.

22. EPA and Respondent shall have the right, subject to Paragraph 9, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA 7 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VII. WORK TO BE PERFORMED

23. In consideration of and in exchange for the United States' Covenant Not to Sue in Section XVIII herein, Respondent agrees to perform Phase 1 of the removal action selected by the Action Memorandum that is attached as Appendix 1 in accordance with the Work Plan that is attached as Appendix 2 and is incorporated into this Order. The Work Plan described in this Section and prepared by Respondent is also incorporated into and enforceable under this Order. Respondent shall perform, at a minimum, all actions necessary to implement Phase 1 of the work, as provided in the Action Memorandum and the Work Plan. The parties anticipate that Phase 2 of the work will take place pursuant to a separate AOC.

24. Work Plan and Implementation.

a. The Work Plan, Appendix 2, and the Health and Safety Plan, Appendix 3, are hereby approved.

b. Respondent shall not commence any Work at the Site that involves disturbing, handling, moving or accessing the Existing Contamination except in conformance with the terms of this Order and the Work Plan, Appendix 2.

25. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent 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. Respondent 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, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent 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, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than

14 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 Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent' implementation of the Work.

26. Post-Removal Site Control. In accordance with the Work Plan schedule, post-removal site control consistent with Section 300.415(*l*) of the NCP and OSWER Directive No. 9360.2-02 will be accomplished as part of Phase 2 of the Work Plan and will be covered by a separate AOC relating to Phase 2. EPA acknowledges that Respondent will not have control over the Site after completion of the Work. Prior to execution of the AOC for Phase 2, Respondent will obtain an agreement for long-term Site controls with Snowbird and submit that agreement to EPA for approval. Once EPA approves that agreement, Respondent's obligations for long-term Site control will be satisfied.

27. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every month after the Effective Date of this Order. The first report shall be due on the 10th day of the month following the first full month after the Effective Date, and on the 10th day of every month thereafter until termination of this Order, unless otherwise directed in writing by the OSC. 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.

b. Respondent shall submit 5 copies of all plans, reports or other submissions required by this Order, the Statement of Work, or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

28. Final Report. Within 30 days after completion of all Work required by this Order, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, 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 accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). 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."

29. Off-Site Shipments.

a. Respondent 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. Respondent 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. Respondent 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 Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 29(a) and 29(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances or pollutant or contaminant from the Site to an off-site location, Respondent 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. Respondent shall only send hazardous substances or 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.

c. It is not expected that the Work to be performed under this Order will require any off-site shipments of Waste Material.

VIII. ASSURANCE OF ABILITY TO COMPLETE WORK

30. The Natural Resources Conservation Service ("NRCS") currently administers the $40,000 necessary for Respondent to perform the Phase 1 Work. Upon notice from EPA that Work takeover pursuant to Paragraph 56 is necessary, NRCS shall complete the Phase 1 Work until the $40,000 fund has been exhausted or provide EPA with the remaining funds, which shall

be placed in 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.

IX. SITE ACCESS

31. Respondent represents that the property where access is needed in order to implement this Order is owned or controlled by Snowbird Corporation. Respondent has already received written permission from Snowbird Corporation to enter the property and perform the Work required under this Order. Respondent shall not commence the Work pursuant to this Order until Snowbird has also granted written permission for EPA and its representatives to enter the property. These written agreements are attached as Appendix 4.

32. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations. If at any point after the Effective Date of this Order, but before the commencement of Work, Snowbird rescinds the permission it has granted to enter the property and perform the Work, Respondent and EPA shall make best efforts to obtain access to the property for those purposes. While those efforts are pending, Respondent will not be obligated to perform the Work. If at any point these efforts to obtain access fail, or if EPA and Respondent conclude that such efforts are not justified for whatever reason, this Order shall cease to be effective and Respondent shall be relieved of the obligation of performing the Work.

