UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CONSENT AGREEMENT AND FINAL ORDER

IN THE MATTER OF	)	
	)	
	)	Docket No. RCRA-HQ-2011-8006
United States Department of the Interior,	)	Docket No. CAA-HQ-2011-8006
	)	Docket No. TSCA-HQ-2011-8006
	)	Docket No. SDWA-HQ-2011-8006
	)	
Respondent.	)	
	)	

Table of Contents

Table of Contents - Continued

Page

Page

Appendices

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CONSENT AGREEMENT

Complainant, the United States Environmental Protection Agency ("EPA," the "Agency," or "Complainant"), and Respondent, U.S. Department of the Interior ("DOI" or "Respondent"), collectively referred to as "the Parties," have agreed that settlement of this matter is in the public interest and that execution of this Consent Agreement and Final Order ("Consent Agreement") without further litigation, is the most appropriate means of resolving this matter.

Before the taking of any testimony, without further adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

I. PRELIMINARY STATEMENT

This Consent Agreement and Final Order is entered into by the Assistant Administrator for the Office of Enforcement and Compliance Assurance, EPA, and DOI, pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992k (2009); the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q (2009); the Toxic Substances Control Act ("TSCA"), Subchapter II ("the Asbestos Hazard Emergency Response Act" or "AHERA"), 15 U.S.C. §§ 2641-2656 (2009); the Safe Drinking Water Act ("SDWA"), 42 U.S.C. §§ 300f-300j-26 (2009); and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Pt. 22 (2008), including, specifically, 40 C.F.R. §§ 22.13(b), 22.18(b)(2)-(3) (2008).

This action addresses environmental violations at schools and public water systems ("PWSs") owned by, operated by, or otherwise the legal responsibility of DOI, Bureau of Indian Affairs (BIA) and/or the Bureau of Indian Education (BIE), and addresses violations under several environmental statutes, including RCRA, CAA, AHERA, and SDWA. Pursuant to RCRA, CAA, AHERA, and SDWA, the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project (SEP) and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of $234,844.00. The Consent Agreement requires DOI to pay a civil penalty of $234,844.00, correct all violations

identified during the inspections, implement a compliance-focused environmental management system (EMS), conduct third-party, multi-media audits of BIE schools and BIA public water systems serving those schools, and perform a SEP.

II. GENERAL PROVISIONS

1. The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement, as prescribed by EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. § 22, and more specifically by 40 C.F.R. § 22.18(b).

2. Respondent agrees that Complainant has the authority to bring an administrative action for these violations and for the issuance of a compliance order and the assessment of penalties under section 3008(a) of RCRA, 42 U.S.C. § 6928(a); and section 113(d) of the CAA, 42 U.S.C. § 7413(d); and sections 16(a) and 207(a) of TSCA, 42 U.S.C. §§ 2615(a) and 2647(a); and sections 1414(a)(1)(B) and 1447(b) of SDWA, 42 U.S.C. §§ 300g-3(a)(1)(B) and 300j-6(b).

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations in this Consent Agreement.

4. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this Consent Agreement, except as provided in paragraphs 1-3, above. Respondent consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, to any conditions specified in the Consent Agreement and Final Order, and to any stated permit action.

5. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the Consent Agreement and Final Order.

6. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

7. Respondent consents to the issuance of this Consent Agreement and Final Order and agrees to comply with its terms and conditions, including payment of the civil penalty and performance of the SEP.

8. Respondent shall bear its own costs and attorney's fees.

9. The provisions of this Consent Agreement and Final Order shall be binding upon Complainant and Respondent, their employees, successors, and assigns.

10. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, local, or tribal law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, local, or tribal permit.

III. EPA'S GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In accordance with the Consolidated Rules at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant makes the findings of fact and conclusions of law which follow.

12. Respondent is the owner and/or operator of the schools and PWSs listed in Appendices C and D as certified by Respondent in Attachment I.

13. EPA conducted inspections of Respondent's facilities between FY 2005-2008 and reviewed PWS files recording compliance data between FY 2004-2008.

A. Resource Conservation and Recovery Act

Findings of Fact and Conclusions of Law

14. Respondent is a "federal agency" and a "person" as those terms are defined in section 1004 of RCRA, 42 U.S.C. § 6903, and 40 C.F.R. § 260.10.

15. Each of the schools identified herein constitutes a "facility" within the meaning of 40 C.F.R. § 260.10.

16. At all times relevant to this Consent Agreement and Final Order, Respondent was the "owner" and/or "operator" of, or is otherwise liable for, each school listed in Appendix C, as those terms are defined in 40 C.F.R. § 260.10.

17. Respondent, in the course of conducting normal building maintenance and educational operations at the schools, has generated "solid waste" within the meaning of 40 C.F.R. § 261.2.

18. Respondent, in the course of conducting normal building maintenance and educational operations at the schools, has generated "hazardous waste" within the meaning of 40 C.F.R. § 261.3, "universal waste" within the meaning of 40 C.F.R. §§ 273.5 and 273.9, and "used oil" within the meaning of 40 C.F.R. § 279.1.

19. At all times mentioned below in this Consent Agreement, Respondent has been a "generator" of hazardous waste as that term is defined in 40 C.F.R. § 260.10, a "generator" and "handler" of universal waste as those terms are defined in 40 C.F.R. § 273.9, and a "used oil generator" as that term is defined in 40 C.F.R. §§ 279.10 and 279.20(a), at the schools.

20. Respondent has stored hazardous waste, including unlabeled and outdated chemicals, and universal waste in the form of spent fluorescent lamps at the schools.

21. Between October 1, 2004, and June 30, 2008, pursuant to section 3007 of RCRA, 42 U.S.C. § 6927, authorized representatives of EPA conducted inspections of the schools listed in paragraphs 26, 31, and 62 to determine compliance with RCRA.

COUNT 1 - Failure to Make Hazardous Waste Determinations for Unlabeled and Outdated Chemicals

22. Complainant realleges each allegation contained in paragraphs 1 through 21 as if fully set forth herein.

23. Pursuant to 40 C.F.R. § 262.11, a person who generates a solid waste must determine whether that solid waste is a hazardous waste, using the procedures specified in that provision.

24. Pursuant to 40 C.F.R. § 261.2, subject to certain inapplicable exclusions, a "solid waste" is any "discarded material" that includes "abandoned," "recycled," or "inherently waste-like materials," as those terms are further defined therein.

25. Pursuant to 40 C.F.R. § 261.2(b), materials are solid wastes if they are "abandoned" by being "disposed of," "burned or incinerated," or "accumulated, stored, or treated before or in lieu of being abandoned by being disposed of, burned or incinerated."

26. As of the inspection dates, EPA inspectors observed unlabeled and outdated chemicals and other waste materials that had been generated by Respondent and were accumulated and/or stored at the following schools before being disposed of:

    - Beatrice Rafferty School
    - Chinle Boarding School
    - Crow Creek Reservation High School
    - Haskell Indian Nations University
    - Hopi Junior/Senior High School
    - Indian Island School
    - Lower Brule Day School
    - Marty Indian School
    - St. Francis School
    - San Simon School
    - Santa Rosa Boarding School
    - Shonto Preparatory School
    - Standing Rock Community Grant School
    - Tohono O'Odham High School
    - Turtle Mountain High School
    - Two Eagle River School

27. As of the inspection dates, the unlabeled and outdated chemicals and other waste materials that had been generated by Respondent and observed by EPA inspectors at the schools listed in paragraph 26 above are "discarded material" and "solid waste," as defined in 40 C.F.R. § 261.2.

28. As of the inspection dates, Respondent had failed to determine whether the unlabeled and outdated chemicals and other waste materials that had been generated by Respondent and observed by EPA inspectors at the schools listed in paragraph 26

constitute hazardous waste, pursuant to 40 C.F.R. § 262.11 and 40 C.F.R. §§ 261.21 through 261.24.

29. Respondent therefore failed to make a hazardous waste determination for the unlabeled and outdated chemicals and other waste materials that had been generated by Respondent and observed by EPA inspectors at the schools listed in paragraph 26 in violation of 40 C.F.R. § 262.11.

COUNT 2 - Failure to Make Hazardous Waste Determinations for Spent Fluorescent Lamps

30. Complainant realleges each allegation contained in paragraphs 1 through 29 as if fully set forth herein.

31. As of the inspection dates, EPA inspectors observed spent fluorescent lamps that had been generated by Respondent and that were collected, accumulated or stored at the following schools:

    - Beatrice Rafferty School
    - Chemawa Indian School
    - Chinle Boarding School
    - Haskell Indian Nations University
    - Hopi Day School
    - Hopi Junior/Senior High School
    - Hotevilla Bacavi Community School
    - Indian Island School
    - Indian Township School
    - Kayenta Community School
    - Marty Indian School
    - Muckleshoot Tribal School
    - Quileute Tribal School
    - St. Francis School
    - San Simon School
    - Santa Rosa Boarding School
    - Santa Rosa Ranch School
    - Sherman Indian High School
    - Shonto Preparatory School
    - Tohono O'Odham High School
    - Two Eagle River School

32. The spent fluorescent lamps generated by Respondent and observed by EPA inspectors at the schools listed in paragraph 31 above are "discarded material" and "solid waste," as defined in 40 C.F.R. § 261.2 because they had been accumulated and/or stored at the schools before being disposed.

33. 40 C.F.R. § 262.11 requires a person who generates a solid waste as defined in 40 C.F.R. § 261.2 to determine if the waste is a hazardous waste.

34. As of the inspection dates, Respondent failed to determine whether the spent fluorescent lamps generated by Respondent and observed by EPA inspectors at the schools listed in paragraph 31 constitute hazardous waste in violation of 40 C.F.R. § 262.11.

COUNT 3 - Failure to Comply with Conditionally Exempt Small Quantity Generator Requirements, the Small Quantity Generator Requirements, or the Universal Waste Requirements for Spent Fluorescent Lamps

35. Complainant realleges each allegation contained in paragraphs 1 through 34 as if fully set forth herein.

36. Pursuant to 40 C.F.R. § 273.9, a "lamp" is defined as the bulb or tube portion of an electric lighting device, and includes fluorescent lamps. 40 C.F.R. § 273.9 goes on to define "universal waste" to include a "lamp" that is "hazardous" because it exhibits one or more of the characteristics identified in 40 C.F.R. § 261 and is discarded. 40 C.F.R. § 273.9 defines a "universal waste handler" to include a generator of universal waste. 40 C.F.R. § 273.9 defines a "generator" as any person by site whose acts or process produces hazardous waste identified or listed in 40 C.F.R. § 261. Finally, 40 C.F.R. § 273.9 defines a "small quantity handler of universal waste" as a universal waste handler who does not accumulate 5,000 kg or more of universal waste at any time.

37. A solid waste is a "hazardous waste" if, subject to certain inapplicable exclusions, it exhibits any of the characteristics of hazardous waste found in 40 C.F.R. §§ 261.20 through 261.24. The definition of "generator" for the purposes of hazardous waste found in 40 C.F.R. § 260.10 is identical to the definition found in the universal waste standards—i.e., a person whose acts or process produces hazardous waste identified or listed in 40 C.F.R. § 261.

38. As of the inspection dates, the spent fluorescent lamps observed by EPA inspectors at the schools listed in paragraph 31 were discarded solid waste and likely included lamps that contained mercury in amounts greater than identified in 40 C.F.R. § 261.24 and are therefore both hazardous waste and universal waste as defined in 40 C.F.R. § 261 and 40 C.F.R. § 273.9.

39. As of the inspection dates, Respondent's acts at the schools listed in paragraph 31 produced hazardous waste in the form of the spent fluorescent lamps observed by EPA's inspectors. Respondent is therefore a generator of hazardous waste and a universal waste handler within the meaning of 40 C.F.R. §§ 260.10 and 273.9.

40. As of the inspection dates, the schools listed in paragraph 31 had accumulated universal waste in quantities less than 5,000 kg. Respondent is therefore a small quantity handler of universal waste pursuant to 40 C.F.R. § 273.9.

41. Pursuant to 40 C.F.R. §§ 261.5, 261.9, 262.10(a), 273.1(b), and 273.8, a small quantity handler of universal waste must comply with one of three alternative sets of compliance

requirements for spent fluorescent lamps: (1) the conditionally exempt small quantity generator requirements found at 40 C.F.R. § 261.5; (2) the hazardous waste standards found in 40 C.F.R. §§ 262-266, 268, 270, and 124 and the notification requirements of section 3010 of RCRA (42 U.S.C. § 6930); or (3), the universal waste standards found in 40 C.F. R. § 273. As described below, Respondent failed to comply with any of the three alternative compliance requirements with respect to its handling of spent fluorescent lamps at the schools listed in paragraph 31.

Respondent is Not a Conditionally Exempt Small Quantity Generator

42. Pursuant to 40 C.F.R. §§ 261.5, 273.1, and 273.8, a generator is conditionally exempt from full regulation under 40 C.F.R. §§ 262-266, 268, 270, and 124, and the notification requirements of section 3010 of RCRA, 42 U.S.C. § 6930, and need not comply with the requirements of § 273, provided that it: (1) generates 100 kilograms (kg) or less of non-acute hazardous waste in a calendar month and accumulates less than 1,000 kg of non-acute hazardous waste at any given time, (2) performs a waste determination required by 40 C.F.R. §§ 261.5(g)(1) and 262.11, and (3) either disposes of its hazardous waste in an onsite facility or ensures delivery to a proper off-site treatment, storage, or disposal facility of any hazardous waste as required by 40 C.F.R. § 261.5(g)(3). A generator meeting all these requirements is referred to as a "conditionally exempt small quantity generator" or "CESQG."

43. As alleged in paragraphs 30-34, Respondent failed to perform a waste determination for the spent fluorescent lamps observed by EPA inspectors at the schools listed in paragraph 31 as required by 40 C.F.R. §§ 261.5(g)(1) and 262.11.

44. Respondent's failure to make a waste determination for the spent fluorescent lamps observed by EPA inspectors at the schools listed in paragraph 31 precluded Respondent from utilizing the CESQG requirements found at 40 C.F.R. § 261.5 as a compliance option.

Respondent Did Not Meet the Hazardous Waste Standards

45. The hazardous waste management standards found in 40 C.F.R. §§ 262-266, and the notification requirements of Section 3010 of RCRA, 42 U.S.C. § 6930 include numerous requirements.

46. Among the requirements found in 40 C.F.R. §§ 262-266, a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator of EPA. 40 C.F.R. § 262.12.

47. As of the inspection dates, Respondent had not applied for or received an EPA identification number from the Administrator of EPA for the schools listed in paragraph 31.

48. Pursuant to 40 C.F.R. §§ 262.34(d)(4) and 262.34(a)(2), a hazardous waste generator must ensure that all hazardous waste is placed in containers or tanks with the date upon

which each period of accumulation begins clearly marked and visible on each container. In addition, pursuant to 40 C.F.R. §§ 262.34(d)(4) and 262.34(a)(3), a hazardous waste generator must ensure that while being accumulated on-site, each tank or container is labeled or marked clearly with the words "Hazardous Waste."

