

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

UNILATERAL ADMINISTRATIVE
ORDER FOR PERFORMANCE OF A
REMOVAL ACTION

IN THE MATTER OF:
Northeast Church Rock Mine Site
New Mexico

U.S. EPA Region 9
CERCLA Docket No. 9-2007-09

United Nuclear Corporation,
Respondent

Proceeding Under Section 106(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. §§ 9606(a)

I. AUTHORITY

1. This Unilateral Administrative Order (“Order”) is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended (“CERCLA”). The President delegated this authority to the Administrator of the United States Environmental Protection Agency (“EPA” or “Agency”) by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. This authority has been duly redelegated to the Branch Chief, Superfund Division, EPA Region 9 (“Branch Chief”), by delegations dated September 29, 1997, and November 16, 2001.

II. PARTIES BOUND

2. This Order shall apply to and be binding on United Nuclear Corporation (“UNC” or “Respondent”). This Order shall be binding on Respondent and any agents, officers, employees, successors and assigns. No change in ownership or operational status will alter Respondent’s obligations under this Order. Notwithstanding the terms of any contract or agreement, Respondent is responsible for compliance with this Order and for ensuring that its employees, contractors, and agents comply with this Order. Respondent shall provide a copy of this Order to all contractors, subcontractors, and consultants that are retained by it to perform the work required by this Order within three (3) days after the Effective Date of this Order or within three (3) days of retaining their services, whichever is later.

3. Respondent may not convey any title, easement, or other interest that it may have in any property comprising the Site, as the term "Site" is defined below, without a provision permitting the continuous implementation of the provisions of this Order. If Respondent wishes to transfer any title, easement, or other interest that it may have in any property comprising the Site, Respondent shall provide a copy of this Order to any subsequent owner(s) or successor(s) before any ownership rights are transferred. In such case, Respondent shall advise EPA as soon as practical prior to any anticipated transfer of interest.

III. DEFINITIONS

4. Unless otherwise expressly provided herein, the terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order, or in the exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on April 18, 2007, by the Regional Administrator, Region 9, or his delegate, and all attachments thereto. The Action Memorandum is attached as Appendix A.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

c. "Day" shall mean a calendar day, and "days" shall mean consecutive calendar days unless expressly stated otherwise. "Working days" shall mean consecutive calendar days other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall be the effective date of this Order as provided in Section VIII.

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

f. "Mine Permit Area" shall mean the Northeast Church Rock Mine, a former uranium mine, and associated structures and lands, collectively encompassing approximately 125 acres, located approximately 16 miles northeast of Gallup, New Mexico near the intersection of State Highway 566 and Red Water Pond Road and located largely on Navajo tribal trust lands within the Eastern Agency of the Navajo Nation.

g. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

h. "Navajo Nation EPA" or "NNEPA" shall mean the Navajo Nation Environmental Protection Agency.

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

j. "Residential Area" shall mean the collective area within approximately one-half acre squares surrounding each of the nine homesites, as indicated generally on Appendix C.

k. "Respondent" shall mean the United Nuclear Corporation.

l. "Response Action" shall be those specific work items Respondent is required to perform at the Site pursuant to this Order, as set forth in Section IX of this Order.

m. "Section" shall mean a portion of this Order identified by a Roman numeral, unless otherwise stated.

n. "Site" shall mean the Mine Permit Area, the Residential Area, and other areas where hazardous substances associated with the Northeast Church Rock Mine have been deposited, stored, disposed of, placed, or otherwise come to be located.

o. "State" shall mean the state of New Mexico and all of its political subdivisions, including, but not limited to, the New Mexico Environment Department and the Mining and Minerals Division of the New Mexico Energy, Minerals and Natural Resources Department.

p. "Unilateral Order" or "Order" shall mean this Unilateral Administrative Order, EPA docket number 9-2007-09, and any exhibits attached hereto. In the event of a conflict between this Order and any exhibit, this Order shall control.

q. "United States" shall mean the United States of America.

