U.S. Environmental Protection Agency
and
Nevada Division of Environmental Protection
National Priorities List Deferral Agreement
Anaconda Mine Site, Lyon County, Nevada

I. PURPOSE

The U.S. Environmental Protection Agency (EPA), Region 9, conducted a preliminary assessment and site investigation of the Anaconda Mine Site (Site) located in Lyon County, Nevada, Comprehensive Environmental Response and Liability Information System (CERCLIS) ID #NVD083917252, and determined that it qualifies for placement on the National Priorities List (NPL).

On December 22, 2015, EPA sent a letter to the State of Nevada Governor's Office, which indicated its intent to list the Site on the NPL pursuant to the Comprehensive Environmental Response and Liability Act (CERCLA) and requested the State of Nevada's position on listing. (Attachment A). The Governor's Office responded in a letter, dated January 29, 2016, that the State was pursuing an alternative path to listing through a private party funding agreement and requested up to and including April 29, 2016, to make a decision on listing the Site. (Attachment B). The Governor's Office sent a letter on March 29, 2016, which offered the State's conditional concurrence with EPA's proposal to list the Site. (Attachment C). In September 2016, EPA proposed the Site to the NPL.

After initial discussions in December 2016 and January 2017 between EPA, NDEP, the Bureau of Land Management, and Atlantic Richfield Company (ARC), and after reviewing with governmental representatives, which included but was not limited to, the Yerington Paiute Tribe, the Walker River Paiute Tribe, Lyon County and City of Yerington, *EPA made a decision in February 2017 to postpone listing of the Site on the NPL while all parties evaluated deferral options for a private funding solution. Between February and June, 2017, NDEP and ARC developed a proposal for deferral of the Site from NPL listing. NDEP conducted outreach with community stakeholders, including Lyon County, the City of Yerington, the Yerington Paiute Tribe, the Walker River Paiute Tribe, and interested citizens. NDEP and ARC have entered agreements that satisfy criteria for deferral of the Site as described in EPA's "Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions." On July x, 2017, NDEP formally requested EPA deferral of Site under CERCLA § 105(h).*

Based on ARC and NDEP meeting required deferral criteria, EPA is deferring the final listing of the Site on the NPL while NDEP completes necessary investigations and response actions at the Site. This Deferral Agreement describes the steps NDEP will take to ensure that adequate response actions are completed at the Site so that it is removed from CERCLIS. .

II. IMPLEMENTATION

A. State Program – NDEP is authorized under state water pollution control law (NRS 445A) and hazardous substance control law (NRS 459) to implement a soil and groundwater cleanup and mine reclamation program which should ensure that the response actions at the Site are carried out and that these actions are protective of human health and the environment. Furthermore, NDEP has sufficient capabilities, resources, expertise and authorities to ensure that a CERCLA-protective cleanup[1] is conducted and to

coordinate with EPA, BLM, the Yerington Paiute Tribe and Walker River Paiute Tribe (Tribes), other interested agencies, and the public on different phases of implementation.

B. Site Eligibility – The State has expressed interest in having the Site listing deferred and in NDEP overseeing the response at the Site under state law. NDEP agrees to pursue response action at the Site in a timely manner. EPA and NDEP agree that a deferral should address the Site sooner than, and at least as quickly as, EPA would expect to respond.

The Site is included in the CERCLIS inventory and has been assessed and scored for listing on the NPL. The State will not request, nor utilize, Federal trust fund money to implement any portion of the actions required by this Deferral Agreement.

C. Community Acceptance – NDEP provided outreach to the community and the Tribes. [Placeholder]. (Attachment).

D. CERCLA Protective Cleanup – NDEP will pursue a CERCLA-protective cleanup of the Site that will be substantially similar to a CERCLA response. The response action will be protective of human health and the environment, as generally defined for individual human exposure by an acceptable risk level for carcinogens between 10^{-4} and 10^{-6} (using 10^{-6} risk level as the point of departure for determining remediation goals for alternatives) and for non-carcinogens a Hazard Index of 1 or less, and no significant adverse impacts to ecological receptors. NDEP will give preference to solutions that will be reliable over the long term. In addition, NDEP will ensure that any remedy selected at the Site will comply with all applicable or relevant and appropriate[2] federal requirements and more stringent applicable or relevant and appropriate State requirements to the maximum extent practicable under NDEP's state authorities.

An evaluation of environmental media, exposure pathways, and human and ecological receptors will be investigated and assessed as part of the comprehensive risk assessment conducted at the Site.

E. Natural Resources Trustees – NDEP will promptly notify the appropriate state and federal trustees for natural resources of discharges and releases at the Site that are injuring or may injure natural resources, and include the trustees, as appropriate, in activities at the Site. NDEP shall, consistent with CERCLA and the National Contingency Plan, seek to coordinate necessary assessments, evaluations, investigations, and planning with the State, Tribes, and Federal trustees.