49. As of the inspection dates, Respondent had not placed all hazardous waste in containers or tanks with the date upon which each period of accumulation begins clearly marked and visible on each container, or labeled or marked clearly with the words "Hazardous Waste," with respect to the spent fluorescent bulbs observed by EPA inspectors at the schools listed in paragraph 31.

50. Pursuant to 40 C.F.R. § 262.34(d)(5)(iii), a hazardous waste generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities.

51. As of the inspection dates, Respondent had not ensured that all employees were thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities for the schools listed in paragraph 31.

52. Respondent's failure to apply for an EPA identification number, to place all hazardous waste in containers or tanks clearly marked with the date upon which each period of accumulation begins, and labeled with the words "Hazardous Waste," and to ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities, as required by 40 C.F.R. §§ 262.12, 262.34(d)(5)(iii), 262.34(d)(4), 262.34(a)(2), and 262.34(a)(3) means that Respondent did not meet the hazardous waste standards found in 40 C.F.R. §§ 262-266, 268, 270, and 124, and the notification requirements of section 3010 of RCRA (42 U.S.C. § 6930) with respect to the spent fluorescent lamps observed by EPA inspectors at the schools listed in paragraph 31.

Respondent Did Not Meet the Universal Waste Standards

53. Pursuant to 40 C.F.R. § 273.13(d)(1), small quantity handlers of universal waste must manage spent fluorescent lamps to prevent releases of any universal waste or a component of universal waste into the environment, ensuring that lamps are managed in closed, structurally sound containers, adequate to prevent breakage, that lack evidence of leakage or damage.

54. As of the inspection dates, the spent fluorescent lamps observed by EPA inspectors were accumulated at the schools listed in paragraph 31 in open containers, without containers, and in a manner not adequate to prevent breakage and the release of universal waste or a component of universal waste to the environment in violation of 40 C.F.R. § 273.13(d)(1).

55. Pursuant to 40 C.F.R. § 273.14(e), a small quantity handler of universal waste must label or mark each lamp or container with one of the following phrases: "Universal Waste-Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

56. As of the inspection dates, Respondent failed to properly label or mark each lamp or container with respect to the spent fluorescent lamps observed by EPA inspectors at the schools listed in paragraph 31 in violation of 40 C.F.R. § 273.14(e).

57. Pursuant to 40 C.F.R. § 273.15(c), a small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or was received. The regulation sets forth six methods of making such a demonstration: (1) placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became waste or was received; (2) marking or labeling each individual item of universal waste with the date it became a waste or was received; (3) maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received; (4) maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received; (5) placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or (6) any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or was received.

58. As of the inspection dates, Respondent failed to implement either of the six methods to demonstrate the length of time the spent fluorescent lamps observed by EPA inspectors at the schools listed in paragraph 31 had been accumulated, and this failure is a violation of 40 C.F.R. § 273.15(c).

59. Respondent's failure to manage the spent fluorescent lamps to prevent releases of any universal waste, to properly mark each lamp or container, and to demonstrate the length of time the spent fluorescent lamps accumulated at the schools listed in paragraph 31 means that Respondent failed to comply with the universal waste standards found in 40 C.F.R. § 273.

Respondent Failed to Satisfy Any of the Compliance Options for Handling Universal Waste Lamps

60. As described in paragraphs 35-59, with respect to the spent fluorescent lamps observed by EPA inspectors at the schools listed in paragraph 31, Respondent failed to meet any of the three compliance options for handling universal waste and is therefore in violation of the requirements for handling universal waste found in 40 C.F.R. § 261.5, 40 C.F.R. §§ 262-266, 268, 270, and 124 and the notification requirements of section 3010 of RCRA (42 U.S.C. § 6930), and 40 C.F.R. § 273.

COUNT 4 - Failure to Properly Clean Up a Spill of Spent Fluorescent Lamps

61. Complainant realleges each allegation contained in paragraphs 1 through 60 as if fully set forth herein.

62. As of the inspection dates, the fluorescent lamps observed by EPA at the schools listed in paragraph 31 were broken, spent fluorescent lamps that had not been cleaned up at the following facilities:

    - Haskell Indian Nations University
    - Marty Indian School
    - Santa Rosa Boarding School
    - St. Francis School

63. As stated in paragraph 38, the broken, spent fluorescent lamps were both hazardous waste and universal waste as defined in 40 C.F.R. § 261.24 and 40 C.F.R. § 273.9.

64. Respondent was required to respond to the spills of universal waste at the schools listed in paragraph 62 utilizing one of the following three compliance options: (1) the CESQG requirements found at 40 C.F.R. § 261.5; (2) the hazardous waste standards found in 40 C.F.R. §§ 262-266, 268, 270, and 124 and the notification requirements of section 3010 of RCRA (42 U.S.C. § 6930); or (3), the universal waste standards found in 40 C.F. R. § 273.

65. As alleged in paragraphs 30-34, Respondent's failure to make a waste determination for spent fluorescent lamps at the schools listed in paragraph 31 precluded Respondent from utilizing the CESQG requirements found at 40 C.F.R. § 261.5 as a compliance option, including any provisions in section 261.5 for responding to the spill of broken, spent fluorescent lamps at the schools listed in paragraph 62.

66. To comply with the hazardous waste standards found in 40 C.F.R. §§ 262-266, 268, 270, and 124 and the notification requirements of section 3010 of RCRA (42 U.S.C. § 6930) with respect to the spills of broken, spent fluorescent lamps, a generator must either: (1) transfer the spilled, broken fluorescent lamps to a container that is in good condition or manage the waste in some other way that complies with the requirements of § 265 as required by 40 C.F.R. §§ 262.34(a)(1)(i) and 265.171; or (2), if Respondent generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month, contain the flow of hazardous waste to the extent possible, and as soon as practicable, clean up the hazardous waste and any contaminated materials or soil as required by 40 C.F.R. § 262.34(d)(5).

67. As of the inspection dates, Respondent failed to transfer the broken, spent fluorescent lamps observed by EPA inspectors at the schools listed in paragraph 62 to a container in good condition or to manage the waste in some other way that complies with 40 C.F.R. § 265 as required by 40 C.F.R. §§ 262.34(a)(1)(i) and 265.171. Respondent also failed to contain the flow to the extent possible and to clean up the hazardous waste as soon as practical as required by 40 C.F.R. § 262.34(d)(5). Respondent therefore failed to comply with the hazardous waste standards for managing spills found in 40 C.F.R. §§ 262-266, 268, 270, and 124 and the notification requirements of section 3010 of RCRA (42 U.S.C. § 6930) with respect to the broken, spent fluorescent lamps observed by EPA inspectors at the schools listed in paragraph 62.

68. To comply with the universal waste standards found at 40 C.F.R. § 273, a small quantity handler of universal waste must immediately clean up and place in a structurally sound, closed container any lamp that shows evidence of breakage, leakage or damage that could cause the release of mercury or other hazardous constituents to the environment as required by 40 C.F.R. § 273.13(d)(2).

69. As of the inspection dates, Respondent failed to immediately clean up and place in a structurally sound, closed container spent fluorescent lamps that were broken or showed evidence of breakage, leakage, or damage that may have resulted in mercury vapor being released to the environment as required by 40 C.F.R. § 273.13(d)(2). Respondent therefore failed to comply with the universal waste standards found in 40 C.F.R. § 273 with respect to the broken, spent fluorescent lamps observed by EPA inspectors at the schools listed in paragraph 62.

70. As described in paragraphs 60-69, Respondent failed to meet any of the three options for responding to the spills of broken, spent fluorescent lamps observed by EPA inspectors at the schools listed in paragraph 62 and is therefore in violation of the requirements for properly handling a spill of broken, spent fluorescent lamps found in 40 C.F.R. § 261.5, 40 C.F.R. §§ 262-266, 268, 270, and 124 and the notification requirements of section 3010 of RCRA (42 U.S.C. § 6930), and 40 C.F.R. § 273.

COUNT 5 - Off-Site Transport of Universal Waste

71. Complainant realleges each allegation contained in paragraphs 1 through 70 as if fully set forth herein.

72. At an inspection conducted by EPA at the Chemawa Indian School on June 6, 2007, EPA inspectors were told by employees that the school had transferred its spent fluorescent lamps and other hazardous material to at least one disposal facility not registered as a universal waste handler in the state of Oregon.

73. Respondent was required to arrange for the transportation and disposal of its spent fluorescent lamps at its schools utilizing one of the following three options: (1) the CESQG requirements found at 40 C.F.R. § 261.5; (2) the hazardous waste standards found in 40 C.F.R. §§ 262-266, 268, 270, and 124 and the notification requirements of section 3010 of RCRA (42 U.S.C. § 6930); or (3), the universal waste standards found in 40 C.F.R. § 273.

74. As alleged in paragraphs 30-34, Respondent's failure to make a waste determination for spent fluorescent lamps at the schools listed in paragraph 31 precluded Respondent from utilizing the CESQG requirements found at 40 C.F.R. § 261.5 as a compliance option, including any provisions in § 261.5 for transporting and disposing of spent fluorescent lamps.

75. To comply with the hazardous waste standards found in 40 C.F.R. §§ 262-266, 268, 270, and 124 and the notification requirements of section 3010 of RCRA (42 U.S.C. § 6930) with respect to the transfer and disposal of spent fluorescent lamps, a generator must

prepare an appropriate manifest designating a properly permitted facility that will handle the waste in accordance with 40 C.F.R. § 262.20.

76. As of the inspection dates, manifests for the transfer and disposal of spent fluorescent lamps as required by 40 C.F.R § 262.20 had not been prepared at the Chemawa Indian School. Respondent therefore failed to comply with the hazardous waste standards found in 40 C.F.R. §§ 262-266, 268, 270, and 124 and the notification requirements of section 3010 of RCRA (42 U.S.C. § 6930) with respect to the transfer and disposal of spent fluorescent lamps at Chemawa Indian School.

77. To comply with the universal waste standard in 40 C.F.R. § 273, a small quantity handler of universal waste must not send or take universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination as required by 40 C.F.R. §§ 273.18 and 273.55.

78. As of the inspection dates, Respondent transferred its spent fluorescent lamps and other hazardous material to at least one disposal facility not registered as a universal waste handler in the state of Oregon as required by OAR-340-100-0002 in violation of 40 C.F.R. §§ 273.18 and 273.55. Respondent therefore failed to comply with the universal waste standards found in 40 C.F.R. § 273 with respect to the transfer and disposal of spent fluorescent lamps at Chemawa Indian School.

79. As described in paragraphs 71 through 78, Respondent failed to meet any of the three options for transporting and disposing of spent fluorescent bulbs at Chemawa Indian School and is therefore in violation of the requirements for properly transporting and disposing of spent fluorescent lamps found in 40 C.F.R. § 261.5, 40 C.F.R. §§ 262-266, 268, 270, and 124 and the notification requirements of section 3010 of RCRA (42 U.S.C. § 6930), and 40 C.F.R. § 273.

COUNT 6 - Failure to Properly Store Used Oil

80. Complainant realleges each allegation contained in paragraphs 1 through 79 as if fully set forth herein.

81. Pursuant to 40 C.F.R. § 279.22(c)(1), containers used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil."

82. As of the dates of inspections, EPA inspectors observed used oil stored by Respondent in containers without labeling or marking clearly with the words "Used Oil" at the following schools:

- Chemawa Indian School
- Haskell Indian Nations University
- Hopi Day School
- Hopi Junior/Senior High School
- Indian Township School
- Kayenta Community School
- Marty Indian School

- Muckleshoot Tribal School
- Northern Cheyenne Tribal School
- St. Francis School
- Sherman Indian High School
- Shonto Preparatory School

83. Respondent failed to label or mark clearly with the words "Used Oil" containers used to store oil at the schools listed in paragraph 82 in violation of 40 C.F.R. § 279.22(c)(1).

84. Pursuant to 40 C.F.R. § 279.22(c)(2), fill pipes used to transfer used oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words "Used Oil."

85. As of the inspection dates, Respondent stored used oil without labeling or marking fill pipes used to transfer used oil into underground storage tanks clearly with the words "Used Oil" at Tohono O'Odham High School.

86. Respondent failed to label or clearly mark fill pipes used to transfer used oil into underground storage tanks with the words "Used Oil" at the Tohono O'Odham High School in violation of 40 C.F.R. § 279.22(c)(2).

COUNT 7 - Failure to Properly Respond to Releases of Used Oil

87. Complainant realleges each allegation contained in paragraphs 1 through 86 as if fully set forth herein.

88. Pursuant to 40 C.F.R. § 279.22(d), upon detection of a release of used oil to the environment, a generator must: (1) stop the release; (2) contain the released used oil; (3) clean up and properly manage the released used oil and other materials; and (4) if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

89. As of the inspection dates, EPA inspectors observed used oil and unknown wastes leaking from containers at Haskell Indian Nations University.

90. As of the inspection date, Respondent had not stopped releases from containers of used oil and unknown wastes and had failed to clean up, and manage properly, the released used oil and unknown wastes that were observed by EPA inspectors at Haskell Indian Nations University.

91. Respondent failed to stop releases from containers of used oil and failed to clean up, and manage properly, the released used oil and unknown wastes at the Haskell Indian Nations University in violation of 40 C.F.R. § 279.22(d).

B. Clean Air Act

Findings of Fact and Conclusions of Law

92. Complainant realleges each allegation contained in paragraphs 1 through 91 as if fully set forth herein.

93. Respondent is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

94. Respondent owns and/or operates the Sherman Indian High School.

95. On or about May 1, 2006, authorized representatives of EPA inspected Respondent's facility known as Sherman Indian High School.

96. Section 608 of the CAA, 42 U.S.C. § 7671(g), requires the Administrator of EPA to promulgate regulations establishing standards and requirements regarding the use and disposal of "Class I" and "Class II" ozone-depleting substances.

97. On May 14, 1993, in accordance with Section 608 of the CAA, 42 U.S.C. § 7671(g), EPA promulgated regulations applicable to Recycling and Emissions Reduction, 40 C.F.R. § 82 Subpart F (the Subpart F regulations).

98. Pursuant to 40 C.F.R. § 82.150(b), the Subpart F regulations apply to any "person" servicing, maintaining or repairing "appliances," as those terms are defined at 40 C.F.R. § 82.152.

99. DOI is a "person" servicing, maintaining or repairing "appliances" as those terms are defined at 40 C.F.R. § 82.152.

100. "Appliance" is defined in 40 C.F.R § 85.152 as, "any device which contains and uses a Class I or Class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller or freezer."

101. "Refrigerant" is defined in 40 C.F.R. § 82.152 as, "any substance consisting in part or whole of a Class I or Class II ozone-depleting substance that is used for heat transfer purposes and provides a cooling effect." Class I and Class II ozone-depleting substances are listed in section 602 of the CAA, 42 U.S.C. § 7671a.