IV. FINDINGS OF FACT

5. Site description. The Northeast Church Rock Mine site (the "Site") located northeast of Gallup, New Mexico, in Sections 34 and 35, Township 17 North, Range 16 West and Section 3, Township 16 North, Range 16 West in McKinley County, New Mexico. The Site vicinity is shown in Appendix B and the Residential Area of the Site is shown in Appendix C. The Mine Permit Area consists of a uranium mining area of approximately 125 acres. The mining operations consisted of two underground mine shafts, a series of vent holes, and support facilities. The Site currently includes uranium mine waste piles, several former ponds and sand fill (mill tailings) areas, and sites of unknown materials.

6. Site ownership and operation. Respondent holds patented mining claims on a portion of the Mine Permit Area. Respondent operated the uranium mine from approximately 1967 until 1982, under the terms of a mineral lease with the predecessors of what is now Newmont Mining Corporation as owner of the mineral estate. The surface estate of this portion is owned by the

United States in trust for the Navajo Nation. The Residential Area lies within the Navajo Nation reservation and includes at least nine residences.

7. Release Characteristics.

a. The conditions at the Site and in the Residential Area present a risk of potential releases of hazardous substances to the air, surrounding soils, sediments, surface water, and ground water. Residences to the northeast of the Mine Permit Area and west and southwest of the former Kerr-McGee Quivira Mine have been impacted by releases of hazardous substances and contaminants transported by wind, historic dewatering of mining operations, and runoff during snow, rain and flood events.

b. EPA has detected elevated levels of alpha radiation at the Site and radium-226 in the surface soils in the Residential Area. Radium is a known human carcinogen, and exposure may be a precursor to bone, liver and breast cancers and other health conditions.

c. More specific detail of materials at the Site and release conditions is stated in the Memorandum *Request for a Time-Critical Removal Action at the Northeast Church Rock Residential Site, McKinley County, New Mexico, Navajo Nation Indian Reservation* (the "Action Memorandum"), included with this Order as Appendix A.

d. The materials EPA observed at the Site and referenced in the Action Memorandum are "hazardous substances," as defined by Section 101(14) of CERCLA. 42 U.S.C. § 9601(14), as listed in 40 CFR § 302.4.

e. Threats to public health or the environment stem from the significant potential for releases of radium-226 and radium-228 and the possibility of inhalation or ingestion of fine particulate matter containing these substances. The presence of dust and soil containing radium-226 and radium-228 in the immediate vicinity of homes presents an imminent and substantial threat of a release of hazardous substances at the Site, and the migration of hazardous substances from the Site.

f. The administrative record supporting this action is available for review at the EPA, Region 9 offices located at 75 Hawthorne Street, San Francisco, California.

8. The State's Mining and Minerals Division asserted jurisdiction over the mine under the New Mexico Mining Act in 1994. In August, 2004, the New Mexico Environment Department issued a groundwater abatement order to Respondent regarding the facility. In January, 2005, the Navajo Nation communicated to the State the Nation's determination that the majority of the Mine Permit Area is on lands that were assigned to the Navajo Nation in the 1880s.

9. Under a 1991 Memorandum of Agreement between the Navajo Nation and EPA Regions 6, 8 and 9, EPA Region 9 has the lead on any EPA response action on lands within the Navajo Nation. On March 11, 2005, the Navajo Nation requested that EPA take the jurisdictional lead on overseeing the reclamation and remediation of the Site, pursuant to the Memorandum of

Agreement.

10. The Mine Permit Area is subject to a National Pollutant Discharge Elimination System ("NPDES") General Storm Water Permit, effective May 15, 2005, issued by EPA. Notwithstanding the provisions of Paragraph 33, Respondent shall comply with this NPDES Permit for all actions not required pursuant to this Order.

