MEMORANDUM OF AGREEMENT

BETWEEN

THE NAVAJO NATION

AND

THE U.S. ENVIRONMENTAL PROTECTION AGENCY

REGIONS 6, 8 AND 9

REGARDING THE IMPLEMENTATION OF ENVIRONMENTAL STANDARDS AND REGULATIONS ON THE NAVAJO NATION

MEMORANDUM OF AGREEMENT
FOR THE
IMPLEMENTATION OF ENVIRONMENTAL STANDARDS
AND REGULATIONS ON THE NAVAJO NATION

I. PARTIES

This MEMORANDUM OF AGREEMENT (hereinafter referrred to as "Agreement") between the U. S. Environmental Protection Agency (EPA) Regions 6, 8, and 9 and the Navajo Nation (hereinafter referred to as "Nation") concerns the protection of human health and the environment within the Territorial jurisdiction of the Navajo Nation.

II. STATEMENT OF PURPOSE

The Navajo Nation lies within the Regional state boundaries (as outlined in the Office of Management and Budget (OMB) Circular A-105 dated April 4, 1974) of EPA Regions 6 [New Mexico], 8 [Utah] and 9 [Arizona]. The Regional boundaries, dividing the Nation, have lead to a great deal of confusion for the Nation and the U. S. EPA with regard to the roles and responsibilities of the three EPA Regional Offices in implementing the Federal environmental mandates and has occasionally resulted in inadequate and inconsistent application of environmental programs on the Navajo Nation.

It is the purpose of this Agreement to: delineate a one-Region lead and responsibility for implementing the Federal environmental programs on the Navajo Nation and for providing assistance (technical and financial) to the Nation; identify areas of mutual interest and concern; specify those areas where coordination shall be maintained between the lead Region and the other two Regions; and provide a more effective and efficient working relationship and partnership with the Navajo Nation.

III. FINDINGS

The OMB Circular A-105 which established the ten standard Federal regions for Federal domestic agencies assigned the Navajo Nation to Region 9 (San Francisco). Although the Circular assigned the Navajo Nation to Region 9, it did not preclude Regions 6 and 8 from working with the Navajo Nation. This Agreement does not conflict with the intent of the OMB Circular, but rather provides further clarification of the role of Region 9 and its responsiblilities to the Navajo Nation, as well as to EPA Regions 6 and 8.

IV. ROLES AND RESPONSIBILITIES

The Navajo Nation and EPA Regions 6, 8 and 9 agree that it is more efficient and effective for one region to be totally responsible for implementation of the Federal environmental programs on the Navajo Nation and for responding to the Nation's needs in the development of Navajo environmental regulatory programs. It is further agreed that Region 9 be the designated one-region lead and the EPA regional office responsible for all environmental matters affecting the Navajo Nation (permitting, enforcement, program development, federal financial assistance, etc).

The Navajo Nation and Region 9 agree to work together in the implementation of Federal environmental laws and regulations on lands determined to be located within the territorial jurisdiction of the Navajo Nation located in the states of Arizona, Utah and New Mexico (including the satellite areas of Alamo, Canoncito, and Ramah). In addition, the above mentioned parties agree to work in partnership in the development of and implementation of Navajo environmental programs to the extent permitted within the following statutes and their accompanying regulations: Clean Water Act; Clean Air Act; Safe Drinking Water Act; Resource Conservation and Recovery Act; Comprehensive Environmental Response, Compensation and Liability Act; Superfund Amendments and Reauthorization Act; Emergency Planning and Community Right-to-Know Act; Federal Insecticide, Fungicide and Rodenticide Act; and the Toxic Substance Control Act and any other applicable Federal environmental laws and regulations as amended.

The following roles and responsibilities will be assumed by the party/parties so identified:

EPA REGION 9 WILL:

1. Work in cooperation with the Navajo Nation to ensure compliance with existing federal and the Nation's environmental laws for all lands located within the territorial jurisdiction of the Navajo Nation located within the states of Arizona, New Mexico and Utah. This responsibility includes the issuance of Federal permits, compliance monitoring/inspections, enforcement actions, review of environmental impact statements, water quality standards, etc.;

2. Provide timely advice, training, guidance and technical assistance to the Navajo Nation to assist the Nation in exercising its sovereign rights to regulate environmental matters within the territorial jurisdiction of the Navajo Nation;

3. Provide review and approval of the Nation's programs seeking primacy/delegation/authorization from EPA. NOTE: Regions 6 and 8 will be able to comment on the

approval of such programs during the required regulatory notice and comment period for such actions; and

4. Provide Technical/Financial Assistance for environmental program development, including research and special studies and projects, to the extent permitted by available resources. Every effort will be made to maintain funding at a level appropriate for current program activity, and increased for those programs which will expand from dealing with one geographic area on the Navajo Nation to include the entire tri-State area of the Nation.