COUNT 8 – Failure to Keep Records Documenting Service of an Appliance Containing Ozone-Depleting Substances

102. Complainant realleges each allegation contained in paragraphs 1 through 101 as if fully set forth herein.

103. Pursuant to 40 C.F.R. § 82.166(k) of the Subpart F regulations, owners and operators of appliances normally containing 50 or more pounds of refrigerant must keep servicing records documenting the date and type of service, as well as the quantity of added refrigerant.

104. On or about May 1, 2006, authorized representatives of EPA observed that two air conditioning units in the Sherman Indian High School auditorium appeared to contain 50 pounds or more of a Class I or Class II refrigerant and were therefore "appliances" within the meaning of 40 C.F.R. § 82.152.

105. At the time of the inspection, a maintenance employee at Sherman Indian High School stated that about a year earlier, the full charge of refrigerant was lost from one of the air conditioning units in the auditorium. The school hired a contractor to fix the unit and replace the 120 pounds of lost refrigerant.

106. As of the date of inspection, Respondent had no service records documenting the date and type of service or the quantity of refrigerant added during the service work described in paragraph 105. As a result, Respondent failed to keep servicing records in violation of 40 C.F.R. § 82.166(k).

C. Asbestos Hazard Emergency Response Act

Findings of Fact and Conclusions of Law

107. Complainant realleges each allegation contained in paragraphs 1 through 106 as if fully set forth herein.

108. Complainant has determined that Respondent has violated certain requirements of TSCA set forth at 15 U.S.C. §§ 2641-2656 and the federal regulations implementing AHERA set forth at 40 C.F.R. § 763, Subpart E.

109. Respondent is a department, agency, or instrumentality of the executive, legislative, or judicial branches of the federal government.

110. Respondent is a "Local Education Agency" ("LEA") as that term is defined under Section 202(7) of TSCA, 15 U.S.C. § 2642(7), and 40 C.F.R. § 763.83.

111. Each facility, as described in Appendix C, is a "school" as that term is defined at Section 202(12) of TSCA, 15 U.S.C. § 2642(12), and 40 C.F.R. § 763.83.

112. Each facility consists of at least one or more separate "school building" as that term is defined at Section 202(13) of TSCA, 15 U.S.C. § 2642(13), and 40 C.F.R. § 763.83.

113. At all times relevant to this Consent Agreement and Final Order, Respondent was the LEA for each facility.

114. Between October 1, 2004 and June 30, 2008, pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, authorized representatives of EPA conducted inspections of the schools to determine compliance with AHERA.

COUNT 9 - Failure to Inspect Each School Building to Identify All Locations of Friable and Nonfriable Asbestos Containing Building Material

115. Complainant realleges each allegation contained in paragraphs 1 through 114 as if fully set forth herein.

116. Pursuant to 40 C.F.R. § 763.85(a), each LEA must have each school building properly inspected by an accredited inspector to identify all locations of friable and nonfriable Asbestos Containing Building Material ("ACBM").

117. Pursuant to 40 C.F.R. § 763.93(d), each LEA must "maintain and update its management plan to keep it current with...inspection...activities."

118. During the dates of inspections, the EPA inspector discovered that Respondent had failed to inspect each school building to identify all locations of friable and nonfriable ACBM and/or failed to update the management plan to reflect the inspection, at the following schools:

- Coeur d'Alene Tribal School
- Crow Creek Reservation High School
- Little Wound School
- Northern Cheyenne Tribal School
- Ojo Encino Day School
- Pine Ridge School
- Porcupine School
- T'siya Elementary/Middle School

119. Respondent failed to inspect each school building to identify all locations of friable and nonfriable ACBM and/or to update the management plan to reflect the inspection at the schools listed in paragraph 118 in violation of 40 C.F.R. § 763.85(a) and 763.93(d).

COUNT 10 - Failure to Develop and Submit an Asbestos Management Plan

120. Complainant realleges each allegation contained in paragraphs 1 through 119 as if fully set forth herein.

121. Pursuant to 40 C.F.R. § 763.93(a), each LEA must develop and submit an asbestos management plan for each school, including all buildings they lease, own, or otherwise use as school buildings.

122. During the dates of inspections, the EPA inspectors discovered that Respondent failed to develop and submit an asbestos management plan at the following schools:

- Blackwater Community School
- Coeur d'Alene Tribal School
- Eufaula Dormitory
- Northern Cheyenne Tribal School

123. Respondent failed to develop and submit an asbestos management plan for the schools listed in paragraph 122 in violation of 40 C.F.R. § 763.93(a).

COUNT 11 - Failure to Update Management Plans

124. Complainant realleges each allegation contained in paragraphs 1 through 123 as if fully set forth herein.

125. Pursuant to 40 C.F.R. § 763.93(d), each LEA must maintain and update its asbestos management plan to keep it current with ongoing operations and maintenance, periodic surveillance, inspection, re-inspection, and response action activities.

126. During the dates of inspections, the EPA inspectors discovered that Respondent failed to update the asbestos management plans at the following schools:

- Chemawa Indian School
- Choctaw Central Middle School
- Choctaw Central High School
- Nenahnezah Community School

127. Respondent failed to update the management plans for the schools listed in paragraph 126 in violation of 40 C.F.R. § 763.93(d).

COUNT 12 - Failure to Provide Annual Written Notification to Parent, Teacher, and Employee Organizations of the Availability of the Management Plan

128. Complainant realleges each allegation contained in paragraphs 1 through 127 as if fully set forth herein.

129. Pursuant to 40 C.F.R. § 763.93(g)(4), at least once each school year, each LEA must provide written notification to parent, teacher, and employee organizations of the availability of management plans and must include in the management plan a description of the steps taken for such notification, and a dated copy of the notification.

130. During the dates of inspections, the EPA inspectors discovered that Respondent failed to provide annual written notification to parent, teacher, and employee organizations of the availability of the management plan at the following schools:

- American Horse School
- Bug-O-Nay-Ge-Shig School
- Cheyenne Eagle-Butte School
- Chitimacha Day School
- Choctaw Central Middle School
- Choctaw Central High School
- Ch'ooshgai Community School
- Crazy Horse School
- Crow Creek Reservation High School
- Dunseith Day School

- Gila Crossing Community School
- Jicarilla Dormitory/School
- Jones Academy
- Laguna Elementary School
- Laguna Middle School
- Little Wound School
- Lower Brule Day School
- Menominee Tribal School
- Northern Cheyenne Tribal School
- Pine Ridge School
- Porcupine School
- Quileute Tribal School
- San Felipe Elementary School
- San Ildelfonso Day School
- Sicangu Owaye Oti (Rosebud) Dormitory
- Sky City Community School
- Taos Day School
- Te Tsu Geh Oweenge Day School
- T'siya Elementary/Middle School
- Wounded Knee School
- Yakama Nation Tribal School

131. Respondent failed to provide annual written notification to parent, teacher, and employee organizations of the availability of the management plan for the schools listed in paragraph 130 in violation of 40 C.F.R. § 763.93(g)(4).

COUNT 13 - Failure to Provide Annual Notification to Workers and Building Occupants or Legal Guardians

132. Complainant realleges each allegation contained in paragraphs 1 through 131 as if fully set forth herein.

133. Pursuant to 40 C.F.R. § 763.84(c), each LEA must ensure that workers and building occupants, or their legal guardians, are informed at least once every school year about inspections, response actions, and post-response action activities, including periodic reinspection and surveillance activities that are planned or in progress.

134. During the dates of inspections, the EPA inspector discovered that Respondent failed to provide annual notification at the following schools:

- American Horse School
- Cheyenne Eagle-Butte School
- Crazy Horse School
- Crow Creek Reservation High School
- Dunseith Day School
- Laguna Elementary School
- Little Wound School

- Lower Brule Day School
- Northern Cheyenne Tribal School
- Pine Ridge School
- Porcupine School
- San Ildelfonso Day School
- Sky City Community School
- Te Tsu Geh Oweenge Day School
- Wounded Knee School

135. Respondent failed to provide annual notification to workers and building occupants, or their legal guardians for the schools listed in paragraph 134 in violation of 40 C.F.R. § 763.84(c).

COUNT 14 - Failure to Designate a Person to Ensure that AHERA Requirements are Met

136. Complainant realleges each allegation contained in paragraphs 1 through 135 as if fully set forth herein.

137. Pursuant to 40 C.F.R. § 763.84(g)(1), each LEA must designate a person to ensure that AHERA requirements are properly implemented.

138. Pursuant to 40 C.F.R. § 763.93(e)(4), each LEA must include in the management plan the name, address, and telephone number of the person designated under 40 C.F.R. § 763.84.

139. During the dates of inspections, the EPA inspector discovered that Respondent failed to designate a person to ensure that AHERA requirements are met and/or failed to include that person's name, address, and telephone number in the management plan, at the following schools:

- American Horse School
- Chitimacha Day School
- Ch'ooshgai Community School
- Crazy Horse School
- Jicarilla Dormitory/School
- Jones Academy
- Laguna Middle School
- Menominee Tribal School
- Nenahnezah Community School
- Northern Cheyenne Tribal School
- San Felipe Elementary School
- San Ildelfonso Day School
- Sanostee Day School
- Sky City Community School
- St. Francis School
- Taos Day School
- Te Tsu Geh Oweenge Day School

- T'siya Elementary/Middle School

140. Respondent failed to designate a person to ensure that AHERA requirements are met and/or to include that person's name, address, and telephone number in the management plan at the schools listed in paragraph 139 in violation of 40 C.F.R. § 763.84(g)(1) and 763.93(e)(4).

COUNT 15 - Failure to Ensure that the Designated Person Receives Adequate Training

141. Complainant realleges each allegation contained in paragraphs 1 through 140 as if fully set forth herein.

142. Pursuant to 40 C.F.R. § 763.84(g)(2), each LEA must ensure that the designated person receives adequate training to perform duties assigned.

143. Pursuant to 40 C.F.R. § 763.93(e)(4), each LEA must include in the management plan the training information of the person designated under 40 C.F.R. § 763.84.

144. During the dates of the inspections, the EPA inspectors discovered that Respondent failed to ensure that the designated person received adequate training at the following schools and/or failed to include that person's training information in the management plan:

- American Horse School
- Dunseith Day School
- Little Wound School
- Porcupine School

145. Respondent failed to ensure that the designated person received adequate training and/or to include that person's training information in the management plan for the schools listed in paragraph 144 in violation of 40 C.F.R. §§ 763.84(g)(2) and 763.93(e)(4).

COUNT 16 - Failure to Reinspect Once Every Three Years

146. Complainant realleges each allegation contained in paragraphs 1 through 145 as if fully set forth herein.

147. Pursuant to 40 C.F.R. § 763.85(b)(1), at least once every three years after a management plan is in effect, each LEA must conduct a reinspection of all friable and nonfriable known or assumed ACBM in each school building that they lease, own, or otherwise use as a school building.

148. Pursuant to 40 C.F.R. § 763.93(d), each LEA must "maintain and update its management plan to keep it current with...reinspection...activities."

149. During the dates of inspections, the EPA inspectors discovered that Respondent failed to conduct the three year reinspection and/or failed to update the management plan to reflect the reinspection at the following schools:

- American Horse School
- Ch'ooshgai Community School
- Crazy Horse School
- Dzilth-O-Dith-Hle Community School
- Gila Crossing Community School
- Jicarilla Dormitory/School
- Keams Canyon Elementary School
- Laguna Elementary School
- Little Wound School
- Lower Brule Day School
- Pine Ridge School
- Porcupine School
- Quileute Tribal School
- San Felipe Elementary School
- San Ildelfonso Day School
- Sky City Community School
- St. Francis School
- Standing Rock Community Grant School
- Taos Day School
- Te Tsu Geh Oweenge Day School

150. Respondent failed to conduct the three year reinspections and/or to update the management plan to reflect the reinspection for the schools listed in paragraph 149 in violation of 40 C.F.R. §§ 763.85(b)(1) and 763.93(d).

COUNT 17 - Failure to Properly Maintain Asbestos Containing Thermal Systems

151. Complainant realleges each allegation contained in paragraphs 1 through 150 as if fully set forth herein.

152. Pursuant to 40 C.F.R. § 763.90(b), if damaged or significantly damaged thermal system insulation Asbestos Containing Material ("ACM") is present in a building, the LEA must repair or remove the damaged material and maintain all thermal system insulation ACM and its covering in an intact state and undamaged condition.

153. During the dates of inspections, the EPA inspectors discovered that Respondent failed to properly maintain asbestos containing thermal systems at the following schools:

- Northern Cheyenne Tribal School
- Ojibwa Indian School
- Standing Rock Community Grant School

154. Respondent failed to properly maintain asbestos containing thermal systems for the

schools listed in paragraph 153 in violation of 40 C.F.R. § 763.90(b).

COUNT 18 - Failure to Properly Respond to Damaged Friable ACM

155. Complainant realleges each allegation contained in paragraphs 1 through 154 as if fully set forth herein.

156. Pursuant to 40 C.F.R. § 763.90(c) and (d), each LEA must respond to damaged friable ACM by selecting from among listed response actions to protect human health and the environment.

157. During the dates of inspections, the EPA inspectors discovered that Respondent had failed to properly respond to damaged friable ACM at Northern Cheyenne Tribal School.

158. Respondent failed to properly respond to damaged friable ACM at Northern Cheyenne Tribal School in violation of 40 C.F.R. § 763.90(c) and (d).

COUNT 19 - Failure to Ensure Proper Asbestos Awareness Training for All Custodial and Maintenance Staff

159. Complainant realleges each allegation contained in paragraphs 1 through 158 as if fully set forth herein.

160. Pursuant to 40 C.F.R. § 763.92(a)(1) and (2) all custodial and maintenance staff must receive at least two hours of asbestos awareness training and any staff who conduct any activities that will result in the disturbance of ACBM must receive 14 hours of additional training.

161. Pursuant to 40 C.F.R. § 763.94(c), for each person required to be trained under 40 C.F.R. § 763.92(a), the LEA must maintain a record of the person's name and job title, the date that training was completed by that person, the location of the training, and the number of hours completed in such training.

162. During the dates of inspections, the EPA inspectors discovered that Respondent failed to ensure proper asbestos awareness training for all custodial and maintenance staff and/or failed to retain records for asbestos awareness training given to maintenance and custodial staff at the following schools:

- Bug-O-Nay-Ge-Shig School
- Choctaw Central Middle School
- Choctaw Central High School
- Ch'ooshgai Community School
- Circle of Life Survival School
- Dunseith Day School
- Dzilth-O-Dith-Hle Community School
- Gila Crossing Community School
- Jicarilla Dormitory

- Jones Academy
- Little Wound School
- Northern Cheyenne Tribal School
- Oneida Tribal School
- Pueblo Pintado Community School
- Quileute Tribal School
- San Felipe Elementary School
- San Ildelfonso Day School
- Sanostee Day School
- Taos Day School
- Te Tsu Geh Oweenge Day School
- Tohaali Community School

163. Respondent failed to ensure proper asbestos awareness training for all custodial and maintenance staff and/or to maintain records of such training at the schools listed in paragraph 162 in violation of 40 C.F.R. §§ 763.92(a) and 763.94(c).