V. CONCLUSIONS OF LAW

11. The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

12. Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

13. Respondent operated the mine at the Site from approximately 1967 to 1982, and holds patented mining claims on a portion of the Site. Respondent was an "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility. Accordingly, Respondent is "liable" within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2), and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

14. The radionuclides identified in the Action Memorandum are "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). Hazardous substances disposed, emitting and escaping in and from the Site constitute a "release," as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

15. The actual or threatened release of hazardous substances from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment, within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VI. DETERMINATIONS

Based on the Findings of Fact and the Conclusions of Law stated herein, the Branch Chief has made the following determinations:

16. That an actual or threatened release of hazardous substances from the Site presents an imminent and substantial endangerment to the public health or welfare or the environment.

17. That conditions at the Site constitute a threat to public health or welfare or the environment based on consideration of the factors stated in the NCP at 40 C.F.R. § 300.415(b), and that the actions required by this Order are necessary to protect the public health or welfare or the environment.

18. That the actions required by this Order, if properly performed, will be consistent with the

NCP, and are appropriate to protect the public health or welfare or the environment.

VII. NOTICE TO THE STATE

19. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA has notified the State and the Navajo Nation of the issuance of this Order by providing a copy of this Order.

VIII. EFFECTIVE DATE

20. This Order is deemed effective on receipt (the "Effective Date"), unless a conference is requested as provided herein. Transmission by EPA of an electronic version of the signed Order to a valid email address for Respondent's representatives shall constitute receipt on the date of transmission, for the purposes of this Paragraph; such delivery shall be followed by overnight delivery of a paper copy. If such a conference is requested, this Order shall be effective the first day following the day of such conference unless modified in writing by EPA.

IX. ORDER

Based on the Findings of Fact, Conclusions of Law, and Determinations, EPA hereby orders Respondent to perform the specific work set forth below under the direction of the EPA On Scene Coordinator ("OSC"), as designated in Section XIV, and to comply with all requirements of this Order until EPA provides notice that the Response Action is complete.

21. Work to be Performed.

a. Procure services, material and equipment necessary for transportation and disposal of soils and contaminants as directed by the OSC, and confirm procurement in writing to EPA by May 2, 2007.

b. Deliver equipment needed for transportation of soils and contaminants to a specific staging location as directed by the OSC, on a schedule to be determined by the OSC.

c. Perform waste profile sampling as needed for disposal.

d. As directed by the OSC, transport and dispose of soils and contaminants as approved by EPA. Transportation and disposal shall be in accordance with all applicable or appropriate regulations. Each transfer of hazardous substances, pollutants or contaminants off-Site must be consistent with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and the EPA procedures for planning and implementing off-Site response actions established at 40 C.F.R. § 300.440.

e. Provide EPA with copies of all documentation related to off-Site disposal or other disposition of wastes including, but not limited to, manifests, waste profiles and analytical data and disposal costs.

f. Submit Final Report as provided in Paragraph 23.

22. Within two (2) days of the Effective Date of this Order, Respondent shall provide EPA with documentation that adequately demonstrates its financial ability to complete the work to be performed pursuant to this Order. Examples of adequate financial documentation that EPA may accept include, but are not limited to: A signed contract or guarantee on the part of the Respondent's contractor that it will complete the work to be performed; a letter of credit from a financial institution; an escrow account for the value of the work to be performed; a demonstration by Respondent that Respondent meets the financial test criteria and all other requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work; or a written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of Respondent, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Respondent; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

23. Final Report. Within twenty (20) days after completion of all activities related to transportation and disposal of soils from the Residential Area required by this Order, Respondent shall submit for EPA review and approval after consultation with NNEPA, a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports", and with "Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed by Respondent, all invoices submitted by contractors (which shall identify specific work performed), and all manifests and permits generated during the removal action. The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

24. All documents, including technical reports, and other correspondence to be submitted by the Respondent pursuant to this Order, shall be sent by over-night mail to the following addressees or to such other addressees as EPA hereafter may designate in writing, and shall be deemed submitted on the date received by EPA.