   (NOTE: 1) During the first year of this Agreement it is the intent of Region 9 to recommend that each program office provide new EPA ID numbers for regulated entities operating on the Navajo Nation so that these facilities will be removed from the Region 6 and 8 State and Regional universe and be directly and easily identifiable as being located within the Navajo Nation's jurisdiction and Region 9's regulated universe. This should facilitate the resource allocation process in those instances where the number of regulated entities are a component to funding formulas and workload models. 2) Eligibility for funding may be dependent upon prior approval of the Nation's "treatment as State" application, if applicable; and 3) Funding levels for Tribal programs (i.e. under SDWA and CWA) may be affected by percentage of allowable set-aside of funds dedicated by law or regulation for Tribes);

5. Coordinate with Regions 6 and 8 on water quality standards and permitting of regulated activities in New Mexico and Utah portions of the Navajo Nation so that those Regions can coordinate, as needed, with States and local governments for which they have responsibility. (NOTE: This coordination will be in the form of providing notice of actions, i.e. application, draft permit, public notice, fact sheet, final permits, proposed water quality standards, etc. to the Regions; and, notice of the actions to the appropriate State and/or local agencies in New Mexico and Utah.)

6. Notify affected facilities that they are now under the direction of Region 9. Such notice will be provided when Region 9 receives the necessary regulated universe lists from Regions 6 and 8.

7. Initiate program-specific Agreements, as needed, with the Navajo Nation. (For example, Superfund Memorandum of Agreement.)

8. Coordinate with other Federal Agencies as necessary and appropriate (i.e. Department of Interior, Department of Energy, Indian Health Service, Housing and Urban Development, etc.)

9. Meet quarterly with the Navajo Nation to evaluate/review the progress in the implementation of this Agreement.

EPA REGIONS 6 AND 8 WILL:

1. Within 60 days of execution of this Agreement, provide to Region 9 all files and data pertaining to Federally regulated entities located within the portions of the Navajo Nation located in the states of New Mexico and Utah;

   NOTE: 1) Exempted by mutual agreement, those files which relate to facilities currently in the permit process and those currently under an enforcement or court action. Transfer of such files will be made 60 days after the specific action is completed.

   2) Cooperative Agreement/Grant Agreement files are not subject to transfer under this MOA. Each Region will be responsible for program and project closeouts made under their Region's financial assistance awards.

2. Permit and enforcement actions begun before the effective date of this agreement will be carried through to completion before responsibility is transfered to Region 9. Provide to Region 9 and the Navajo Nation a list of permit and enforcement actions which are not being transferred to Region 9 at the time of this agreement;

3. Upon execution of this Agreement, abstain from further direct Federal implementation or program development activities with the Navajo Nation, except where otherwise noted in this Agreement (see item 2. above) or with prior written approval of the Navajo Nation and Region 9 or an executed amendment to this Agreement;

4. Provide notification and invitation to the Navajo Nation for training held within the Region which is being provided for States and/or Tribes. (NOTE: There may be times when it would be cost beneficial and time saving for the Tribe to attend training held in Regions 6 and/or 8 rather than in Region 9.);

5. At the request of Region 9 on the behalf of the Navajo Nation, provide technical assistance and training, to the extent possible;

EPA Regions 6 and 8 will: (Cont)

6. Refer all complaints, concerns and public inquiries, raised to the Region regarding activities actually on the Navajo Nation in the New Mexico or Utah portions to Region 9 and the Navajo Nation. If the facility in question is off the Navajo Nation, but may be impacting the environment on Navajo lands, notice will be provided to Region 9 and the Navajo Nation;

7. Review draft permits and proposed water quality standards for activities in the New Mexico and Utah portions of the Navajo Nation and coordinate, as needed, with State and local governments. (Note: This will be most important for NPDES permits utilizing State water quality standards until such time as the Navajo develop Tribal standards.) See item 5. under "EPA Region 9 Will"; and

8. Coordinate with the Navajo Nation on sites located off-Nation lands in the States of New Mexico and Utah which may have a direct effect on the Navajo Nation (For example: Region 6 will continue to provide Management Assistance to the Navajo Nation through a Support Agency Cooperative Agreement with regard to the Prewitt Refinery NPL site and the United Nuclear Corp. NPL site.)

9. Provide Region 9 and the Navajo Nation with a list of State and local agencies which should be notified of EPA permit actions in New Mexico and Utah.