COUNT 20 - Failure to Maintain Required Abatement Records

164. Complainant realleges each allegation contained in paragraphs 1 through 163 as if fully set forth herein.

165. Pursuant to 40 C.F.R. § 763.94(a), for each abatement action performed, the LEA must ensure that records are retained for three years after the next reinspection required under 40 C.F.R. § 763.85(b)(1), or for an equivalent period.

166. During the dates of inspections, the EPA inspectors discovered that Respondent had failed to maintain required abatement records at the following schools:

- Ahafachfee Day School
- Northern Cheyenne Tribal School

167. Respondent failed to maintain required abatement records for the schools listed in paragraph 166 in violation of 40 C.F.R. § 763.94(a).

COUNT 21 - Failure to Maintain Records of Preventative Measures and Response Actions

168. Complainant realleges each allegation contained in paragraphs 1 through 167 as if fully set forth herein.

169. Pursuant to 40 C.F.R. § 763.94(b), the LEA must maintain records for each preventive measure and response action taken for friable and nonfriable ACBM and friable and nonfriable suspected ACBM assumed to be ACM.

170. During the dates of inspections, the EPA inspectors discovered that Respondent failed to maintain records of preventative measures and response actions at the following schools:

- Northern Cheyenne Tribal School
- Quileute Tribal School

171. Respondent failed to maintain records of preventative measures and response actions at the schools in paragraph 170 in violation of 40 C.F.R. § 763.94(b).

COUNT 22 - Failure to Attach Asbestos Warning Labels

172. Complainant realleges each allegation contained in paragraphs 1 through 171 as if fully set forth herein.

173. Pursuant to 40 C.F.R. § 763.95(a), the LEA must attach a warning label immediately adjacent to any friable and nonfriable ACBM and suspected ACBM assumed to be ACM located in routine maintenance areas at each school building.

174. During the date of inspection, the EPA inspector discovered that Respondent failed to attach asbestos warning labels at Northern Cheyenne Tribal School, as required by the regulations.

175. Respondent failed to attach asbestos warning labels at Northern Cheyenne Tribal School in violation of 40 C.F.R. § 763.95(a).

COUNT 23 - Failure to Conduct Periodic Surveillance

176. Complainant realleges each allegation contained in paragraphs 1 through 175 as if fully set forth herein.

177. Pursuant to 40 C.F.R. § 763.92(b), the LEA must conduct and record periodic surveillance in each building that contains ACBM or is assumed to contain ACBM, at least every 6 months.

178. Pursuant to 40 C.F.R. § 763.93(d), each LEA must "maintain and update its management plan to keep it current with... periodic surveillance ...activities."

179. Pursuant to 40 C.F.R. § 763.94(a) and (d), each LEA must maintain in a centralized location records for each time that periodic surveillance is performed.

180. During the dates of inspections, the EPA inspectors discovered that Respondent failed to conduct periodic surveillance every 6 months and/or failed to update the management plan to reflect the periodic surveillance and/or failed to maintain records of the periodic surveillance at the following schools:

- American Horse School
- Bug-O-Nay-Ge-Shig School
- Cheyenne Eagle-Butte School
- Choctaw Central Middle School
- Choctaw Central High School
- Ch'ooshgai Community School

- Circle of Life Survival School
- Crazy Horse School
- Jicarilla Dormitory/School
- Jones Academy
- Laguna Elementary School
- Laguna Middle School
- Little Wound School
- Menominee Tribal School
- Northern Cheyenne Tribal School
- Ojibwa Indian School
- Pine Ridge School
- Porcupine School
- Riverside Indian School
- San Felipe Elementary School
- San Ildelfonso Day School
- Sicangu Owaye Oti (Rosebud) Dormitory
- Sky City Community School
- St. Francis School
- Standing Rock Community Grant School
- Taos Day School
- Te Tsu Geh Oweenge Day School
- Wounded Knee School

181. Respondent failed to conduct periodic surveillance every 6 months and/or to update the management plan to reflect the periodic surveillance and/or to maintain records of the periodic surveillance at the schools in paragraph 180 in violation of 40 C.F.R. §§ 763.92(b), 763.93(d) and 763.94(a) and (d).

D. Safe Drinking Water Act

Findings of Fact and Conclusions of Law

182. Complainant realleges each allegation contained in paragraphs 1 through 181 as if fully set forth herein.

183. Respondent is a "federal agency" as that term is defined in Section 1401 of the SDWA, 42 U.S.C. § 300f (11).

184. Respondent is a "person" within the meaning of 40 C.F.R. § 141.2 for purposes of federal enforcement.

185. Respondent owns and/or operates those public water systems ("PWSs" or "Systems") listed in Appendix D.

186. Each of the Systems serves an average of at least 25 individuals daily at least 60 days a year and is therefore a "public water system" within the meaning of section 1401(4) of

the SDWA, 42 U.S.C. § 300f(4), and is either a "community water system" or "non-transient non-community water system" within the meaning of 40 C.F.R. § 141.2.

187. Respondent owns and/or operates the Systems and therefore is a "supplier of water" within the meaning of Section 1401(5) of the Act, 42 U.S.C. § 300f (5), and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of part B of the SDWA, 42 U.S.C. § 300g et seq., and its implementing regulations, 40 C.F.R. § 141.

188. EPA reviewed data files for public water systems between FY 2004-2008 and found the following violations:

COUNT 24 – Failure to Conduct Coliform Routine Sampling

189. Complainant realleges each allegation contained in paragraphs 1 through 188 as if fully set forth herein.

190. Pursuant to 40 C.F.R. § 141.21(a), PWSs must collect total coliform samples at sites that are representative of water throughout the distribution system according to a written sample siting plan.

191. Respondent failed to perform bacteriological monitoring for total coliform at the Crazy Horse School System during the period March 1-31, 2005, in violation of 40 C.F.R. § 141.21(a).

192. Respondent failed to perform bacteriological monitoring for total coliform at the Wounded Knee District School System during the period September 1-30, 2005, in violation of 40 C.F.R. § 141.21(a).

193. Respondent failed to perform bacteriological monitoring for total coliform at the Chemawa Indian School System during the periods February 1-28, 2005; March 1-31, 2005; April 1-30, 2005; May 1-31, 2005; July 1-31, 2005; November 1-30, 2005; and October 1-31, 2006, in violation of 40 C.F.R. § 141.21(a).

194. Respondent failed to perform bacteriological monitoring for total coliform at the Indian School District #512 System during the periods March 1-31, 2005; August 1-31, 2005; September 1-30, 2007; and November 1-30, 2007, in violation of 40 C.F.R. § 141.21(a).

195. Respondent failed to perform bacteriological monitoring for total coliform at the BIA Keams Canyon during the periods February 1-28, 2005; March 1-31, 2005; April 1-30, 2005; May 1-31, 2005; June 1-30, 2005; July 1-31, 2005; August 1-31, 2005; September 1-30, 2005; November 1-30, 2005; December 1-31, 2005; March 1-31, 2006; and May 1-31, 2008, in violation of 40 C.F.R. § 141.21(a).

196. Respondent failed to perform bacteriological monitoring for total coliform at the Hopi High School System during the periods March 1-31, 2005; October 1-31, 2005; March 1-31, 2006; and April 1-30, 2006, in violation of 40 CFR § 141.21(a).

197. Respondent failed to perform bacteriological monitoring for total coliform at the Hotevilla Bacavi Community School System during the periods July 1-31, 2005; August 1-31, 2005; September 1-30, 2005; May 1-31, 2006; June 1-30, 2006; December 1-31, 2007; and January 1-31, 2008, in violation of 40 C.F.R. § 141.21(a).

198. Respondent failed to perform bacteriological monitoring for total coliform at the Second Mesa Day School System during the periods July 1-30, 2007 and May 1-31, 2008, in violation of 40 C.F.R. § 141.21(a).

199. Respondent failed to perform bacteriological monitoring for total coliform at the American Horse School System during the periods February 1-28, 2005 and December 1-31, 2007, in violation of 40 C.F.R. § 141.21(a).

200. Respondent failed to perform bacteriological monitoring for total coliform at the Bug O-Nay-Ge-Shig School System during the period November 1-30, 2006, in violation of 40 C.F.R. § 141.21(a).

201. Respondent failed to perform bacteriological monitoring for total coliform at the Borrego Pass School System during the period November 1-30, 2006, in violation of 40 C.F.R. § 141.21(a).

202. Respondent failed to perform bacteriological monitoring for total coliform at the Cibecue School System during the periods July 1-31, 2005; September 1-30, 2005; December 1-31, 2005; May 1-31, 2006; June 1-30, 2006; July 1-31, 2006; December 1-31, 2006; January 1-31, 2007; and May 1-31, 2008, in violation of 40 C.F.R. § 141.21(a).

203. Respondent failed to perform bacteriological monitoring for total coliform at the St. Stephens Indian School System during the period January 1-31, 2006, in violation of 40 C.F.R. § 141.21(a).

204. Respondent failed to perform bacteriological monitoring for total coliform at the BIA JFK School System during the periods July 1-31, 2005; November 1-30, 2005; August 1-31, 2006; December 1-31, 2007; January 1-31, 2008; April 1-30, 2008; and June 1-30, 2008, in violation of 40 C.F.R. § 141.21(a).

205. Respondent failed to perform bacteriological monitoring for total coliform at the BIA T. Roosevelt School System during the periods July 1-31, 2005; November 1-30, 2005; October 1-31, 2007; December 1-31, 2007; January 1-31, 2008; April 1-30, 2008; and June 1-30, 2008, in violation of 40 C.F.R. § 141.21(a).

COUNT 25 - Failure to Conduct Coliform Repeat Monitoring

206. Complainant realleges each allegation contained in paragraphs 1 through 205 as if fully set forth herein.

207. Pursuant to 40 C.F.R. § 141.21(b), public water systems must collect a set of four repeat samples within 24 hours of being notified of a total coliform positive routine sample.

208. Respondent failed to collect a set of four repeat samples at the Hotevilla/Bacavi Community School System during the period August 2007, in violation of 40 C.F.R. § 141.21(b).

209. Respondent failed to collect a set of four repeat samples at the Cibeque Community School System during the period May 2005 and August 2005, in violation of 40 C.F.R. § 141.21(b).

COUNT 26 - Failure to Deliver Consumer Confidence Rule Report

210. Complainant realleges each allegation contained in paragraphs 1 through 209 as if fully set forth herein.

211. Pursuant to 40 C.F.R. § 141, Subpart O, each community water system must provide an annual report to each customer. The report must contain information concerning the quality of water delivered by the system and characterize the risks, if any, from exposure to contaminants detected in the drinking water in an accurate and understandable manner.

212. Respondent failed to deliver the required report to the customers of the Pueblo Pintado Community School System during the periods July 1, 2005 to March 16, 2007 and July 1, 2006 to March 16, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

213. Respondent failed to deliver the required report to customers of the Ojo Encino Building School System during the periods of July 1, 2005 to March 16, 2007 and July 1, 2006 to March 16, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

214. Respondent failed to deliver the required report to customers of the Crazy Horse School System during the period of July 1, 2007 to October 18, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

215. Respondent failed to deliver the required report to customers of the Wounded Knee District School System during the period beginning July 1, 2007, in violation of 40 C.F.R. §§ 141.152 and 144.155.

216. Respondent failed to deliver the required report to customers of the Chemawa Indian School System during the period of July 1, 2007 to August 27, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

217. Respondent failed to deliver the required report to customers of the Indian School District #512 System during the periods of July 1, 2005 to July 11, 2007 and July 1, 2006 to July 11, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

218. Respondent failed to deliver the required report to customers of the BIA Keams Canyon System during the period of July 1, 2005 to September 11, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

219. Respondent failed to deliver the required report to customers of the Hopi High School System during the period of July 1, 2005 to July 17, 2007, in violation of 40 C.F.R. §§ 141.152 and 41.155.

220. Respondent failed to deliver the required report to customers of the Hotevilla/Bacavi Community School System during the periods beginning July 1, 2005, July 1, 2006, and July 1, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

221. Respondent failed to deliver the required report to customers of the American Horse School System during the period of July 1, 2007 to December 6, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

222. Respondent failed to deliver the required report to customers of the Chichiltah Boarding School System during the periods of July 1, 2005 to March 16, 2007 and July 1, 2006 to March 16, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

223. Respondent failed to deliver the required report to customers of the Borrego Pass School System during the periods of July 1, 2005 to March 16, 2007 and July 1, 2006 to March 16, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

224. Respondent failed to deliver the required report to customers of the Huerfano Boarding School System during the period of July 1, 2005 to March 16, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

225. Respondent failed to deliver the required report to customers of the Ft. Wingate Elementary School System during the periods of July 1, 2005 to March 16, 2007 and July 1, 2006 to March 16, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

226. Respondent failed to deliver the required report to customers of the Ft. Wingate High School System during the periods of July 1, 2005 to March 16, 2007 and July 1, 2006 to March 16, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

227. Respondent failed to deliver the required report to customers of the Bread Springs Day School System during the periods of July 1, 2005 to April 13, 2007 and July 1, 2006 to April 13, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

228. Respondent failed to deliver the required report to customers of the Lake Valley Boarding School System during the periods of July 1, 2005 to March 16, 2007 and July 1, 2006 to March 16, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

229. Respondent failed to deliver the required report to customers of the Mariano Lake Boarding School System during the periods of July 1, 2005 to March 16, 2007 and July 1, 2006 to March 16, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

230. Respondent failed to deliver the required report to customers of the Standing Rock Boarding School System during the periods of July 1, 2005 to March 16, 2007 and July 1, 2006 to March 16, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

231. Respondent failed to deliver the required report to customers of the Dzilthnaodithhle Boarding School System during the periods of July 1, 2005 to March 16, 2007 and July 1, 2006 to March 16, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

232. Respondent failed to deliver the required report to customers of the Crownpoint Boarding School System during the periods of July 1, 2005 to March 16, 2007 and July 1, 2006 to March 16, 2007, in violation of 40 C.F.R. §§ 141.152 and 141.155.

COUNT 27 - Failure to Monitor for Lead and Copper – Follow-up and Routine Tap Sampling

233. Complainant realleges each allegation contained in paragraphs 1 through 232 as if fully set forth herein.

234. Pursuant to 40 C.F.R. § 141.86, small and medium size community and non-transient, non-community water systems must monitor tap water for lead and copper for each six-month compliance period.

235. Respondent failed to conduct the required monitoring at the Crazy Horse School System during the period October 1, 2004 to October 4, 2005, in violation of 40 C.F.R. § 141.86.