Andrew Bain
U.S. EPA, Mail Code SFD-8-2
75 Hawthorne St.
San Francisco, CA 94105
Telephone 415-972-3167
Facsimile 415-947-3528
Email Bain.Andrew@epa.gov

AND

Harry L. Allen, Federal On-Scene Coordinator
U.S. EPA, Mail Code SFD-9-2
75 Hawthorne St.
San Francisco, CA 94105
Telephone 415-972-3063
Facsimile 415-947-3518
Email Allen.HarryL@epa.gov

AND

David A. Taylor
Navajo Nation Department of Justice
P.O. Drawer 2010
Window Rock, AZ 86515
Telephone 928-871-6932
Fax 928-871-6200
Email davetaylor@navajodoj.com

25. EPA shall review, comment, and approve or disapprove each plan, report, or other deliverable submitted by Respondent. All EPA comments on draft deliverables shall be incorporated by Respondent. EPA shall notify Respondent in writing of EPA's approval or disapproval of a final deliverable. In the event of any disapproval, EPA shall specify the reasons for such disapproval, EPA's required modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by EPA, EPA first shall notify Respondent of its disapproval of the resubmitted report, document, or deliverable, and then may draft its own report, document or deliverable and incorporate it as part of this Order, may seek penalties from Respondent for failing to comply with this Order, and may conduct the remaining work required by this Order and seek to recover costs from Respondent.

26. For purposes of this Order, EPA's authorized representatives shall include, but not be limited to, consultants and contractors hired by EPA to oversee the activities required by this Order.

27. Selection of Contractor(s) and Subcontractor(s)

a. All work performed by or on behalf of Respondent pursuant to this Order shall be performed by qualified individuals or contractors with expertise in hazardous waste site investigation or remediation, unless agreed otherwise by EPA. Respondent shall, within two (2) days after the Effective Date of this Order, notify EPA in writing of the name, title and qualifications of the individual(s) who will be responsible for carrying out the terms of this Order, and the name(s) of any contractor(s) or subcontractor(s). The qualifications of the persons, contractors, and subcontractors undertaking the work for Respondent shall be subject to EPA review and approval.

b. If EPA disapproves of any person's or contractor's technical or work-experience qualifications, EPA will notify the Respondent in writing. Respondent shall, within five (5) working days of Respondent's receipt of EPA's written notice, notify EPA of the identity and qualifications of the replacement(s). Should EPA disapprove of the proposed replacement(s), Respondent shall be deemed to have failed to comply with the Order.

c. Respondent may propose to change the individual(s), contractor(s), or subcontractor(s) retained to direct and supervise the work required by this Order. If Respondent wishes to propose such a change, Respondent shall notify EPA in writing of the name, title, and qualifications of the proposed individual(s), proposed contractor(s), or proposed subcontractor(s), and such individual(s), contractor(s) or subcontractor(s) shall be subject to approval by EPA in accordance with the terms of Paragraph 27, above. The naming of any replacement(s) by Respondent shall not extend any deadlines required by this Order nor relieve the Respondent of any of their obligations to perform the work required by this Order.

28. Respondent will notify EPA and NNEPA of the respective field activities at least twenty-four (24) hours before initiating them so that EPA may adequately schedule oversight tasks.

29. Respondent shall submit to EPA a certification that Respondent or its contractor(s) and subcontractor(s) have adequate insurance coverage or other ability, subject to approval of EPA, to compensate for liabilities for injuries or damages to persons or property that may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Adequate insurance shall include comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. If the Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondent need provide only that portion of the insurance described above that is not maintained by such contractor or subcontractor. Respondent shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order. Respondent shall ensure that the United States is named as an additional insured on any such insurance policies.

30. All work required by this Order shall be conducted in accordance with: CERCLA; the NCP; EPA Region 9 "Guidance for Preparing Quality Assurance Project Plans for Superfund

Remedial Projects” (EPA, November 1992); any final amended or superseding versions of such documents provided by EPA; other applicable EPA guidance documents; any Work Plan or individual components approved pursuant to Paragraph 25 of this Order; and any report, document or deliverable prepared by EPA because Respondent failed to comply with this Order.