X. ACCESS TO INFORMATION

33. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, 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. Respondent shall also make available to EPA for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

34. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order 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 Respondent 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 may be given access to such documents or information without further notice to Respondent.

35. Respondent 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 Respondent 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 Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

36. 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.

XI. RECORD RETENTION

37. Until 5 years after Respondent' receipt of EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its 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 retention policy to the contrary. Until 5 years after Respondent's receipt of EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

38. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent 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 Respondent 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 Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

XII. COMPLIANCE WITH OTHER LAWS

39. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, 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 Order 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

40. 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, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer [insert Regional Office, *e.g.*, Emergency Planning and Response Branch, EPA Region, telephone number, and the EPA Regional Emergency 24-hour telephone number] of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

41. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at [insert Regional spill phone number] and the National Response Center at (800) 424-8802. Respondent 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

42. The OSC shall be responsible for overseeing Respondent's implementation of this Order. The 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 Order, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

43. Payments for Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs in connection with EPA's oversight of the Work outlined herein, not inconsistent with the NCP, up to a maximum of $4,000. Respondent shall not be liable for any Future Response Costs above $4,000. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a SCORPIOS report, which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 45 of this Order.

b. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks or by wire transfer(s) made payable to "EPA Hazardous Substance Superfund" and shall include their name and address and the EPA Site/Spill ID number 08CW. Respondent shall send the payment(s) as indicated below:

For certified or cashier's checks, payment must be received by 11:00 AM Eastern Time for same day credit and should be forwarded to one of the following addresses:

Regular Mail:

Mellon Bank
Attn: Superfund Accounting
Lockbox 360859
Pittsburgh, PA 15251-6859

Express Mail:

Environmental Protection Agency 360859
Mellon Client Service Center Rm 154-0670
500 Ross Street
Pittsburgh, PA 15262-0001

For wire transfers, payment must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

c. At the time of payment, Respondent shall send notice that payment has been made to Maureen O'Reilly, Enforcement Specialist, ENF-RC, 999 18th Street, Suite 300, Denver, CO 80202.

d. The total amount to be paid by Respondent pursuant to Paragraph 43(a) shall be deposited in the American Fork Canyon Site 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.

44. In the event that the payments for Future Response Costs are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The Interest on Future 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 Respondent's failure to make timely payments under this Section.

45. Respondent may dispute all or part of a bill for Future Response Costs submitted under this Order, if Respondent alleges that EPA has made an accounting error, or if Respondent 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 necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 43 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 43(c) above. Respondent 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 30 days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

46. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally. In the event EPA concludes that Respondent has in any way failed to comply with this Order, EPA shall immediately notify Respondent of the alleged failure to comply. EPA shall then assist Respondent in collecting and reviewing information relevant to the alleged violation so that Respondent may cure, correct or remediate the alleged violation. If, after these efforts, EPA contends that Respondent is still in violation of this Order, EPA shall so notify Respondent in writing. Respondent may object to that action in writing pursuant to Paragraph 47 of this Order and any dispute concerning an alleged violation will be subject to the terms of this section.

47. If Respondent objects to any EPA action taken pursuant to this Order, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within 14 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 14 days from EPA's receipt of Respondent' 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.

48. 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 Order. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA

management official at the Assistant Regional Administrator level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Order. Respondent' obligations under this Order 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, Respondent 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

49. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, set forth in the Action Memorandum or increased cost of performance.

50. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 7 days of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent 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; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, 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 Respondent 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.

51. 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 Order 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 Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. COVENANT NOT TO SUE BY EPA

52. Except as otherwise specifically provided in this Order, upon issuance of the EPA Notice of Completion referred to in Section XXVI (Notice of Completion of Work), EPA covenants not to (1) sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for any failure to perform actions agreed to in this Order except as otherwise expressly reserved herein, or (2) sue or take any other civil or administrative action against Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination.