236. Respondent failed to conduct the required monitoring at the Wounded Knee Water System during the periods October 1, 2004 to October 4, 2005 and October 1, 2005 to March 13, 2006, in violation of 40 C.F.R. § 141.86.

237. Respondent failed to conduct the required monitoring at the Indian School Dist. #512 System during the period beginning October 1, 2007, in violation of 40 C.F.R. § 141.86.

238. Respondent failed to conduct the required monitoring at the St. Stephens Indian School System during the period beginning October 1, 2005, in violation of 40 C.F.R. § 141.86.

239. Respondent failed to conduct the required monitoring at the Hotevilla/Bacavi Community School System during the period July 1, 2007, to September 1, 2008, in violation of 40 C.F.R. § 141.86.

240. Respondent failed to conduct the required monitoring at the Flandreau BIA School System during the period beginning October 1, 2002, in violation of 40 C.F.R. § 141.86.

COUNT 28 - Failure to Monitor for Lead and Copper – Initial Tap Sampling

241. Complainant realleges each allegation contained in paragraphs 1 through 240 as if fully set forth herein.

242. Pursuant to 40 C.F.R. § 141.86, small and medium size community and non-transient, non-community water systems must conduct initial tap sampling for lead and copper for each six-month compliance period.

243. Respondent failed to conduct the required sampling at the Cibecue School System beginning July 1, 1996, in violation of 40 C.F.R. § 141.86.

244. Respondent failed to conduct the required sampling at the BIA JFK School System beginning July 1, 1996, in violation of 40 C.F.R. § 141.86.

COUNT 29 - Failure to Monitor for Radionuclides

245. Complainant realleges each allegation contained in paragraphs 1 through 244 as if fully set forth herein.

246. Pursuant to 40 C.F.R. § 141.26, community water systems must monitor for gross alpha particle activity, radium-226, radium-228, uranium, and beta particle and photon radioactivity.

247. Respondent failed to conduct the required monitoring for uranium at the Hopi High School System during the periods January 1, 2008 to March 31, 2008 and April 1, 2008 to June 30, 2008, in violation of 40 C.F.R. § 141.26.

248. Respondent failed to conduct the required monitoring for gross alpha particle activity, radium-226+228, and uranium at the Hotevilla/Bacavi Community School System during the period October 1, 2007 to December 31, 2007, in violation of 40 C.F.R. § 141.26.

249. Respondent failed to conduct the required monitoring for gross alpha particle activity, radium-226+228, uranium, and gross beta particle activity at the Second Mesa Day School System during the period January 1, 2008 to March 31, 2008, in violation of 40 C.F.R. § 141.26.

COUNT 30 - Failure to Monitor for Organic Chemicals

250. Complainant realleges each allegation contained in paragraphs 1 through 249 as if fully set forth herein.

251. Pursuant to 40 C.F.R. § 141.24, community water systems and non-transient non-community water systems must monitor for organic chemicals in accordance with the instructions in that section.

252. Respondent failed to conduct the required monitoring for volatile and synthetic organic chemicals (51 contaminants) at the Second Mesa Day School System during the period January 1, 2008 to March 31, 2008, in violation of 40 C.F.R. § 141.24.

253. Respondent failed to conduct the required monitoring for volatile and synthetic organic chemicals (51 contaminants) at the American Horse School System during the period January 1, 2005 to December 31, 2007, in violation of 40 C.F.R. § 141.24.

254. Respondent failed to conduct the required monitoring for volatile and synthetic organic chemicals (51 contaminants) at the St. Stephens Indian School System during the period January 1, 2005 to December 31, 2007, in violation of 40 C.F.R. § 141.24.

255. Respondent failed to conduct the required monitoring for volatile and synthetic organic chemicals (51 contaminants) at the Cibecue School System during the period January 1, 2005 to December 31, 2007, in violation of 40 C.F.R. § 141.24.

COUNT 31 - Failure to Monitor for Inorganic Chemicals

256. Complainant realleges each allegation contained in paragraphs 1 through 255 as if fully set forth herein.

257. Pursuant to 40 C.F.R. § 141.23, community water systems and non-transient non-community water systems must monitor for inorganic chemicals in accordance with the instructions in this section.

258. Respondent failed to conduct the required monitoring for barium, cadmium, chromium, free cyanide, fluoride, mercury, selenium, antimony, beryllium, and thallium at the Cibecue School System during the period January 1, 2005 to December 31, 2007, in violation of 40 C.F.R. § 141.23.

COUNT 32 - Failure to Monitor for Inorganic Chemicals – Nitrate

259. Complainant realleges each allegation contained in paragraphs 1 through 258 as if fully set forth herein.

260. Pursuant to 40 C.F.R. § 141.23, community water systems and non-transient non-community water systems must monitor for inorganic chemicals, specifically nitrate.

261. Respondent failed to conduct the required monitoring at the BIA Chemawa Indian School System during the periods April 1, 2006 to June 30, 2006 and July 1, 2006 to September 30, 2006, in violation of 40 C.F.R. § 141.23.

262. Respondent failed to conduct the required monitoring at the Indian School District #512 System during the period January 1, 2007 to December 31, 2007, in violation of 40 C.F.R. § 141.23.

263. Respondent failed to conduct the required monitoring at the BIA Keams Canyon System during the period January 1, 2005 to December 31, 2005, in violation of 40 C.F.R. § 141.23.

264. Respondent failed to conduct the required monitoring at the Hopi High School System during the period January 1, 2005 to December 31, 2005, in violation of 40 C.F.R. § 141.23.

265. Respondent failed to conduct the required monitoring at the Hotevilla/Bacavi Community School System during the period January 1, 2007 to December 31, 2007, in violation of 40 C.F.R. § 141.23.

266. Respondent failed to conduct the required monitoring at the Second Mesa Day School System during the period January 1, 2008 to March 31, 2008, in violation of 40 C.F.R. § 141.23.

267. Respondent failed to conduct the required monitoring at the American Horse School System during the periods January 1, 2005 to December 31, 2005 and January 1, 2007 to December 31, 2007, in violation of 40 C.F.R. § 141.23.

268. Respondent failed to conduct the required monitoring at the Chichiltah Boarding School System during the period January 1, 2006 to December 31, 2006, in violation of 40 C.F.R. § 141.23.

269. Respondent failed to conduct the required monitoring at the St. Stephens Indian School System during the period January 1, 2007 to December 31, 2007, in violation of 40 C.F.R. § 141.23.

270. Respondent failed to conduct the required monitoring at the Cibecue School System during the periods January 1, 2005 to December 31, 2005; January 1, 2006 to December 31, 2006; and January 1, 2007 to December 31, 2007, in violation of 40 C.F.R. § 141.23.

271. Respondent failed to conduct the required monitoring at the Theodore Roosevelt School System during the periods January 1, 2005 to December 31, 2005; January 1, 2006 to December 31, 2006; and January 1, 2007 to December 31, 2007, in violation of 40 C.F.R. § 141.23.

COUNT 33 - Failure to Monitor for Inorganic Chemicals – Arsenic

272. Complainant realleges each allegation contained in paragraphs 1 through 271 as if fully set forth herein.

273. Pursuant to 40 C.F.R. § 141.23, community water systems and non-transient non-community water systems must monitor for inorganic chemicals, specifically arsenic.

274. Respondent failed to conduct the required monitoring at the BIA Keams Canyon System during the periods January 1, 2008 to March 31, 2008 and April 1, 2008 to June 30, 2008, in violation of 40 C.F.R. § 141.23.

275. Respondent failed to conduct the required monitoring at the Hopi High School System during the periods April 1, 2007 to June 30, 2007; January 1, 2008 to March 31, 2008; and April 1, 2008 to June 30, 2008, in violation of 40 C.F.R. § 141.23.

276. Respondent failed to conduct the required monitoring at the Second Mesa Day School System during the period January 1, 2008 to March 31, 2008, in violation of 40 C.F.R. § 141.23.

277. Respondent failed to conduct the required monitoring at the Cibecue School System during the period January 1, 2005 to December 31, 2007, in violation of 40 C.F.R. § 141.23.

COUNT 34 - Failure to Monitor for Disinfection Byproducts

278. Complainant realleges each allegation contained in paragraphs 1 through 277 as if fully set forth herein.

279. Pursuant to 40 C.F.R. § 141.132, public water systems subject to Subpart L (Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors) must monitor for Total Trihalomethanes (TTHM) and Haloacetic Acids (HAA5) as specified in this section.

280. Respondent failed to conduct the required monitoring at the BIA Keams Canyon System during the period January 1, 2005 to December 31, 2005, in violation of 40 C.F.R. § 141.132.

281. Respondent failed to conduct the required monitoring at the Hopi High School System during the periods January 1, 2005 to December 31, 2005 and January 1, 2006 to December 31, 2006, in violation of 40 C.F.R. § 141.132.

282. Respondent failed to conduct the required monitoring at the Hotevilla/Bacavi Community School System during the period January 1, 2007 to December 31, 2007, in violation of 40 C.F.R. § 141.132.

283. Respondent failed to conduct the required monitoring at the American Horse School System during the period January 1, 2005 to December 31, 2007, in violation of 40 C.F.R. § 141.132.

284. Respondent failed to conduct the required monitoring at the Bug O-Nay-Ge-Shig School System during the period January 1, 2006 to December 31, 2006, in violation of 40 C.F.R. § 141.132.

285. Respondent failed to conduct the required monitoring at the Cibecue School System during the period January 1, 2007 to December 31, 2007, in violation of 40 C.F.R. § 141.132.

286. Respondent failed to conduct the required monitoring at the BIA JFK School System during the period January 1, 2007 to December 31, 2007, in violation of 40 C.F.R. § 141.132.

287. Respondent failed to conduct the required monitoring at the BIA T. Roosevelt School System during the period January 1, 2005 to December 31, 2005, January 1, 2006 to December 31, 2006, and January 1, 2007 to December 31, 2007, in violation of 40 C.F.R. § 141.132.

COUNT 35 - Failure to Monitor for Residual Disinfectants - Chlorine

288. Complainant realleges each allegation contained in paragraphs 1 through 287 as if fully set forth herein.

289. Pursuant to 40 C.F.R. § 141.74, public water systems subject to Subpart H (Filtration and Disinfection) must monitor for residual disinfectant concentrations, specifically chlorine, as specified in this section.

290. Respondent failed to conduct the required monitoring at the Wounded Knee District School System during the period January 1, 2005 to March 31, 2005, in violation of 40 C.F.R. § 141.74.

291. Respondent failed to conduct the required monitoring at the BIA Chemawa Indian School System during the period October 1, 2007 to December 31, 2007, in violation of 40 C.F.R. § 141.74.

292. Respondent failed to conduct the required monitoring at the Indian School District #512 System during the periods October 1, 2006 to December 31, 2006; January 1, 2007 to March 31, 2007; April 1, 2007 to June 30, 2007; July 1, 2007 to September 30, 2007; October 1, 2007 to December 31, 2007; and January 1, 2008 to March 31, 2008, in violation of 40 C.F.R. § 141.74.

COUNT 36 - Violation of the Maximum Contaminant Level for Microbiological Contaminants (Total Coliform Rule)

293. Complainant realleges each allegation contained in paragraphs 1 through 292 as if fully set forth herein.

294. Pursuant to 40 C.F.R. § 141.63(a)(2), the maximum contaminant level ("MCL") for microbiological contaminants is based on the presence or absence of total coliforms in a sample, rather than coliform density. For a PWS which collects fewer than 40 samples per month, if no more than one sample collected during a month is total coliform-positive, the system is in compliance with the MCL for total coliforms.

295. Respondent exceeded the monthly maximum MCL for total coliform bacteria at the Crazy Horse School System during the period August 1-31, 2007, in violation of 40 C.F.R. § 141.63(a)(2).

296. Respondent exceeded the monthly maximum MCL for total coliform bacteria at the Wounded Knee District School System during the period March 1-31, 2005, in violation of 40 C.F.R. § 141.63(a)(2).

297. Respondent exceeded the monthly maximum MCL for total coliform bacteria at the BIA Keams Canyon System during the period December 1-31, 2006, in violation of 40 C.F.R. § 141.63(a)(2).

298. Respondent exceeded the monthly maximum MCL for total coliform bacteria at the Hopi High School System during the periods September 1-30, 2005 and September 1-30, 2007, in violation of 40 C.F.R. § 141.63(a)(2).

299. Respondent exceeded the monthly maximum MCL for total coliform bacteria at the Hotevilla/Bacavi Community System during the period September 1-30, 2007, in violation of 40 C.F.R. § 141.63(a)(2).

300. Respondent exceeded the monthly maximum MCL for total coliform bacteria at the St. Stephens Indian School System during the period December 1-31, 2005, in violation of 40 C.F.R. § 141.63(a)(2).

301. Respondent exceeded the monthly maximum MCL for total coliform bacteria at the Cibecue System during the period March 1-31, 2005, in violation of 40 C.F.R. § 141.63(a)(2).

302. Respondent exceeded the monthly maximum MCL for total coliform bacteria at the Lake Valley Boarding School System during the periods August 1-31, 2006; September 1-30, 2006; November 1-30, 2006; and August 1-31, 2007, in violation of 40 C.F.R. § 141.63(a)(2).

COUNT 37 - Acute Violation of the Maximum Contaminant Level for Microbiological Contaminants (Total Coliform Rule)

303. Complainant realleges each allegation contained in paragraphs 1 through 302 as if fully set forth herein.

304. Pursuant to 40 C.F.R. § 141.63(b), any fecal coliform-positive repeat sample or E.coli-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or E.coli-positive routine sample constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in 40 C.F.R. § 141, subpart Q, this is a violation that may pose an acute risk to health.

305. Respondent's sampling results exceeded the acute MCL for total coliform bacteria at the Pueblo Pintado BIA Boarding School System during the period August 1-31, 2007, in violation of 40 C.F.R. § 141.63(b).

COUNT 38 - Violation of the Maximum Contaminant Level for Arsenic

306. Complainant realleges each allegation contained in paragraphs 1 through 305 as if fully set forth herein.

307. Pursuant to 40 C.F.R. § 141.62(b), the MCL for arsenic applies to community water systems and non-transient, non-community water systems. The MCL for arsenic is 0.010 milligrams per liter (mg/l).

308. Respondent exceeded the maximum MCL for arsenic at the BIA Keams Canyon System during the periods April 1, 2007, to June 30, 2007 (with a concentration of 0.033 mg/l) and October 1, 2007 to June 30, 2008 (with a concentration of 0.03275 mg/l), in violation of 40 C.F.R. § 141.62(b).

309. Respondent exceeded the maximum MCL for arsenic at the Hopi High School System during the period October 1, 2007 to June 30, 2008 (with a concentration of 0.023 mg/l), in violation of 40 C.F.R. § 141.62(b).