31. All plans, schedules, and other reports that require EPA's approval and are required to be submitted by Respondent pursuant to this Order shall, after approval by EPA, be incorporated into and enforceable under this Order.

32. EPA will oversee Respondent's activities as specified in Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1). Respondent will support EPA's initiation and implementation of activities needed to carry out its oversight responsibilities. Respondent also shall cooperate and coordinate the performance of all work required to be performed under this Order with all other work being performed at the Site, including work performed by EPA, the State, Navajo Nation, or any other party performing work at the Site with the approval of EPA.

33. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, tribal, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

X. NOTICE OF INTENT TO COMPLY

34. Respondent shall, within two (2) working days of the Effective Date of this Order, provide written notice to EPA of Respondent's irrevocable intent to comply with this Order. Failure to respond, or failure to agree to comply with this Order, shall be deemed a refusal to comply with this Order.

XI. OPPORTUNITY TO CONFER

35. Respondent may, within one (1) working day of receipt of this Order, request a conference with the Section Chief of the Emergency Response Section in the Response, Planning and Assessment Branch in the EPA Region 9 Superfund Division, or whomever the Section Chief may designate. If requested, the conference shall occur within two (2) working days of the request, unless extended by mutual agreement of the EPA and Respondent, at EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

36. At any conference held pursuant to Respondent's request, the Respondent may appear in person, or be represented by an attorney or other representative. If Respondent desires such a conference, Respondent shall contact Harrison Karr, EPA Assistant Regional Counsel, at (415) 972-3939. Respondent also shall give notice to NNEPA of the conference request.

37. The purpose and scope of any such conference held pursuant to this Order shall be limited to issues involving the implementation of the Response Action required by this Order and the extent to which Respondent intends to comply with this Order. If such a conference is held, the Respondent may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations on which the Order is based, the appropriateness of any action that the Respondent is ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within three (3) days following the Effective Date of this Order. Any such writing should be directed to Harrison Karr at the following address:

Harrison Karr
Assistant Regional Counsel
U.S. EPA, Mail Code ORC-3
75 Hawthorne Street
San Francisco, CA 94105

38. Respondent is hereby placed on notice that EPA will take any action that may be necessary in the opinion of EPA for the protection of public health and welfare and the environment, and Respondent may be liable for the costs of those actions under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

XII. ENDANGERMENT AND EMERGENCY RESPONSE

39. In the event of any action or occurrence during the performance of the work that causes or threatens to cause a release of a hazardous substance or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action(s) to prevent, abate, or minimize the threat, and shall immediately notify EPA's OSCs. If neither of these persons is available, Respondent shall notify the EPA Emergency Response Unit, Region 9, by calling (800) 300-2193. Respondent shall take such action(s) in consultation with EPA's OSC and in accordance with all applicable provisions of this Order, including but not limited to the approved Health & Safety Plan.

40. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances at or from the Site.

XIII. MODIFICATION OF WORK REQUIRED

41. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the EPA OSC by telephone within twenty-four (24) hours of discovery of the unanticipated

or changed circumstances. This verbal notification shall be followed by written notification postmarked no later than within two (2) days of discovery of the unanticipated or changed circumstances.

42. The Branch Chief may determine that in addition to tasks addressed herein, additional work may be required to address the unanticipated or changed circumstances referred to in Paragraphs 39 and 41. Where consistent with Section 106(a) of CERCLA, the Branch Chief may direct, as an amendment to this Order, that Respondent perform these tasks in addition to those required herein. Respondent shall implement the additional tasks that the Branch Chief identifies. The additional work shall be completed according to the standards, specifications, and schedules set forth by the Branch Chief in any modifications to this Order.