F. Tribal Participation – NDEP has reviewed and revised NDEP/Tribal consultation protocols with all Tribal governments that have elected to participate in the

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[1] The term CERCLA-protective cleanup is defined in OSWER Directive 9375.6-11, *Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions* (May 3, 1995), and further explained in § II(D) of this Deferral Agreement.

[2] The phrase "applicable or relevant and appropriate requirements" shall be defined by reference to Section 121 of CERCLA, 42 U.S.C. § 9621, the National Contingency Plan (*see* 40 C.F.R. § 300.5 definitions of "applicable requirements" and "relevant and appropriate requirements"), and applicable EPA Guidance.

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response actions. In lieu of a federally funded technical assistance grant or similar funding mechanism, NDEP has reached an agreement with ARC that provides the Yerington Paiute Tribe with reasonable financial assistance, to support and facilitate interpretation of technical information and participation in remedy selection until issuance of a future Record of Decision.

III. PROCEDURAL REQUIREMENTS

A. Roles and Responsibilities – NDEP has responsibility, with minimal EPA involvement, to provide for a timely CERCLA – protective cleanup under state authority and to support the public's right of participation in the decision–making process. EPA's role will generally be limited to review of NDEP's semi–annual and annual reports and consultation on the proposed remedy. However, EPA may request reports, data, or other documentation related to the remedial activities at the Site, as it deems appropriate, or arrange for NDEP to provide certain draft documents for EPA's review as they are prepared. EPA will not provide financial assistance for site activities to the State, Tribes, or the community during deferral.

In the event that community members or the Tribes develop significant and valid concerns to the protectiveness or timeliness of the response actions implemented by NDEP, they may request that EPA reconsider deferral of the Site or request EPA's intervention in response actions.

B. Schedule for Performance – A proposed schedule of events for the Site cleanup is set forth in the following table. The dates in the table are subject to change. EPA shall be notified of a change in Target Completion Date as soon as NDEP becomes aware that such a change is necessary or unavoidable.

Task	Target Completion Date

C. Documentation Submissions to EPA – NDEP will make available all Site data, reports, and other documents to EPA upon request.

D. Reporting to EPA – NDEP will provide management briefings to EPA at least annually on whether the conditions in the Agreement are being met and the progress in the investigation, assessment, and response actions. In addition, NDEP will report to EPA at least semi–annually on any difficulties that it is having meeting the conditions of the Agreement. Following the submission of a report required or requested, EPA may request

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a briefing or meeting with NDEP to discuss the report(s).

E. Proposed Remedial Action – NDEP will brief EPA on proposed remedial actions (Draft Record of Decision Staff Report) before and after soliciting public comment.

F. Deliverable Review and Approval – Deliverables that have been submitted to EPA by ARC and are pending EPA action at the time this Agreement is executed will be transferred to NDEP for further action. Deliverables submitted to EPA by ARC that have been reviewed, commented on, and transmitted to ARC but have not been incorporated into a response action or order or directive at the time that this Agreement is executed will be reviewed and considered by NDEP in future decisions and actions at the Site. Deliverables scheduled to be submitted to EPA after this Agreement is executed will be submitted to NDEP for further action on the same scheduled dates the deliverables were due to be submitted to EPA.

IV. COMMUNITY PARTICIPATION

NDEP will ensure public involvement that is substantially similar to the intent of the National Contingency Plan, in accordance with the Community Involvement and Participation Plan finalized for the Site. NDEP will prepare a draft Community Involvement and Participation Plan (Plan) within 90–days after this Deferral Agreement is executed. The public will have 30 days to review the Plan and provide comments. NDEP will prepare a final Plan 45–days after the public review and comment period closes. The Plan will be designed to satisfy the requirements of the NPL Deferral Guidance, NDEP's regulations, and the unique needs of the Site and surrounding community. NDEP will also ensure the following actions are undertaken:

A. Site files will be maintained at NDEP offices located at 901 South Stewart Street, Carson City, Nevada 89701.

B. Site related documents will be available at one or more locations near the Site.

C. Site related information will be provided to community groups.

D. Through the Plan, the affected community will be able to acquire technical assistance in interpreting information with regard to the nature of the hazard, investigations, and studies conducted, and implementation decisions at the Site.

V. CERTIFICATION AND CONFIRMATION OF STATE RESPONSE ACTION

Once NDEP considers response actions at the Site or for a portion of the Site to be sufficiently complete, it will certify to EPA, BLM, the Tribes, and the affected community that the remedy has been successfully completed and appropriate clean-up levels and performance standards included in the applicable Record of Decision have been achieved (Certification). As part of this Certification, NDEP will submit for EPA's review response action completion documentation, for the Site or a portion of the Site, consistent with that described in the June 1992 OSWER Directive "Remedial Action

Report; Documentation for Operable Unit Completion" (OSWER Directive 9355.0-39FS) or the appropriate subsequent / later published EPA guidance (Completion Report).