53. These covenants not to sue extend only to the Respondent and do not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

54. Except as specifically provided in this Order, 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 Order. For purposes of this Order only (and not stare decisis for any other order or agreement with this or other parties) and excepting Paragraph 55 d, f and g, the reservations in this Section shall only apply prior to issuance of the Notice of Completion pursuant to Section XXVI of this Order.

55. The covenant not to sue set forth in Section XVIII above does not pertain to any matters other than those expressly identified therein. The scope of the reservations in this Section is premised on the voluntary nature and narrow scope of the actions to be undertaken pursuant to this Order, the fact that Respondent does not currently own property on the Site and on Respondent's representation that it does not intend to own such property in the future. EPA reserves, and this Order is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondent to meet a requirement of this Order;

b. liability resulting from exacerbation of Existing Contamination due to willful, intentional or grossly negligent conduct by Respondent, its successors, contractors, assignees, lessees or sublessees;

c. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site caused by Respondent, not within the definition of Existing Contamination;

d. criminal liability;

e. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site, excluding any migration of Existing Contamination that is not caused by Respondent; and

f. liability for violations of federal law or regulations.

g. liability for releases of hazardous substances within or outside the Site caused by Respondent's activities not within the scope of this Order.

56. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA or NRCS may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Funding for any work takeover under this Paragraph shall be pursuant to Section VIII and Respondent shall not be liable for such Work Takeover. Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANT NOT TO SUE BY RESPONDENT

57. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Order, 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 Constitution, 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.

Except as provided in Paragraph 59 (Waiver of Claims), 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 55 (b), and (e) - (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

58. Nothing in this Order 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).

59. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if

a. the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of i) 0.002% of the total volume of waste at the Site, or ii) 110 gallons of liquid materials or 200 pounds of solid materials.

b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against Respondent.

XXI. PARTIES BOUND

60. This Order shall apply to and be binding upon the United States, and shall apply to and be binding upon the Respondent. Each signatory of the Parties to this Order represents that he or she is fully authorized to enter into the terms and conditions of this Agreed Order and to legally bind such Party.

61. Notwithstanding any other provisions of this Order, all of the rights, benefits and obligations conferred upon Respondent under this Order may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion.

62. The Respondent agrees to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreed Order.

XXII. OTHER CLAIMS

63. By issuance of this Order, 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 Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

64. Except as expressly provided in Section XVIII (Covenant Not to Sue by EPA), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, 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.

65. No action or decision by EPA pursuant to this Order 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 PROTECTION

66. The Parties agree that Respondent is 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), for "matters addressed" in this Order. The "matters addressed" in this Order are Existing Contamination, the Work and Future Response Costs. Nothing in this Order precludes the United States or Respondent from asserting any claims, causes of action, or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XXIV. INDEMNIFICATION

67. Respondent 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 Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondent 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 Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

69. Respondent 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 any one or more of Respondent 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, Respondent 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 any one or more of Respondent 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. MODIFICATIONS

70. The OSC and Respondent may, by mutual consent, make modifications to the schedule. In addition, the OSC may unilaterally make modifications to any plan necessary to protect public health or the environment in writing or by oral direction, so long as any such unilateral modification does not substantially alter the scope of work required by the Work Plan or the overall cost of completing the Work required by this Order. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

71. If Respondent seeks permission to deviate from the Work Plan, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 70.

72. 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 Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXVI. NOTICE OF COMPLETION OF WORK

73. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including payment of Future Response Costs or record retention, EPA will provide written Notice of Completion to Respondent. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

XXVII. PUBLIC COMMENT

74. Final acceptance by EPA of Section XV (Payment of Response Costs) of this Order shall be subject to Section 122(i) of CERCLA, 42 U.S.C.§ 9622(i), which requires EPA to

publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. EPA may withhold consent from, or seek to modify, all or part of Section XV of this Order if comments received disclose facts or considerations that indicate that Section XV of this Order is inappropriate, improper or inadequate. Otherwise, Section XV shall become effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section XV of this Order.