XIV. DESIGNATED PROJECT MANAGERS

43. EPA designates Andrew Bain and Harry Allen, employees of EPA Region 9, as its OSCs and designated representatives at the Site. Each OSC shall have the authorities, duties, and responsibilities vested in an OSC by the NCP. This includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Order or undertake the Response Action (or portions of the Response Action) when conditions at the Site present or may present a threat to public health or welfare or the environment as set forth in the NCP. Within two (2) working days of the Effective Date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for overseeing Respondent's implementation of this Order. To the maximum extent possible, all oral communications between Respondent and EPA concerning the activities performed pursuant to this Order shall be directed through EPA's OSC and Respondent's Project Coordinator. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be delivered in accordance with Paragraph 24, above.

44. EPA and Respondent may change their respective OSC and Project Coordinator. Notification of such a change shall be made by notifying the other party in writing at least five (5) days prior to the change, except in the case of an emergency, in which case notification shall be made orally followed by written notification as soon as possible.

45. The absence of the EPA OSC from the Site shall not be cause for the stoppage of work. Nothing in this Order shall limit the authority of the EPA OSC under federal law.

XV. SITE ACCESS

46. Respondent shall permit EPA and its authorized representatives, including its contractors and the State, to have access at all times to the Site to monitor any activity conducted pursuant to this Order and to conduct such removal activities, tests or investigations as EPA deems necessary. Respondent also shall provide the NNEPA and its designated representatives, including technical contractors, with access at all reasonable times to the Site, or such other property, for the purpose of overseeing, observing, monitoring, and taking split samples, during any EPA activities related to this Order. Nothing in this Order shall be deemed a limit on EPA's

authority under federal law, or NNEPA's authority, to gain access to the Site.

47. To the extent that Respondent requires access to property other than property that they own to carry out the terms of this Order, Respondent shall, within a reasonable time to implement the requirements of this Order, obtain access for: EPA, its contractors, oversight officials, or other authorized representatives; NNEPA oversight officials, contractors, or other authorized representatives; and Respondent and its authorized representatives. If Respondent fails to gain access within the time period necessary to implement the requirements of this Order, Respondent shall continue to use best efforts to obtain access until access is granted. For purposes of this Paragraph, "best efforts" include, but are not limited to, the payment of money as consideration for access. If access is not provided within the time referenced above, EPA may obtain access under Sections 104(e) or 106(a) of CERCLA. EPA reserves the right to seek reimbursement from Respondent for all costs and attorney's fees incurred by the United States in obtaining such access. With regard to access to the residences and residential yards in the Residential Area, if additional access agreements are necessary, Respondent shall consult with EPA and NNEPA on a coordinated access approach, which will include EPA and NNEPA making the initial effort to obtain necessary access agreements.

XVI. DELAY IN PERFORMANCE

48. Any delay in the performance of any requirement of this Order that, in the EPA's sole judgment and discretion, is not properly justified by Respondent under the terms of this Section shall be considered a violation of this Order. Any delay in performance of any requirement of this Order shall not affect any other obligation of Respondent under the terms and conditions of this Order.

49. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's OSCs within twenty-four (24) hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why the Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not justifications for any delay in performance.

50. If Respondent is unable to perform any activity or submit any document within the time required under this Order, Respondent may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to perform any of Respondent's obligations under this Order.

51. If EPA determines that good cause exists for an extension of time, it may grant a request

made by Respondent pursuant to Paragraph 50 above, and specify in writing to the Respondent the new schedule for completion of the activity or submission of the document for which the extension was requested.

XVII. RECORD PRESERVATION

52. Respondent shall maintain, during the pendency of this Order, and for a minimum of seven (7) years after EPA provides notice to Respondent that the work has been completed, a depository of the records and documents required to be prepared under this Order. In addition, Respondent shall retain copies of the most recent version of all documents that relate to hazardous substances at the Site and that are in their possession or in the possession of their employees, agents, contractors, or attorneys. After this seven-year period, Respondent shall notify EPA and NNEPA at least thirty (30) days before the documents are scheduled to be destroyed. If EPA or NNEPA so requests, Respondent shall provide these documents to EPA or NNEPA.