310. Respondent exceeded the maximum MCL for arsenic at the Second Mesa Day School System during the periods April 1, 2007 to June 30, 2007 (with a concentration of 0.014 mg/l); October 1, 2007 to March 31, 2008 (with a concentration of 0.017 mg/l); and April 1, 2008 to June 30, 2008 (with a concentration of 0.01267 mg/l), in violation of 40 C.F.R. § 141.62(b).

COUNT 39 - Violation of the Maximum Contaminant Level for Fluoride

311. Complainant realleges each allegation contained in paragraphs 1 through 310 as if fully set forth herein.

312. The Hopi High School System is a community water system as defined in 40 C.F.R. § 141.2.

313. Pursuant to 40 C.F.R. § 141.62(b), the MCL for fluoride applies to community water systems. The MCL for fluoride is 4.0 milligrams per liter (mg/l).

314. Respondent exceeded the maximum MCL for fluoride at the Hopi High School System during the periods January 1, 2006 to December 31, 2006 (with a single sample concentration of 43.0 mg/l) and October 1, 2007 to December 31, 2007 (with an average concentration of 23.15 mg/l), in violation of 40 C.F.R. § 141.62(b).

COUNT 40 - Violation of the Maximum Contaminant Level for Uranium

315. Complainant realleges each allegation contained in paragraphs 1 through 314 as if fully set forth herein.

316. Pursuant to 40 C.F.R. § 141.66(e), the MCL for uranium applies to community water systems. The MCL for uranium is 30 micrograms per liter (ug/l).

317. Respondent exceeded the maximum MCL for uranium at the Hopi High School System during the period October 1, 2007 to December 31, 2007 (with a concentration of 105.79 ug/l), in violation of 40 C.F.R. § 141.66(e).

IV. COMPLIANCE PROVISIONS

318. Except for the time frames set forth in the Region 9 Administrative Orders issued March 22, 2011, Docket Nos. PWS-AO-2011-6001, PWS-AO-2011-6002, and PWS-AO-2011-6003 ("Region 9 AOs") and paragraphs 319 and 320 below, Respondent shall correct and maintain compliance for the violations described in Counts 1 - 40 of this Consent Agreement within ninety (90) days of approval of this Consent Agreement by EPA's Environmental Appeals Board ("EAB"). Respondent's actions shall include, but are not limited to, the actions set forth below in subparagraphs "a" through "oo."

RCRA

a. Make hazardous waste determinations for the unlabeled and outdated chemicals and other waste materials for those schools listed in paragraph 26 as required by 40 C.F.R. § 262.11 and 40 C.F.R. §§ 261.21 through 261.24 and, if any of those waste materials are determined to be hazardous waste, properly handle those hazardous wastes in accordance with 40 C.F.R. Parts 262-270.

b. Make hazardous waste determinations for the spent fluorescent lamps as required by 40 C.F.R. § 262.11 and in accordance with 40 C.F.R. §§ 261.21 through 261.24 for those schools listed in paragraph 31.

c. Comply with all the Universal Waste requirements found in 40 C.F.R. § 273 for spent fluorescent lamps including, but not limited to, adequately labeling or marking as Universal Wastes, demonstrating the length of time for accumulation of Universal Wastes, properly cleaning up any spills of spent fluorescent lamps, and properly transferring universal wastes to a registered universal waste handler for those schools listed in paragraph 31.

d. Clean up the spills of spent fluorescent lamps in accordance with 40 C.F.R. § 273.13(d)(2) at those schools listed in paragraph 62.

e. Transfer universal wastes to a properly registered universal waste handler as required by 40 C.F.R. §§ 273.18 and 273.55 for the Chemawa Indian School.

f. Comply with the used oil storage requirements found in 40 C.F.R. § 279.22 for those schools listed in paragraph 82 and Tohono O'Odham High School identified in paragraph 85.

g. Respond to the releases of used oil in accordance with 40 C.F.R. § 279.22(c) for the Haskell Indian Nations University with respect to the spills referenced in paragraph 89 and identified during the inspections referenced in paragraph 82.

Clean Air Act

h. Keep servicing records documenting the date and type of service, as well as the quantity of refrigerant added, for all appliances normally containing 50 or more pounds of refrigerant at the Sherman Indian High School.

AHERA

i. Inspect each school building to identify all locations of friable and nonfriable asbestos containing building materials and update the asbestos management plan for those schools in paragraph 118.

j. Develop and submit an asbestos management plan for those schools listed in paragraph 122.

k. Update the asbestos management plans for those schools listed in paragraph 126.

l. Provide annual written notification to parent, teacher, and employee organizations of the availability of the asbestos management plan and update the asbestos management plan for those schools listed in paragraph 130.

m. Provide annual notification to workers and building occupants, or their legal guardians, at least once each school year about inspections, response actions, and post-response actions, including periodic re-inspection and surveillance activities that are planned or in progress for those schools listed in paragraph 134.

n. Designate a person to ensure AHERA requirements are met; include that person's name, address, and telephone number in the management plan; ensure that person receives all required training; and update the asbestos management plan for those schools listed in paragraph 139.

o. Ensure that the designated person receives adequate training and update the asbestos management plan for those schools listed in paragraph 144.

p. Reinspect all friable and nonfriable known or assumed ACBM in each school building that DOI leases, owns, or otherwise uses as a school building and update the asbestos management plan for those schools listed in paragraph 149.

q. Repair or remove the damaged material and maintain all thermal insulation of ACM and its covering in an intact state and undamaged condition for those schools listed in paragraph 153.

r. Properly respond to damaged friable ACM at Northern Cheyenne Tribal School, identified in paragraph 157.

s. Ensure that all custodial and maintenance staff receive at least two hours of asbestos awareness training and that any staff who conduct activities that will result in the

disturbance of ACBM receive 14 hours of additional training and retain those records for those schools listed in paragraph 162.

t. Maintain required abatement records for each abatement action performed for those schools listed in paragraph 166.

u. Maintain records for each preventive measure and response action taken for friable and nonfriable ACBM and friable and non friable ACBM assumed to be ACM for those schools listed in paragraph 170.

v. Attach a warning label immediately adjacent to any friable and nonfriable ACBM and suspected ACBM assumed to be ACM located in routine maintenance areas at each school building at Northern Cheyenne Tribal School, to address violations identified in paragraph 174.

w. Conduct and record periodic surveillance in each building that contains ACBM or is assumed to contain ACBM and update the asbestos management plan for those schools listed in paragraph 180.

x. Comply with all the AHERA requirements found in 40 C.F.R. § 763 for asbestos including, but not limited to, inspections; reinspections; developing, submitting, and updating management plans; annual written notifications to parents, teachers, employee organizations, workers, and building occupants; designating and providing proper training to a person as required under AHERA; maintaining asbestos containing thermal systems; responding to damaged friable ACM; providing asbestos awareness training to all custodial and maintenance staff; maintaining records; attaching asbestos warning labels; and conducting periodic surveillance, for those schools listed in Appendix C of this Consent Agreement.

Safe Drinking Water Act

y. Conduct routine bacteriological monitoring for total coliform at the drinking water systems identified in paragraphs 191 through 205.

z. Conduct coliform repeat monitoring as required after any DOI PWS has a total coliform positive routine sample, to prevent future violations such as those identified in paragraphs 208 and 209 of Count 25.

aa. Deliver the required consumer confidence rule report for all DOI PWSs to prevent future drinking water system violations such as those identified in paragraphs 212 through 232 of Count 26.

bb. Conduct the required follow up and routine tap water monitoring for lead and copper at the drinking water systems identified in paragraphs 235 through 240.

cc. Conduct the required initial tap water sampling for lead and copper at the drinking water systems identified in paragraphs 243 and 244.

dd. Conduct the required monitoring for gross alpha particle activity, radium-226, radium-228, uranium, and beta particle and photon radioactivity at the drinking water systems identified in paragraphs 247 through 249.

ee. Conduct the required monitoring for organic chemicals at the drinking water systems identified in paragraphs 252 through 255.

ff. Conduct the required monitoring for inorganic chemicals at the drinking water system identified in paragraph 258.

gg. Conduct the required monitoring for nitrate at the drinking water systems identified in paragraphs 261 through 271.

hh. Conduct the required monitoring for arsenic at the drinking water systems identified in paragraphs 274 through 277.

ii. Conduct the required monitoring for Total Trihalomethanes (TTHM) and Haloacetic Acids (HAA5) at the drinking water systems identified in paragraphs 280 through 287.

jj. Conduct the required monitoring for residual disinfectant concentrations, specifically chlorine, at the drinking water systems identified in paragraphs 290 through 292.

kk. Correct the contaminant level for microbiological contaminants so that Respondent does not exceed the monthly maximum MCL for total coliform bacteria at the drinking water systems identified in paragraphs 295 through 302.

ll. Correct the contaminant level for microbiological contaminants so that Respondent does not exceed the acute MCL for total coliform bacteria at the drinking water system identified in paragraph 305.

mm. Correct the contaminant level for arsenic so that Respondent does not exceed the MCL for arsenic at the drinking water systems identified in paragraphs 308 through 310.

nn. Correct the contaminant level for fluoride so that Respondent does not exceed the maximum MCL for fluoride at the Hopi High School drinking water system identified in paragraph 314.

oo. Correct the contaminant level for uranium so that Respondent does not exceed the maximum MCL for uranium at the Hopi High School drinking water system identified in paragraph 317.

319. Except for those violations for which the Region 9 AOs cited in Paragraph 318 above specifically provide for a longer time period to come into compliance, if despite all reasonable efforts Respondent believes it cannot correct and maintain compliance for any violation listed in Counts 1 - 40 within ninety (90) days of approval of this Consent Agreement by the EAB, Respondent shall submit a detailed compliance plan to correct

the violation(s) to EPA Headquarters and the EPA Regional office with jurisdiction over the facility within thirty (30) days of approval of this Consent Agreement by the EAB. The compliance plan shall be subject to EPA review and approval in accordance with Section IX (EPA Review and Approval of Compliance Plans) of this Consent Agreement. The plan shall require Respondent to achieve compliance as expeditiously as possible, but no later than one hundred eighty (180) days from approval of the Consent Agreement by the EAB.

320. Respondent shall undertake the following longer term compliance actions at the Keams Canyon Public Water System (SDWIS ID 090400054):

a. Within thirty (30) days of approval of this Consent Agreement by the EAB, Respondent shall submit to EPA Headquarters and EPA Region 9, at the appropriate addresses provided in Appendix E, a draft written alternative drinking water plan (the "Plan") for EPA's approval that describes in detail the steps Respondent will take to provide alternative drinking water to the users of the BIA Keams Canyon Water System - SDWIS ID 090400054 ("System"). The Plan shall include milestones and dates of completion for each of the steps Respondent will follow to provide alternative drinking water to all System users within ninety (90) days after approval of this Consent Agreement and Final Order by the EAB. In addition, the Plan shall include a description of the management controls that Respondent will put in place to provide and maintain the supply of alternative drinking water to all System users. Unless otherwise specified by EPA, Respondent shall, within twenty (20) days of receipt of comments from EPA, incorporate all comments from EPA into the Plan and submit a final revised Plan to EPA for approval.

b. Respondent shall comply with all milestones, deadlines, and other requirements described in the final approved Plan.

c. Alternative water supplied under the approved Plan shall satisfy all requirements of the primary drinking water regulations found in 40 CFR Part 141 and, if bottled water is supplied, the United States Food and Drug Administration bottled water standards specified at 21 C.F.R. § 165.110.

d. If Point-of-Use (POU) or Point-of-Entry (POE) devices are used, such devices shall be owned and operated by Respondent, or person(s) under contract to the Respondent and shall be equipped with a mechanical warning device to ensure automatic notification to customers and Respondent if operational problems occur. In addition, POU and/or POE devices must be certified according to the product standards of the American National Standards Institute.

e. Respondent shall continue to supply alternative water to all System users until such time that Respondent has fully complied with the EPA Region 9 Unilateral Order issued March 22, 2011, requiring Respondent to achieve and maintain compliance with the arsenic MCL found in 40 C.F.R. § 141.62(b) and all other applicable national primary drinking water regulations found in 40 C.F.R. § 62.

V. CERTIFICATIONS OF COMPLIANCE

321. Within one hundred and twenty (120) days of approval of the Consent Agreement and Final Order by the EAB, Respondent shall submit the following certification to EPA Headquarters:

> *I certify that Indian Affairs has fully corrected the violations identified in Counts 1 - 40 of the Consent Agreement and Final Order within ninety (90) days of approval of the Agreement by the U.S. Environmental Protection Agency's Environmental Appeals Board, except for those violations for which the Consent Agreement and Final Order or the EPA has specifically granted a longer time period to come into compliance. I certify that, to the best of my knowledge and belief, the information contained in this written certification and in any documents accompanying this certification is true, accurate, and complete. In making this statement, I have not made an independent review of all statements contained therein and have relied in good-faith on information, statements, and representations furnished to me by employees or contractors of the Department of the Interior. Based on my inquiry of the person or persons (or the supervisors of such persons) directly responsible for gathering the information contained in this written certification and in any documents accompanying this certification, this document is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant potential penalties for submitting materially false information, including the possibility of fines and imprisonment for knowing violations.*

The certification shall be signed by the Assistant Secretary—Indian Affairs or a senior official designated to act in this capacity.

322. For those violations where EPA has specifically approved a longer term compliance plan under paragraph 319 of the Consent Agreement and Final Order, allowing Respondent to take more than ninety (90) days from approval of the Consent Agreement and Final Order by the EAB to correct a violation, upon completion of all corrective measures set forth in the approved compliance plan, Respondent shall include the following certification in its next semi-annual report submitted to EPA pursuant to Section XII (Record Keeping and Reporting) of the Consent Agreement and Final Order:

> *I certify that Indian Affairs has fully corrected the following violations: [insert violations]. Correction of these violations was completed in accordance with the measures and schedule approved by EPA. I certify that, to the best of my knowledge and belief, the information contained in this written certification and in any documents accompanying this certification is true, accurate, and complete. In making this statement, I have not made an independent review of all statements contained therein and have relied in good-faith on information, statements, and representations furnished to me by employees or contractors of the*

Department of the Interior. Based on my inquiry of the person or persons (or the supervisors of such persons) directly responsible for gathering the information contained in this written certification and in any documents accompanying this certification, this document is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant potential penalties for submitting materially false information, including the possibility of fines and imprisonment for knowing violations.

The certification shall be signed by the Assistant Secretary—Indian Affairs or a senior official designated to act in this capacity.