XXVIII. SEVERABILITY/INTEGRATION/APPENDICES

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

76. This Order and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Order. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following appendices are attached to and incorporated into this Order: Engineering Evaluation/Cost Analysis, Exhibit 3 to Appendix 1, Action Memorandum, Appendix 4, Statement of Work, Appendix 2, Health and Safety Plan, Appendix 3, and Access Agreement, Appendix 4.

XXIX. EFFECTIVE DATE

77. This Order shall be effective upon execution by EPA.

The undersigned representative(s) of Respondent certify(ies) that it (they) is (are) fully authorized to enter into the terms and conditions of this Order and to bind the party(ies) it (they) represent(s) to this document.

Agreed this ___ day of September, 2005 .

For Respondent _____

By _____

Title _____

publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. EPA may withhold consent from, or seek to modify, all or part of Section XV of this Order if comments received disclose facts or considerations that indicate that Section XV of this Order is inappropriate, improper or inadequate. Otherwise, Section XV shall become effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section XV of this Order.

XXVIII. SEVERABILITY/INTEGRATION/APPENDICES

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

76. This Order and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Order. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following appendices are attached to and incorporated into this Order: Engineering Evaluation/Cost Analysis, Appendix __, Action Memorandum, Appendix __, Statement of Work, Appendix __, and Health and Safety Plan, Appendix ___.

XXIX. EFFECTIVE DATE

77. This Order shall be effective upon execution by EPA.

The undersigned representative(s) of Respondent certify(ies) that it (they) is (are) fully authorized to enter into the terms and conditions of this Order and to bind the party(ies) it (they) represent(s) to this document.

Agreed this 19th day of ~~September~~ December, 2005.

For Respondent Trout Unlimited

By [signature]

Title President & CEO

It is so ORDERED and Agreed this _____ day of September, 2005.

BY: _____ DATE: _____
Name
Robert E. Roberts
Region 8
U.S. Environmental Protection Agency

BY: Kelly A Johnson DATE: 10/3/05
Kelly A. Johnson
Acting Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice

EFFECTIVE DATE: _____

It is so ORDERED and Agreed this day of ~~September~~ Oct ~ 2005.

BY: [illegible] DATE: 5 Oct '05
Name
Robert E. Roberts
Region 8
U.S. Environmental Protection Agency

BY: Kelly A Johnson DATE:~o/3/O:S::
Kelly A. J C}ffilson
Acting Assktant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice

EFFECTIVE DATE:

American Fork Canyon
Abandoned Mine Land Restoration

Stage Construction Work Plan

Overview of the Project: Trout Unlimited proposed to reclaim four abandoned mine and mill sites in American Fork Canyon, Utah all located on privately owned lands managed by Snowbird Corporation. The sites are the Pacific Mine, Pacific Mill, Scotchman #2 Mine, and Blue Rock Mine. The waste rock deposits at the Pacific Mine will be reshaped to develop a repository at that site. The repository will have slopes of 3:1 on the face with a top that drains back into the hillside at a -2% slope in both westerly and northern orientations. The waste rock piles at Scotchman #2 Mine and Blue Rock Mine will excavated and hauled to the Pacific Repository for disposal.

The Pacific Mill was located on a steep hillside adjacent to the proposed repository. The footprint of the mill contains some of the highest concentrations of heavy metals in American Fork Canyon. That footprint, and surrounding area with elevated metals, will be stripped of its surface soils until the heavy metal concentrations are below the Preliminary Remediation Goal (PRG). The contaminated soils will be placed in the repository.

An impervious composite liner will be installed on the top of the repository to prevent water from seeping into the consolidated mine and mill wastes. The face and top of the repository will be capped with 3 feet of clean, glaciated soils obtained from a borrow site 0.25 miles upcanyon. An interceptor ditch will be constructed along the hillside interface to collect and transport any overland flow that drains onto the site and any water that accumulates on the top of the repository. The ditch will flow into an existing channel containing mine drainage from the plugged Pacific adit.