XVIII. ENFORCEMENT AND RESERVATIONS

53. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or otherwise incurred at the Site and not reimbursed by Respondent. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, and the costs of compiling the cost documentation to support oversight costs, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

54. Notwithstanding any other provision of this Order, at any time during the Response Action, EPA may perform its own studies, complete the Response Action (or any portion of the Response Action) and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

55. Nothing in this Order shall preclude EPA from taking any additional enforcement action, including modification of this Order or issuance of additional Orders, or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9607(a), *et seq.*, or any other applicable law. Respondent may be liable under CERCLA Section 107(a) for the costs of any such additional actions.

56. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Resource Conservation and Recovery Act, or any other applicable statutes or regulations.

57. Notwithstanding compliance with the terms of this Order, including the completion of the EPA-approved Response Action, Respondent is not released from liability, if any, for any enforcement actions beyond the terms of this Order taken by EPA.

58. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other legal authority, including the right to seek injunctive relief, monetary penalties, reimbursement of response costs, and punitive damages for any violation of law or this Order.

59. EPA expressly reserves all rights and defenses that it may have, including the EPA's right both to disapprove of work performed by Respondent and to request Respondent to perform tasks in addition to those detailed in Section IX of this Order.

60. This Order does not release Respondent from any claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause of action, or demand that lawfully may be asserted by representatives of the United States, the Navajo Nation, or the State.

61. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain such formal approval as may be required by this Order.

XIX. SEVERABILITY

62. If any provision or authority of this Order or the application of this Order to any circumstance is held by a court to be invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby, and the remainder of this Order shall remain in force.

XX. DISCLAIMER

63. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or its employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States shall be held as a party to any contract entered into by Respondent, or its employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA; 42 U.S.C. § 9611(a)(2).

XXI. PENALTIES FOR NONCOMPLIANCE

64. Respondent is advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), that violation of this Order or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject Respondent to a civil penalty of up to \$32,500 per day for each day in which such violation occurs, or such failure to comply continues. Failure to comply with this Order, or any portion thereof, also may subject Respondent to liability for punitive damages in an amount three times the amount of any cost incurred by the government as a result of the failure of Respondent to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

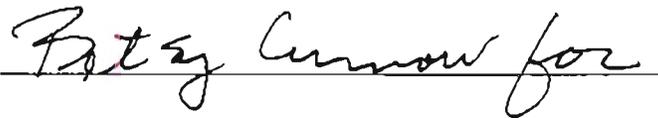
XXII. TERMINATION AND SATISFACTION

65. The provisions of this Order shall be deemed satisfied on Respondent's receipt of written notice from EPA that Respondent has demonstrated to the satisfaction of EPA that all of the terms of this Order, including any additional tasks that EPA has determined to be necessary, have been completed.

Unilateral Administrative Order 9-2007-09

IT IS SO ORDERED:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

By: 

Date: 4/27/07

Daniel A. Meer
Branch Chief, Response, Planning and Assessment Branch
U.S. Environmental Protection Agency, Region 9

EPA Region 9 Contacts:

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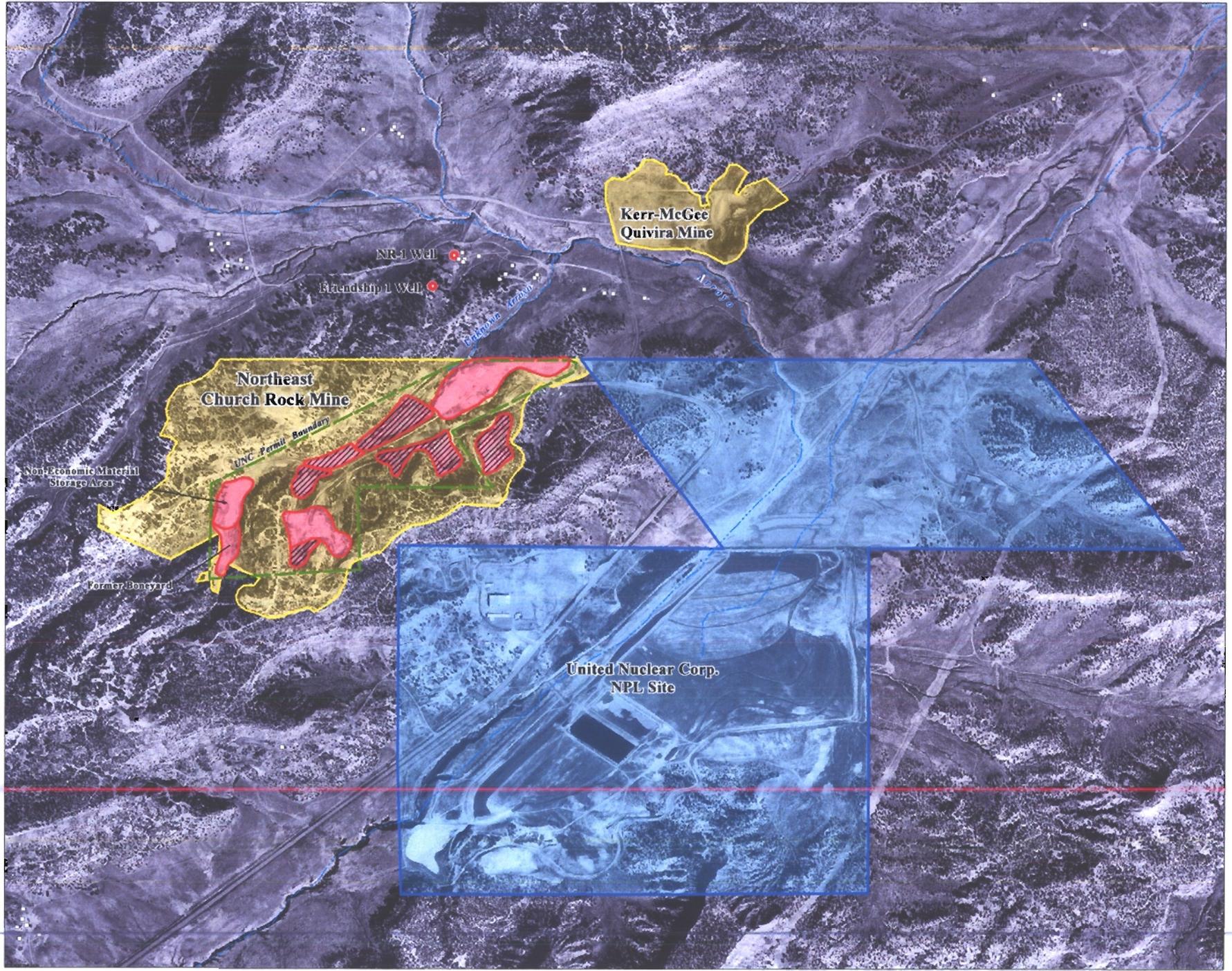
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Appendix B

Site Map



- Wells
- AUM Sites
- UNC Permit Boundary
- Sandfills/Ponds
- Areas of Surface Disturbance
- Building Structures

Navajo Nation Tribal Lands - Northeast Church Rock Mine



Appendix C
Residential Removal Area



LEGEND

- - - UNNAMED ARROYO
- APPROXIMATE SURVEY BOUNDARY
- SAMPLING AREAS
- HOME SITES



NOTES:

1. 14 STRUCTURES ARE SHOWN; 10 WITH 1/2 ACRE SURVEY AREAS;

1	Issued For Final	06/06	L.Martin	C.Fowler	L.Martin
0	Issued For Draft	05/05	L.Martin	C.Fowler	L.Martin
REV. No.	REVISIONS	DATE	DESIGN BY	DRAWN BY	REVIEWED AND CHECKED BY
			PROJECT No. 1004690		
			AutoCAD FILE: 3-11 GIS.dwg		
			SCALE	FIGURE No.	



**REMOVAL SITE EVALUATION
WORK PLAN**

**LOCATIONS OF NINE
HOME SITES**



MWH