323. For those violations that will be addressed pursuant to the longer term compliance provisions set forth in paragraph 320 of this Consent Agreement and Final Order relating to the Keams Canyon Public Water System, Respondent shall include the following certification in each semi-annual report submitted to EPA pursuant to Section XII (Record Keeping and Reporting) of the Consent Agreement and Final Order:

I certify that Indian Affairs has maintained full compliance with the terms of paragraph 320 of the Consent Agreement and Final Order during the past six (6) months. I certify that, to the best of my knowledge and belief, the information contained in this written certification and in any documents accompanying this certification is true, accurate, and complete. In making this statement, I have not made an independent review of all statements contained therein and have relied in good-faith on information, statements, and representations furnished to me by employees or contractors of the Department of the Interior. Based on my inquiry of the person or persons (or the supervisors of such persons) directly responsible for gathering the information contained in this written certification and in any documents accompanying this certification, this document is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant potential penalties for submitting materially false information, including the possibility of fines and imprisonment for knowing violations.

The certification shall be signed by the Assistant Secretary—Indian Affairs or a senior official designated to act in this capacity.

VI. THIRD-PARTY INDEPENDENT COMPLIANCE AUDITS OF DOI FACILITIES

324. DOI shall require that independent, third-party compliance audits be conducted at all BIE schools and BIA public water systems serving BIE schools in accordance with Appendix A of this Consent Agreement and Final Order. These compliance audits shall conform to all the requirements set out in Appendix A.

VII. ENVIRONMENTAL MANAGEMENT SYSTEM

325. DOI shall develop and implement a compliance-based Environmental Management System (EMS) at all of its facilities. This EMS shall conform to all the requirements set out in Appendix B.

VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

326. Respondent shall complete the following supplemental environmental project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvements. The Scope of Work for this SEP is included in this Consent Agreement as Appendix F.

327. Respondent shall complete the SEP as follows: Not more than thirty (30) days after approval of this Consent Agreement and Final Order by the EAB, Respondent shall submit, for EPA review and approval, a detailed workplan describing the installation of a 750 kW h solar photovoltaic ("PV") electric system for the benefit of the Havasupai Tribe of the Havasupai Reservation. Within thirty (30) days of EPA final approval of the workplan, Indian Affairs will begin the design phase of the project. The design phase will last no longer than ninety (90) days. Upon completion of the design phase, Respondent shall submit, for EPA Headquarters review and approval, a detailed description of the design. The project will begin construction within sixty (60) days after design approval by EPA. The project construction will take no longer than one hundred and twenty (120) days. The project consists of installing a 750 kW h solar PV electric system to convert light into electricity. The Havasupai project will use a modular approach which does not require sun tracking, and which, as a result, will reduce operations and maintenance costs. The Havasupai system will consist of freestanding PV power units. These power units will have twelve (12) solar panels each and will be arranged in rows. The power generated in a row will make up a branch circuit. The branch circuit will have a dedicated inverter that converts the direct current, generated by the solar cells, to alternating current. The alternating current from each row will then be routed to a transformer and then, via a grid, tie to the transmission line to the Supai village. Approximately 2,000 PV panels will be required for an area of approximately five (5) acres. Construction of the 750 kW h solar PV electric system must be completed and the system fully operational by no later than one (1) year after EPA final approval of the SEP workplan. The SEP is more specifically described in Appendix F which is incorporated herein by reference.

328. The total expenditure for the SEP shall be not less than $1,212,750.00 in accordance with the specifications set forth in the Scope of Work. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

329. Respondent hereby certifies that, as of the date of this Consent Agreement, neither is Respondent required to perform or develop the SEP by any federal, state, or local law or regulation, or any Executive Order; nor has Respondent agreed to or is required to perform or develop the SEP by any other agreement, grant, or as injunctive relief in

this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

330. SEP Reports

a. SEP Completion Report: Respondent shall submit a SEP Completion Report to EPA Headquarters by December 31, 2012. The SEP Completion Report shall contain the following information:

i. a detailed description of the SEP as implemented;

ii. a description of any operating problems encountered and the solutions thereto;

iii. itemized costs;

iv. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and

v. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions if feasible).

b. Periodic Reports: Respondent shall submit any additional reports required by the detailed workplan described in paragraph 327 above in accordance with the schedule and requirements recited therein.

c. Respondent agrees that failure to submit the SEP Completion Report or any Periodic Report required by subsections (a) and (b) above shall be deemed a violation of this Consent Agreement and Final Order and Respondent shall become liable for stipulated penalties pursuant to paragraph 335 below.

d. Respondent shall submit all notices and reports required by this Consent Agreement and Final Order to EPA Headquarters and the EPA Regional office with jurisdiction over the facility listed in Appendix E of this Consent Agreement and Final Order by overnight mail.

e. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs, as determined by EPA. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

331. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

332. Respondent shall continuously use or operate the systems installed as the SEP for not less than five (5) fiscal years subsequent to installation.

333. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and Final Order and shall provide the documentation of any such underlying research and data to EPA not more than seven (7) days after a request by EPA for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement and Final Order, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

> *I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.*

334. After receipt of the SEP Completion Report described in paragraph 330(a) above, EPA will notify the Respondent, in writing, regarding:

a. any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or

b. indicate that EPA concludes that the project has been completed satisfactorily; or

c. determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 335 herein. If EPA elects to exercise option (a) above (i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself), EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall

be due and payable by Respondent to EPA in accordance with paragraph 335 herein.

335. Stipulated Penalties for Failure to Complete SEP or Spend Agreed-on Amount

a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in paragraph 327 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 328 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

i. except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the United States in the amount of $995,807.00;

ii. if the SEP is not completed in accordance with Appendix F but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty;

iii. if the SEP is completed in accordance with Appendix F, but the Respondent spends less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of $179.245.00;

iv. if the SEP is completed in accordance with Appendix F, and the Respondent spends at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty;

v. for failure to submit the SEP Completion Report required by paragraph 330(a) above, Respondent shall pay a stipulated penalty in the amount of $250.00 per day for Days 1-10 in which Respondent is in violation and $500 per day for every day thereafter; and

vi. for failure to submit any other report required by paragraph 330(b) above, Respondent shall pay a stipulated penalty in the amount of $250.00 per day for Days 1-10 in which Respondent is in violation and $500 per day for every day thereafter until the report is submitted.

b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c. Stipulated penalties for subparagraphs (v) and (vi) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

d. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Respondent shall make any required payment under this paragraph to the United States by Fed Wire Electronic Funds Transfer ("EFT") in accordance with written instructions to be provided to Respondent at the time of payment.

e. Nothing in this Consent Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Consent Agreement or of the statutes and regulations upon which this Consent Agreement is based, or for Respondent's violation of any applicable provision of law.

336. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language, "*This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of RCRA, CAA, AHERA, and the SDWA.*"

IX. EPA REVIEW AND APPROVAL OF COMPLIANCE PLANS

337. The procedures set forth in this section shall be followed by the parties whenever the Consent Agreement and Final Order requires review and approval of a compliance plan by EPA.

338. Respondent shall submit the compliance plan to the appropriate EPA office(s) specified in paragraph 319 or Appendix E for review and approval in accordance with the schedule and the content requirements for the particular plans set forth in the Consent Agreement and Final Order and its Appendices. EPA will review the plan and notify Respondent in writing within sixty (60) days of official receipt of the compliance plan that it is approving the plan, disapproving the plan, or approving some parts of the plan and disapproving others. If EPA disapproves the plan in whole or in part, EPA will state why it is disapproving the plan, and will describe in reasonable detail how to correct the deficiencies.

339. Respondent shall have thirty (30) days from receipt of the notice from EPA that its compliance plan has been disapproved in whole or part to submit to EPA a revised plan that incorporates all corrections required by EPA. EPA will notify Respondent that it is either approving or disapproving the revised plan. Disapproval by EPA of the revised plan shall constitute a failure by DOI to submit an approvable compliance plan.

340. DOI shall implement the compliance plan approved by EPA in accordance with the actions and schedules set forth in the approved compliance plan.

X. CIVIL PENALTY

341. Pursuant to the applicable penalty provisions in the governing statutes, the nature of the violations, Respondent's agreement to comply with all provisions of the Consent Agreement and Final Order, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of two hundred forty thousand, nine hundred forty dollars ($234,844.00).

342. Respondent consents to the assessment of a civil penalty in the amount of two hundred forty thousand, nine hundred forty dollars ($234,844.00) with a cash component to be determined by and through the application of Sections 207(a) and (c) of TSCA, 15 U.S.C. §§ 2647(a) and (c). Consistent with Section 207(a) of TSCA, Respondent must certify that it has expended or will expend $234,844.00 to comply with Subchapter II of TSCA and must provide EPA Headquarters with supporting cost documentation. In the event Respondent does not expend the full penalty amount within four (4) years of approval by the EAB of this Consent Agreement and Final Order, Respondent shall pay a cash penalty which equals the difference between the assessed amount ($234,844.00) and the amount determined by EPA to be eligible expenditures under this penalty provision. Respondent shall make any required payment under this paragraph not more than fifteen (15) days after receipt of written demand by EPA for such payment and shall submit the payment to the United States by Fed Wire EFT in accordance with written instructions to be provided to Respondent at the time of payment.

XI. FUNDING

343. It is the expectation of the Parties to this Consent Agreement and Final Order that all obligations of the Respondent arising under this Consent Agreement will be fully funded. Respondent agrees to seek sufficient funding through the DOI budgetary process to fulfill its obligations under this Consent Agreement and Final Order. No provision herein, including payment or obligation of funds, including stipulated penalties, shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341.

XII. RECORD KEEPING AND REPORTING

344. Respondent shall submit a semi-annual report to EPA Headquarters on January 1 and July 1 of each year documenting the progress made in implementing the Consent Agreement and Final Order and the anticipated actions to be taken over the next six (6) months. If the Consent Agreement and Final Order is approved by the EAB less than two (2) months prior to the end of a reporting period, then the first report shall be due at the end of the next reporting period (e.g., if the EAB approves the Consent Agreement and Final Order on May 15, 2011, then the first semi-annual report shall be due on January 1, 2012).

345. The semi-annual report shall include the following information:

a. A summary of all actions taken during the reporting period to correct the violations listed in Counts 1 - 40 of the Consent Agreement and Final Order. For the first report, the summary shall include all corrective actions taken since DOI was originally notified of the violations by EPA up to the time of the first report.

b. A detailed description of all instances where Respondent did not comply with any requirements of the Consent Agreement and Final Order during the reporting period and an explanation why the non-compliance occurred and the remedial steps taken, or to be taken, to prevent or minimize such non-compliance.

c. A summary of all the compliance audits DOI conducted during the reporting period pursuant to Appendix A. This summary should include the following:

i. the names and addresses of the facilities audited;

ii. the date each audit took place;

iii. who conducted the audits;

iv. a brief description of any area of noncompliance ("AON") discovered at each facility, including the statute and regulations violated and how long the violation has been ongoing;

v. actions taken during the reporting period to correct AONs identified during the compliance audits or the actions needed to correct AONs and a schedule for correcting the violations; and

vi. any actions that DOI has taken or will take to prevent the violations from happening again.

d. A list of all facilities that Respondent expects to audit pursuant to Appendix A of the Consent Agreement and Final Order in the next six (6) months and the anticipated dates of the on-site portion of the audits.

e. A summary of all actions taken since the last report, and expected to be taken during the next six (6) months, to implement the Environmental Management System as required by Appendix B.

f. A certification that the audit(s) performed at any facility during the reporting period was completed in accordance with the relevant provisions of Appendices A and B and the Audit Plan.

346. Respondent shall maintain, for a period of nine (9) years from approval of the Consent Agreement and Final Order by the EAB, all records related to its implementation of the Consent Agreement and Final Order. Respondent shall respond to any requests by EPA for such records by providing all the requested records within fourteen (14)

calendar days of receipt of EPA's request. If, for good cause, DOI requires more than fourteen (14) calendar days to respond to such a request, DOI shall notify EPA as soon as practicable and shall provide EPA with a date by which the request will be fulfilled. The date the request will be fulfilled shall not be later than thirty (30) days from the date of receipt of EPA's request.

347. In all reports and records submitted to EPA pursuant to this section of the Consent Agreement and Final Order, Respondent shall certify under penalty of law that the information contained in such report or record is true, accurate, and not misleading, by including and signing the following statement:

> *I certify that, to the best of my knowledge and belief, the information contained in this written certification and in any documents accompanying this certification is true, accurate, and complete. In making this statement, I have not made an independent review of all statements contained therein and have relied in good-faith on information, statements, and representations furnished to me by employees or contractors of the Department of the Interior. Based on my inquiry of the person or persons (or the supervisors of such persons) directly responsible for gathering the information contained in this written certification and in any documents accompanying this certification, this document is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant potential penalties for submitting materially false information, including the possibility of fines and imprisonment for knowing violations.*

The above statement shall be signed by the Assistant Secretary—Indian Affairs or a senior official designated to act in this capacity.

XIII. STIPULATED PENALTIES

348. Respondent shall pay the following stipulated penalties for failing to comply with the terms of this Consent Agreement and Final Order:

a. For failure to correct the violations identified in Counts 1 - 40 within ninety (90) days unless a longer schedule is specifically set forth in the Consent Agreement and Final Order or approved by EPA:

Days of Violation	Penalty Per Day Per Violation
1-10 days	$500
11-30 days	$1,000
31 or more days	$5,000

b. For failure to correct any violations identified in Counts 1 - 40 of the Consent Agreement and Final Order by the deadline set forth in any longer term compliance plan approved by EPA pursuant to paragraph 319 of the Consent Agreement and Final Order:

Days of Violation	Penalty Per Day Per Violation
1-10 days	$1,000
11-30 days	$5,000
31 or more days	$10,000

c. For failure to take the actions set forth in paragraph 320 of the Consent Agreement and Final Order by the stated deadlines:

Days of Violation	Penalty Per Day Per Action Not Taken
1-10 days	$500
11-30 days	$1,000
31 or more days	$5,000

d. For failure to submit the certifications required by paragraph 321 by the stated deadline:

Days of Violation	Penalty Per Day Per Certification
1-10 days	$1,000
11-30 days	$5,000
31 or more days	$20,000

e. For failure to submit the certifications required by paragraphs 322 and 323 or Appendices A and B by the stated deadlines:

Days of Violation	Penalty Per Day Per Certification
1-10 days	$1,000
11-30 days	$5,000
31 or more days	$20,000

f. For failure to submit a revised compliance plan to EPA as required under paragraph 339 of the Consent Agreement and Final Order, beginning with the date the original plan is disapproved by EPA:

Days of Violation	Penalty Per Day Per Disapproved Plan
1-10 days	$500
11-30 days	$1,000
31 or more days	$5,000

g. For failure to submit an approvable compliance plan, beginning with the date the revised plan is disapproved by EPA under paragraph 339, of the Consent Agreement and Final Order, $10,000:

h. For failure to submit a semi-annual report required by paragraph 344 by the stated deadline:

Days of Violation	Penalty Per Day Per Report
1-10 days	$1,000
11-30 days	$5,000
31 or more days	$10,000

i. For failure to comply with a request by EPA to provide documents under paragraph 346 by the stated deadline:

Days of Violation	Penalty Per Day Per Request
1-10 days	$500
11-30 days	$1,000
31 or more days	$5,000

j. For failure to pay the civil penalty set forth in paragraph 342 of the Consent Agreement and Final Order or any stipulated penalty set forth in this paragraph by the stated deadline:

Days of Violation	Penalty Per Day
1-10 days	$1,000
11-30 days	$5,000
31 or more days	$10,000

k. For failure to submit to EPA, as required by Section VI (Third-Party Independent Compliance Audits of DOI Facilities) of the Consent Agreement and/or Appendix A, an Audit Plan, the name and address of the Auditor DOI has selected to conduct the Audits at DOI's facilities, documentation that such Auditor satisfies the requirements of paragraph 11 of Appendix A or a copy of the contract(s) entered into by DOI with the Auditor, or to inform EPA in writing at least thirty (30) days prior to the start of each quarter the projected dates of the audits for the upcoming quarter:

Days of Violation	Penalty Per Day
1-10 days	$1,000
11-30 days	$5,000
31 or more days	$10,000

l. For failure to conduct the compliance audits in accordance with the requirements set forth in Appendix A to the Consent Agreement and Final Order:

Days of Violation	Penalty Per Day Per Audit
1-10 days	$1,000
11-30 days	$5,000
31 or more days	$10,000

m. For failure to give notice to the relevant EPA Regional Office thirty (30) days prior to beginning an Audit at a facility required by Appendix A or to provide immediate

notice to EPA when IA must make a change to the projected date of an Audit: $10,000 per Audit.

n. For failure to submit a Summary Audit Report to EPA for each audit conducted in accordance with Appendix A, beginning with the stated deadline that the Summary Audit Report is due:

Days of Violation	Penalty Per Day Per Report
1-10 days	$1,000
11-30 days	$5,000
31 or more days	$10,000

o. For the first three year cycle of audits and the first year of the second three year cycle (i.e., years 1-4 of the DOI's Audits at each BIA school and BIE water system that serves a BIA school) conducted under Appendix A, for failure to correct any AON identified in an Audit Report for an Audit conducted under Appendix A within ninety (90) days of receipt by DOI of the Audit Report for each facility, unless EPA has specifically approved a Compliance Plan allowing for more than ninety (90) days to correct the AON:

Days of Violation	Penalty Per Day Per AON
1-10 days	$500
11-30 days	$1000
31 or more days	$5,000

p. With respect to any AON identified in an Audit Report for an Audit conducted under Appendix A where EPA has specifically approved a Compliance Plan allowing for more than ninety (90) days to correct the AON, for failure to correct the AON in accordance with the approved Compliance Plan:

Days of Violation	Penalty Per Day Per AON
1-10 days	$1,000
11-30 days	$5,000
31 or more days	$10,000

q. For failure to obtain certification by a qualified independent third-party for Respondent's compliance focused EMS in accordance with Appendix B to the Consent Agreement and Final Order, $100,000.

r. For failure to implement an EMS meeting all the requirements in Appendix B at each of the facilities listed in Appendices C and D, $10,000 per facility.

349. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

350. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of a written demand by EPA for such penalties. Respondent shall make any required payment under this paragraph to the United States by Fed Wire EFT in accordance with written instructions to be provided to Respondent at the time of payment.

351. Complainant may, in his/her sole discretion, reduce or eliminate any stipulated penalty due if Respondent has in writing demonstrated to Complainant's satisfaction good cause for such reduction or elimination. If, after review of Respondent's submission, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement and Final Order, and Complainant does not, in his/her sole discretion, eliminate the stipulated penalties demanded, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by the Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within fifteen (15) calendar days of its receipt of such written notice from EPA. Respondent shall make any required payment under this paragraph to the United States by Fed Wire EFT in accordance with written instructions to be provided to Respondent at the time of payment.

352. Nothing in this Consent Agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Consent Agreement and Final Order or of the statutes and regulations upon which this Consent Agreement is based, or for Respondent's violation of any applicable provision of law.

XIV. NOTICES TO EPA HEADQUARTERS AND EPA REGIONAL OFFICES

353. Documents required to be submitted to EPA Headquarters and/or the EPA Regional Office with jurisdiction over the facility covered by the document, shall be sent to the address(es) listed in Appendix E.

354. The term 'days' shall mean calendar days. Any submittal due on a Saturday, Sunday, Federal or state holiday shall be due on the following business day.

XV. FORCE MAJEURE

355. A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Consent Agreement, including, but not limited to: acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than DOI; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if DOI shall have made timely request for such funds as part of the budgetary process as set forth in Section XI (Funding) of this Consent Agreement.

356. If any event occurs which causes or may cause delay in the completion of the tasks required under this Consent Agreement and Final Order, Respondent shall notify EPA in writing within fourteen (14) days of such event or within fourteen (14) days of

Respondent's knowledge of the anticipated delay, whichever is earlier. Respondent shall implement all reasonable and feasible measures to avoid or minimize any such delay. Notice under this paragraph shall include a detailed description of: the actual or anticipated length of the delay; the precise cause(s) of the delay; any measures already taken and/or to be taken by Respondent to prevent or minimize the delay; and a timetable for implementation of such measures. Failure by Respondent to comply with the notice requirements of this Section shall render this Section void and of no effect as to the particular event involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this Consent Agreement and Final Order based on such incident.

357. If Respondent and EPA agree that the delay or anticipated delay in complying with this Consent Agreement and Final Order has been or will be caused by circumstances entirely beyond the control of Respondent that could not or cannot be overcome by due diligence (i.e., a "force majeure"), the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, Respondent and EPA shall stipulate in writing to such extension of time.

358. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Consent Agreement and Final Order has been or will be caused by a force majeure, EPA, in its sole discretion, will notify Respondent in writing of its decision. Such delays shall not be the basis for any extension of time for the performance of Respondent's obligations under this Consent Agreement and Final Order.

359. The burden of proving that any delay is caused by a force majeure shall rest with Respondent. Increased costs or expenses associated with the implementation of actions required by this Consent Agreement and Final Order shall not, in any event, be a basis for changes in this Consent Agreement or Final Order or extensions of time, hereunder.

XVI. NOTICE TO DOI AND INDIAN TRIBES AND OTHER MATTERS

360. DOI has been afforded the opportunity to confer with EPA regarding the violations of the Clean Air Act as provided for by Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4). Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), administrative settlements where the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action require a joint determination by the Attorney General of the United States and the Administrator that it is appropriate to administratively settle claims older than twelve (12) months. On February 25, 2011, the Administrator and the Attorney General, through their duly authorized representatives, jointly determined pursuant to Section 113(d)(1) that violations preexisting commencement of this action by more than twelve (12) months are appropriately settled in this Consent Agreement and Final Order.

361. DOI has been given notice and afforded the opportunity to confer with EPA regarding the violations of the Safe Drinking Water Act as provided for by section 1447(b)(1)-(3), 42 U.S.C. § 300j-6(b)(1)-(3).

362. On October 9, 2009, via phone conference and December 3, 2009, via written notice, EPA gave notice as provided for by section 1414(a)(1)(A) of the SDWA, 42 U.S.C. § 300g-3(a)(1)(A), to the Navajo Nation of Indians, who has primary enforcement responsibility over the T'iists'ooz'bi'olta System (Crownpoint) (SDWIS ID 093534023), the Mariano Lake Community School System (SDWIS ID 093534010), and the Pueblo Pintado Community School System (SDWIS ID 093534015), that the affected systems did not comply with certain applicable requirements of the SDWA. Also as provided for under that section of the SDWA, EPA gave such advice and technical assistance to the Navajo Nation and to DOI as appropriate to bring the systems into compliance with the requirements by the earliest feasible time. Finally, EPA gave the Navajo Nation an opportunity to confer regarding this Consent Agreement and Final Order as provided for by section 1414(g)((2) of the SDWA, 42 U.S.C. § 300g-3(g)(2), and the Navajo Nation will be sent a copy of this Consent Agreement and Final Order once it has been approved by the EAB.

363. After consultation between EPA and the Navajo Nation, the Navajo Nation decided not to commence an enforcement action. Since the Navajo Nation did not commence an enforcement action within thirty (30) days of EPA's notification to them regarding the noncompliance at the public water systems, EPA has the authority under sections 1414(a)(1)(B) and 1447(b) of the SDWA, 42 U.S.C. §§ 300g-3(a)(1)(B) and 300j-6(b), to require those systems to comply and to collect civil penalties through this Consent Agreement and Final Order.

364. On December 3, 2009, with respect to each public water system listed in Appendix D that is not noted as the primary enforcement responsibility of the Navajo Nation, EPA gave notice to each tribe (or state as appropriate) regarding any noncompliance with SDWA at each of the systems and EPA's intent to take action through an order to bring the systems into compliance.

365. This Consent Agreement shall be submitted to the Environmental Appeals Board for approval after a period of not less than thirty (30) days for consultation with affected Tribes. EPA reserves the right to withdraw its signature from the Consent Agreement if the results of the Tribal consultation regarding the Consent Agreement disclose facts or considerations which indicate that the Consent Agreement is inappropriate, improper, or inadequate. Settling Respondent consents to the submission of this Consent Agreement without further notice and agrees not to withdraw from or oppose ratification of this Consent Agreement by the EAB or to challenge any provision of the Agreement, unless EPA has notified Respondent in writing that it no longer supports ratification of the Agreement.

XVII. EFFECT OF SETTLEMENT

366. Payment of the penalty specified in paragraph 341 of the Consent Agreement and Final Order in the manner set forth in paragraph 342, correction of violations as specified in Section IV (Compliance Provisions), completion of the SEP, full completion of the compliance audits described in Appendix A and correction of any areas of noncompliance discovered by the audits, full implementation of the EMS as required by Appendix B, and full compliance with the provisions of this Consent Agreement

and Final Order and its Appendices shall constitute full and final satisfaction of all civil claims for penalties through June 30, 2008, which Complainant may have under RCRA, CAA, AHERA, and SDWA for the specific violations alleged in paragraphs 14 through 317 above. Compliance with this Consent Agreement and Final Order shall not be a defense to any action commenced at any time for any violations alleged in paragraphs 14 through 317 above that continued past June 30, 2008, or for any other violation of the federal laws and regulations administered by EPA.

367. The Parties specifically agree that this Consent Agreement and Final Order does not absolve Respondent from liability for SDWA violations that continued past, or commenced after, June 30, 2008, at the Keams Canyon Water System (SDWIS ID 090400054), Second Mesa Day School Water System (SDWIS ID 09040057), or Hopi High School Water System (SDWIS ID 090400395). In particular, the Parties acknowledge that the longer term compliance actions necessary to correct violations alleged in the Region 9 AOs will be governed by those Administrative Orders.

368. Failure to comply with any term of this Consent Agreement and Final Order shall void this covenant not to sue, and Respondent specifically waives the right to assert a defense based on the running of the statute of limitations between February 19, 2009, the date of the first tolling agreement, through the date that the United States files a complaint for any of the violations listed in paragraphs 14 through 317 of this Consent Agreement.

XVIII. RESERVATION OF RIGHTS

369. This Consent Agreement and Final Order resolves only the civil claims for monetary penalties through June 30, 2008, for the specific violations alleged in paragraphs 14 through 317 of the Consent Agreement and Final Order. This Consent Agreement does not resolve any criminal liability that Respondent may have as a result of the circumstances described in paragraphs 14 through 317 of the Consent Agreement and Final Order or elsewhere. In addition, this Consent Agreement does not resolve those violations found during audits conducted pursuant to Appendices A or B. Should EPA issue a separate Order concerning a violation found during an audit conducted pursuant to Appendices A or B, or an independent EPA inspection, and there is a conflict between the timeframes for compliance with that Order and timeframes for corrective action pursuant to Appendix A or B, the timeframe in the separate Order will govern compliance. Any penalties set forth in such separate Order will apply rather than the stipulated penalties in Section XIII of the Consent Agreement and Final Order. For any corrective action covered by a separate Order, the reporting requirements of paragraph 345 of the Consent Agreement and Final Order will be fulfilled by a statement in the appropriate semi-annual report(s) that such corrective action is under a separate Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies

available to it under RCRA, CAA, AHERA, SDWA, and the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Agreement and Final Order, following its filing with the EAB. Respondent reserves all available rights and defenses it may have to defend itself in any such action except as specifically stated in this Consent Agreement and Final Order.

370. If Respondent fails to correct a violation discovered during an audit conducted pursuant to Appendix A within the time allowed by that Appendix, Respondent specifically waives the right to assert a defense based on the running of the statute of limitations between the time that a violation is identified as an AON by the Auditor in an Audit Report submitted to DOI through the date that EPA files a complaint for the violation.

XIX. ENTIRE CONSENT AGREEMENT

371. This Consent Agreement and Final Order, including all Appendices, constitutes the entire agreement and understanding of the Parties regarding settlement of all claims pertaining to specific violations alleged herein, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

XX. MODIFICATION

372. The Parties may agree to non-material modifications to this Consent Agreement. Unless specifically allowed in this Consent Agreement by unilateral notice of one of the Parties, non-material modifications shall be in writing and shall be effective when expressly agreed upon by both Parties. For purposes of this paragraph, non-material modifications include, but are not limited to: (i) any modification specifically allowed by another provision of this Consent Agreement; (ii) any modification to the schedules or the corrective action requirements set forth in this Consent Agreement that do not ultimately affect the obligation of Respondent to fully correct all AONs at its facilities within a reasonable time period; (iii) changes in persons and addresses for notification; and (iv), any other modification to this Consent Agreement that does not materially affect the obligations and rights of any Party under this Consent Agreement.

XXI. SEVERABILITY

373. If any provision of this Consent Agreement is ruled invalid, illegal, or unconstitutional, the remainder of the Agreement shall not be affected by such a ruling.

XXII. ANTIDEFIENCY ACT

374. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with RCRA, CAA, AHERA, SDWA, and the applicable regulations thereunder, or with this Consent Agreement and Final Order, except as provided in this Consent Agreement and Final Order. Nothing in this Consent Agreement and Final Order shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

XXIII. AUTHORITY TO BIND THE PARTIES

375. The undersigned representative of Respondent certifies that he or she is fully authorized by the Respondent to enter into the terms and conditions of this Consent Agreement and Final Order and to bind the Respondent to it.

XXIV. EFFECTIVE DATE

376. This Consent Agreement and Final Order shall become effective upon the issuance of the Final Order by the Environmental Appeals Board.

For Respondent:

The United States Department of the Interior

_____
Date

_____
Larry Echo Hawk
Assistant Secretary for Indian Affairs

For Complainant:

U.S. Environmental Protection Agency

4/9/11
Date

Cynthia A. Giles
Assistant Administrator
Office of Enforcement and Compliance Assurance

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APR 19 2011

Date

Larry Echo Hawk
Assistant Secretary for Indian Affairs

For Complainant:

U.S. Environmental Protection Agency

Date

Cynthia A. Giles
Assistant Administrator
Office of Enforcement and Compliance Assurance