All of the disturbed sites will be revegetated using a native seed mix, fertilizer, and mulch. The steeper hillsides at Pacific Mill and Scotchman #2 will be covered with biodegradable erosion control netting to stabilize the soil until the vegetation reestablishes. Signage and vehicle barriers will be installed to notify the recreating public of the establishment of the Pacific Repository and to prevent any vehicle use on the repository.

The construction details for the removal of the contaminated materials and placement of those materials in the repository will be defined in the plans and specifications being developed by Trout Unlimited for this project. Those documents will be reviewed and approved by EPA prior to commencement of any work on this project.

Need for Stage Construction: Trout Unlimited is working with the Environmental Protection Agency (EPA) to obtain permission and authorization to proceed with the proposed work through an Administrative Order on Consent (AOC) as provided in Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Trout Unlimited is a non profit conservation organization and has no vested interest or ownership of the lands containing the abandoned mine wastes in American Fork Canyon. Trout Unlimited is not a Potentially Responsible Party (PRP) under CERCLA. Trout Unlimited has voluntarily gained permission to take the lead in developing and implementing a mine reclamation project at these sites under a Memorandum of Understanding with Snowbird Corporation. The proposed removal action is consistent with the goals and mission of Trout Unlimited. This project will serve as a demonstration project for future mine restoration projects throughout the western United States.

Before the work can be implemented, even after signing of the AOC with EPA, Trout Unlimited must raise the funds needed to fund the construction project. Those funds can come from various sources including foundations, interested parties, land owners, industry, government allocations, etc.

Numerous contacts have been made in preparation for funding of this project and some funding has already been received or approved. The project development costs have been secured through grants from two separate organizations and foundations.

Stage 1: Project initiation funding (for on the ground work) was provided by a Congressional Earmark of the 2005 appropriation for the Natural Resource Conservation Service (NRCS) in the amount of $45,000. The total estimated cost of the entire project approaches $200,000. In discussions with the NRCS, leading to an agreement to be signed by NRCS and Trout Unlimited, certain deliverables have been identified that can be provided in 2005 with the funding now available. Those deliverables are items of work pertaining to the implementation of the overall project that can be done *"without disturbance of any of the contaminated mine or mill wastes"*. This work has been identified as Stage 1 of the project for implementation in 2005. A description of this work follows later in this document.

Stage 2: This work will include the removal and disposal of the contaminated mine/mill wastes from the various sites and the construction of the Pacific Repository. This stage includes the revegetaton of all the disturbed sites. There are plans for another NRCS earmark in 2006 which will allow the commencement and completion of the removal of the contaminated mine/mill wastes and construction of the Pacific Repository. Trout Unlimited continues to explore other funding sources to reduce the size of the needed earmark in 2006. All work at the site is planned for completion in 2006.

Stage 3: There is a Stage 3 for this project. That work will be done on National Forest System lands at the Miller Hill Tunnel disturbed area. The investigations of that site performed by the Forest Service have determined that there are no Concentrations of Concern of heavy metals at that site. It consists of a disturbed area of about 0.7 acre that needs to be revegetated. That work will be separate from the work approved under the AOC by EPA. The Miller Hill Tunnel work was authorized by a Decision Memo signed by the Pleasant Grove District Ranger, Uinta National Forest, in 2001. This work will be implemented during the construction phase of Stage 2 while the needed equipment is on site.