THE NAVAJO NATION WILL:

1. Upon execution of this Agreement, direct all requests for direct EPA program implementation and financial assistance for Tribal environmental program development to EPA Region 9;

2. Raise all environmental concerns of the Navajo Nation, affecting lands within the states of Arizona, New Mexico and/or Utah to EPA Region 9, the lead Region; and

3. Meet quarterly with Region 9 to evaluate/review the progress in the implementation of this Memorandum of Agreement.

V. TERMS OF AGREEMENT

A. General Obligations

In order to implement the purpose, findings and roles and responsibilities of this Agreement set forth in Sections II, III and IV above, the parties agree to the following terms:

V. Terms of Agreement: (Cont)

1. Coverage: This Agreement covers the implementation of Federal programs and technical/financial assistance authorized by the Clean Water Act (CWA); the Clean Air Act (CAA); the Resource Conservation and Recovery Act (RCRA); the Safe Drinking Water Act (SDWA); the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Toxic Substances Control Act (TSCA); Comprehensive Environmental Response, Compensation and Liability Act and Superfund Amendments and Reauthorization Act (CERCLA/SARA); and Emergency Planning and Community Right-to Know Act and other applicable environmental laws and regulations as amended.

2. Cooperation: Each party shall cooperate to the greatest extent possible with the other parties in fulfilling the purpose of this Agreement.

3. Timely Notification: Each party shall act in a timely manner to provide information and documentation for proposed actions (i.e. on-site inspections, enforcement actions, technical assistance, permitting, training, program approvals) of interest to the appropriate other parties of this Agreement. When the proposed action of a party may directly affect the programs of another party, the proponent of such action shall solicit input from the other affected parties.

4. Funding: During the term of this Agreement, Region 9 shall make every effort to assure timely processing of funding requests, and adequate program development and implementation funds available to the Navajo Nation to the extent permitted by available resources and applicable laws.

5. Compliance: EPA Region 9 will have responsibility for assuring that compliance with Federal environmental laws and regulations is maintained.

6. Other Agreements: Unless otherwise provided for, all parties agree that all previously entered Agreements which contradict this Agreement are hereby rescinded. This Memorandum of Agreement does not preclude the possibility that there may need to be additional, program specific Agreements to further clarify roles and responsibilities or policies and procedures in the implementation of the overall intent of this Agreement.

   NOTE: One program specific Agreement might be to define the NPDES permit review process on affected downstream states, particularly for facilities affecting state waters outside of Region 9.

V. Terms of Agreement: (Cont)

7. Review: EPA Region 9 and the Navajo Nation will meet quarterly to review progress in the implementation of this Agreement and discuss ways to further enhance their partnership in the development and implementation of environmental programs on the Navajo Nation. Some potential areas for focus during this review might include:

   A. The administration of financial assistance agreements;

   B. Timeliness and adequacy of response to request for technical guidance and assistance;

   C. Identification of areas of conflicting authorities and priorities which may limit or delay the effective and efficient implementation of environmental programs, work plans and response to potential emergency events; and

   D. Modifications and amendments to this Agreement which may be necessary to protect human health and the environment on the Navajo Nation.

B. Revisions/Amendments

This Agreement may be amended at any time except as limited by applicable regulations or laws. Amendments shall be made by supplemental Agreements executed in writing by the parties hereto, as required in order to carry out any of the provisions of this Agreement or for any other purpose in furtherance of this Agreement.

C. Written Communication

Written communications pursuant to the provisions of this Agreement shall be delivered or mailed as follows:

1. To the Nation: Executive Director
   Division of Natural Resources
   The Navajo Nation, P.O. Box 308
   Window Rock, AZ 86515

2. To the EPA: Regional Administrator, EPA Region 6
   1445 Ross Avenue, 12th Floor, Suite 1200
   Dallas, TX 75202

   Regional Administrator, EPA Region 8
   999 18th Street, Suite 500
   Denver, CO 80202-2405

   and

   Regional Administrator, EPA Region 9
   75 Hawthorne Street
   San Francisco, CA 94105-3901

VI. DURATION AND TERMINATION OF AGREEMENT

This Agreement shall continue in effect until either terminated by joint agreement of the parties, or any party terminates its participation in this Agreement. Written notice of termination must be given to all parties to the Agreement thirty (30) days in advance of the termination date. Such termination, however shall not relieve any party of responsibilities otherwise prescribed by law or regulation.

VII. EXECUTION

This Agreement shall be effective upon date of execution by all parties.

Peterson Zah, President
Navajo Nation

Oct. 9, 1991
Date

Daniel W. McGovern
Regional Administrator, EPA Region 9

10.9.91
Date

James J. Scherer
Regional Administrator, EPA Region 8

October 9, 1991
Date

Robert E. Layton Jr.
Regional Administrator, EPA Region 6

Oct. 9, 1991
Date