Upon receiving NDEP's Certification and Completion Report, EPA should confirm in writing that the Site response, as described in the Certification and Completion Report, has been completed. Alternatively, within 90–days of receipt of NDEP's Certification and Completion Report, EPA may initiate and complete a deferral completion inquiry to review and validate the Completion Report and confirm the Certification from NDEP for the Site or the portion of the Site addressed in these documents, provided EPA does not identify a substantial or material failure of the response action to meet the appropriate clean-up levels and applicable performance standards and to provide an adequate CERCLA-protective remedy. If a substantial or material failure is identified by EPA, EPA must work with NDEP to address the data deficiencies hindering the confirmation and agree to a time frame for completion of the inquiry. If EPA does not confirm the response completion, terminate the deferral, or initiate and complete an inquiry within 90–days of its receipt of NDEP's Certification and Completion Report, the status of the Site will be recorded in CERCLIS as a deferral completion for the Site or the portion of the Site addressed in NDEP's Certification and Completion Report. Once the status of the Site is recorded as complete, the Site or the portion of the Site addressed by NDEP's Certification and Completion Report will be removed from CERCLIS and will not be evaluated further for NPL listing or another response unless and until EPA receives new information of a release or potential release posing a substantial threat to human health or the environment.

VI. AGREEMENT TERMINATION AND MODIFICATION

A. EPA Termination –EPA may terminate this Deferral Agreement if it determines: (1) that the remedial actions are unreasonably delayed; (2) the response is not CERCLA protective (as defined in Section II(D) above); or (3) NDEP has not adequately addressed the significant and valid concerns of the affected community or Tribal governments. Prior to requesting termination, EPA must provide written notice of deficiency(ies) to NDEP and allow NDEP up to 90–days to meet and discuss EPA's concerns and to propose a formal plan to resolve EPA concerns in lieu of termination. EPA may also terminate this Deferral Agreement if ARC breaches its agreement(s) with NDEP and NDEP is unable to enforce compliance or provide other sources of funding to complete the response action. EPA may further terminate this Deferral Agreement and implement emergency or time-critical response action without 30–days notice to NDEP if EPA determines that such action is necessary to prevent a significant risk to human health and the environment.

If the deficiency(ies) identified by EPA cannot be resolved and this Deferral Agreement is terminated, EPA will consider taking any necessary response actions including resuming a rulemaking process to formally list the Site on the NPL. At that time, EPA and NDEP will coordinate efforts to notify the community of the termination of the deferral. These actions will assure the public that EPA will continue to respond at the Site. At EPA's request, NDEP will provide to EPA copies of all information in its possession regarding the Site, to the extent permitted by Nevada law. In the event of a

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termination, EPA agrees that it will not use the existence of this Deferral Agreement, any other agreement entered into between NDEP and ARC to satisfy the criteria for deferral, or any response actions performed by NDEP or ARC pursuant to this Deferral Agreement and those other agreements as the basis for asserting NDEP's or ARC's liability or responsibility for CERCLA response costs or response actions at the Site.

B. NDEP Termination – NDEP may terminate this Deferral Agreement if it determines that: (1) adequate funding provided by ARC for completion of the remedy has become unavailable prior to completion; (2) ARC fails to perform site activities as agreed to in the Administrative Order on Consent, in a CERCLA protective manner, or otherwise in compliance with applicable federal and state law, and NDEP and ARC cannot reach resolution on a dispute or ARC is not responsive to the State's enforcement action; (3) there has been a material change in conditions or circumstances such that NDEP's programs are no longer sufficient to manage the Site; (4) the remedial action is unreasonably delayed; or (5) the response is inconsistent with this Deferral Agreement.

This Deferral Agreement is consistent with EPA's "Guidance of Deferral of NPL Listing Determinations While State's Oversee Response Actions" dated May 3, 1995. This Deferral Agreement may be modified at any time upon agreement of both parties. Except as prescribed by this Deferral Agreement, EPA and NDEP retain their respective authorities and reserve all rights to take any and all response actions authorized by law.

VII. AGREEMENT APPROVALS

DATED this _ day of _____ __, 2017.

BY: _ _____ _____ _____ _____
GREGORY LOVATO
Administrator
State of Nevada
Division of Environmental Protection

DATED this __day of _____ __, 2017.

BY: _____ _____ _____ _____ ___
[INSERT NAME]
[INSERT TITLE]
U.S. Environmental Protection Agency
Region 9

ATTACHMENTS

A. Letter, dated December 22, 2015, from the U.S. Environmental Protection Agency to the Honorable Brian Sandoval, Governor of Nevada.

B. Letter, dated January 29, 2016, from the Honorable Brian Sandoval, Governor of the State of Nevada to the U.S. Environmental Protection Agency.

C. Letter, dated March 29, 2016, from the Honorable Brian Sandoval, Governor of the State of Nevada to the U.S. Environmental Protection Agency.

D. [Placeholder for additional attachments]