Work Plan Detailed by Item of Work

Stage 1 Items of Work (2005)

COMPLETE PRECONSTRUCTION ACTIVITIES

Obtain and analyze a soil sample from the designated Borrow Area to demonstrate that material is free from contamination and suitable for capping the repository. ***June 2005***

Provide Slope Stakes for the construction of a new 400 foot road segment downhill from the repository site. (This road segment will move the Miller Hill Access Road that is now located on top of the Pacific Mine waste rock pile to a new location free from contamination.) ***July 2005***

Provide Slope Stakes for the excavation of the Borrow Area ***July 2005***

Select an Owner/Operator of heavy equipment and sign an agreement for use of that equipment to complete the on the ground work included in Stage 1. ***July 2005***

IMPLEMENT STAGE 1 - CONSTRUCTION PHASE ***August 2005***

Mobilize Equipment and Materials

- Trackhoe Excavator
- Dump Truck
- Cache of Hand Tools for Emergency Firefighting
- Fuel/Mechanics Truck
- Bring In Materials; Silt Fences, Straw Bales, Culverts, Fencing Materials, Etc.

Prepare the Borrow Area

Use the trackhoe to knock down and remove the trees within the borrow area perimeter.

Strip and stockpile 3 inches of topsoil from a portion of the borrow area as designated by TU's engineer. (The remainder of the borrow area will have the topsoil removed in 2006.)

Construct the new road segment below the repository and close the road across the waste rock pile.

Remove and salvage a portion of the guardrail barrier to gain access to the new road location.

Install an 18 inch diameter culvert in the channel at the beginning of the new road segment.

Install erosion control devises (silt fence/straw bales) at locations designated by the engineer.

Excavate and haul 200 cubic yards of borrow material and construct the new road segment.

Install barriers to prevent vehicle use on lands reclaimed by the FS and on the Pacific waste rock pile.

Relocate the guardrail barrier at Pacific Mine to the toe of the embankment of the new road.

Install a temporary three strand barbed wire fence around the Pacific Mine waste rock pile.

Relocate a closure sign from the top of the waste rock pile to a location inside the new fence.

Widen the road accessing Blue Rock Mine to accommodate haul trucks. (For use in Stage 2.)

Remove trees flagged by the engineer with the trackhoe.

Establish a wider road surface to accommodate articulated dump trucks in 2006.

Use downed trees to block the road to discourage public use of this road.

Connect mine adit drain pipes to existing culvert to prevent diversion of mine drainage onto rock pile.

Fabricate a six foot long pipe to connect 2 six inch diameter pipes to a 12 inch culvert.

Backfill around the pipe connection with 2 feet of cover material from the borrow area.

Purchase materials needed during implementation of Stage 2 and stockpile for use in 2006.

Guardrail, W-beam, weathering steel rail and posts, 400 feet with flared terminal sections.

Closure signs for repository, borrow area, and mill site.

Interpretive signs addressing abandoned mine lands and potential environmental hazards.

Erosion control netting to protect steep slopes.

Native seed mix for reseeding of disturbed areas.

Fabrics and liners for Composite Liner for repository top if funding allows.

Conduct project inspection with Snowbird, EPA and NRCS. ***August 2005***

Demobilize equipment.

Provide status reports to NRCS and EPA including expenditures and accomplishments. ***Sept 2005***

Stage 2 Items of Work (2006)

COMPLETE PRECONSTRUCTION ACTIVITIES

Sign construction contract between Trout Unlimited and Snowbird Corp. Snowbird will provide construction services to remove waste materials and construct the repository. ***May 2006***

Provide construction personnel with Hazwoper Training and Health Screening. ***May 2006***

Provide Slope Stakes for the construction of the Pacific Repository. ***July 2006***

IMPLEMENT STAGE 2 - CONSTRUCTION PHASE ***August 2006***

Mobilize Equipment, Materials, And Workforce

Trackhoe Excavator

D-5 Dozer

Two Articulated Dump Trucks

Cache of Hand Tools for Emergency Firefighting

Fuel/Mechanics Truck

Reshape the North Fork Road as Needed for Access – Minimize Effort

Bring In Materials; Silt Fences, Straw Bales, Culverts, Etc.

Pacific Mine

- Maintain Erosion Control Devices – Silt Fences and Straw Bales
- Clear Trees and Brush on Repository Footprint – Deck Trees
- Bury Abandoned Automobile in Waste Rock Pile
- Place Extension on Ground Water Monitoring Well
- Dispose of Mill Site Material on Waste Pile
- Reshape Waste Rock Pile to Establish 3:1 Exterior Slopes
  - Do Not Damage North Loading Structure – Remove Two Others
- Add Blue Rock Mine Waste Rock Pile to Repository
  - Layer Place Waste in Repository and Walk with Dozer (Typical)
- Add Scotchman #2 Waste Rock to Repository
- Finish Shaping of Repository
- Cover Repository (with Liner Materials and 3 Feet of Borrow Material)
- Construct Interceptor Ditch and Place Riprap
- Reset Ground Water Monitoring Well Cap
- Prepare Repository for Seed, Mulch, and Fertilizer – Apply Each
- Remove and Dispose of Silt Fences – Break and Scatter Bales on Repository
- Construct Weathered Guardrail Vehicle Barrier Around Repository
- Install Regulatory and Interpretive Signing

Pacific Mill

- Place Erosion Control Devices at Toe of Worksite – Silt Fences and Straw Bales
- Pioneer Access Road for Trackhoe Up Hillside
- Excavate Contaminated Material from Hillside for Removal to Repository
  - Start at Upper Concrete Wall Pulling Material Downhill
  - Remove Unstable Concrete Structures – Dispose of Them in Repository
  - Reshape Hillside as Proceeding Downhill in Preparation for Revegetation
- Sample Underlying Soils to Demonstrate Heavy Metal Concentration Meets PRG
- Stockpile Larger Trees for Use as Barrier at Toe of Reclaimed Hillside
- Proceed with Revegetation Efforts Including a Erosion Blanket on Steep Hillside
- Place Tree Barrier at Toe of Hillside and Install Signing

Scotchman # 2

- Excavate Waste Rock and Haul It to Repository
- Sample Underlying Soils to Demonstrate Heavy Metal Concentration Meets PRG
- Reshape Hillside and Apply Revegetation Materials Including Erosion Blanket

Blue Rock Mine

- Remove Cabin and Loading Structure – Bury in Repository
- Excavate Waste Rock Pile and Haul to Repository
- Sample Underlying Soils to Demonstrate Heavy Metal Concentration Meets PRG
- Apply Revegetation Materials to Hillside
- Obliterate Haul Road and Revegetate

Borrow Site

- Complete Topsoil Removal and Stockpile
- Excavate Borrow Material and Place as Cover On Repository
- Finish Grade Borrow Site and Place Topsoil
- Scatter Downed Trees Over Site
- Apply Seed, Fertilizer, and Mulch
- Install Closure Sign

Stage 3 Items of Work (2006)

COMPLETE PRECONSTRUCTION ACTIVITIES

Provide Slope Stakes for the excavation of FS Borrow Area *July 2006*

IMPLEMENT STAGE 3 - CONSTRUCTION PHASE AT MILLER HILL TUNNEL *August 2006*

Remove rock barriers to gain access to the site
Widen road from borrow area to accommodate articulated dump trucks
Backfill existing culvert at entrance to Miller Hill Tunnel site
Install a temporary culvert in secondary stream channel
Set silt fences and straw bales at temporary stream crossing
Excavate borrow material and place a 1 foot thick layer on disturbed area at Miller Hill Tunnel
Final shape the borrow area to form 2 dispersed camping areas
Apply seed, mulch and fertilizer on borrow area slopes and over the covered area at MHT
Remove the temporary stream crossing – remove culvert from the canyon
Reset the Rock Barriers as directed by the Forest Service

FINAL OUT PROJECT

Conduct project inspection with Snowbird, EPA and NRCS. *Sept 2006*
Demobilize equipment.
Provide Final Reports to NRCS and EPA including expenditures and accomplishments. *Sept 2006*