

RESOLUTION OF THE  
RESOURCES AND DEVELOPMENT COMMITTEE  
24<sup>th</sup> Navajo Nation Council --- Second Year, 2020

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE  
NAVAJO NATION COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
COMPENSATION, AND LIABILITY ACT (NNCERCLA) REGULATIONS

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. Pursuant to 2 N.N.C. § 500(C), the Resources and Development Committee of the Navajo Nation Council has oversight authority over environmental protection.
- B. Pursuant to 2 N.N.C. § 500(C)(2), the Resources and Development Committee of the Navajo Nation Council has the authority "[t]o oversee regulation of activities on Navajo Nation lands for disposition or acquisition of resources, surface disturbance, or alternation of the natural state of the resource, including the enforcement and administration of applicable Navajo Nation and federal laws, regulations, guidelines, and administrative procedures in the development and use of resources as a good steward."
- C. Pursuant to 2 N.N.C. § 501(B)(1), the Resources and Development Committee of the Navajo Nation Council has the power "[t]o promulgate rules and regulations governing transportation, community development, local government units, land acquisitions for the Navajo Nation, environmental protection, and the use, sale, exchange, and development of Navajo Nation lands and/or resources, whether held in fee or trust status."

SECTION TWO. FINDINGS

- A. The Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act ("NNCERCLA"). Fees for Environmental Review Services, attached as **Exhibit A**, is promulgated pursuant to the NNCERCLA, 4 N.N.C. § 2105(A)(11), for the purpose of preventing the release of hazardous substances on the Navajo Nation.
- B. The Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, Release Reporting

Regulations, attached as **Exhibit B**, are promulgated pursuant to NNCERCLA, 4 N.N.C. § 2801(A), for the purpose of reporting of releases of hazardous substances in accordance with 4 N.N.C. § 2201.

- C. The Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act Regulations Governing the Preservation of Records Under 4 N.N.C. § 2201, attached as **Exhibit C**, are promulgated to preserve records that have been created pursuant to the recordkeeping requirements of Section 103(d) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9603(c). These regulations prescribe (a) the notice to be given to the Director regarding the existence of facilities within the Navajo Nation at which hazardous substances are or have been stored, treated, or disposed of; (b) the records required to be retained under NNCERCLA § 2202(A); (c) requirements for preserving these records; (d) procedures for waivers from the record preservation requirements; and (c) penalties for violations of the record-preservation requirements.
- D. The Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, Regulations Governing Notice of Intent to bring a Citizen Suit Under 4 N.N.C. § 2804, attached as **Exhibit D**, authorizes any person to bring a civil action in Navajo Nation District Court to enforce the NNCERCLA. Such an action may be brought against any person except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises, who is alleged to be in violation of a requirement or standard of the NNCERCLA, a regulation promulgated pursuant to the NNCERCLA, or an agreement or order agreed to or issued pursuant to the NNCERCLA. This action must be filed in accordance with the rules of the Navajo Nation District Court in which the action is brought. These regulations prescribe the procedures governing the notice required by the NNCERCLA, 4 N.N.C. § 2804(B) as a prerequisite to the commencement of such civil actions.
- E. The Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, Voluntary Cleanup Program Regulations, attached as **Exhibit E**, are promulgated pursuant to 4 N.N.C. § 2402. They set forth policies and procedures for a Voluntary Cleanup Program ("VCP") to provide for voluntary cleanup activities at contaminated sites within the Navajo Nation that are not already undergoing or scheduled for remediation. These regulations include requirements for

applications to the Voluntary Cleanup Program, VCP Agreements, and work plans. The VCP is intended to increase the pace of response activities at contaminated sites and to promote the economic security, political integrity, and health, welfare, and environment of the Navajo Nation by returning contaminated sites to economically productive uses.

- F. The above five NNCERCLA regulations regarding Fees for Environmental Review Services; Release Reporting Regulations; Regulations Governing the Preservation of Records Under 4 N.N.C. § 2202; Regulations Governing Notice of Intent to bring a Citizen Suit Under 4 N.N.C. § 2804; and Voluntary Cleanup Program Regulations were published in newspapers August 23, 2012 and public hearings were conducted September 19-21, 2012. See attached **Exhibit F**, memorandum concerning the public hearings for NNCERCLA.

### **SECTION THREE. APPROVAL**

- A. The Resources and Development Committee of the Navajo Nation Council hereby approves the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, Fees for Environmental Review Services attached as **Exhibit A**.
- B. The Resources and Development Committee of the Navajo Nation Council hereby approves the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, Release Reporting Regulations attached as **Exhibit B**.
- C. The Resources and Development Committee of the Navajo Nation Council hereby approves the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, Regulations Governing the Preservation of Records Under 4 N.N.C. § 2202 attached as **Exhibit C**.
- D. The Resources and Development Committee of the Navajo Nation Council hereby approves the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, Regulations Governing Notice of Intent to bring a Citizen Suit Under 4 N.N.C. § 2804 attached as **Exhibit D**.
- E. The Resources and Development Committee of the Navajo Nation Council hereby approves the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, Voluntary Cleanup Program Regulations attached as **Exhibit E**.

**CERTIFICATION**

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 24<sup>th</sup> Navajo Nation Council at a duly called meeting held by a teleconference for which a quorum was present and that same was passed by a vote of 4 in favor, and 0 opposed, on this 17<sup>th</sup> day of June 2020.



Rickie Nez, Chairperson  
Resources and Development Committee  
of the 24<sup>th</sup> Navajo Nation Council

Motion: Honorable Mark A. Freeland  
Second: Honorable Thomas Walker, Jr.

Chairperson Rickie Nez not voting.



**NAVAJO NATION COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION, AND LIABILITY ACT**

**Fees for Environmental Review Services**

**October 11, 2013**

**Navajo Nation Superfund Program  
Highway 264  
43 Crest Road  
St. Michael's, AZ 86511**

**NAVAJO NATION COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION, AND LIABILITY ACT**

**Fees for Environmental Review Services**

**Table of Contents**

§ 101. Purpose and Findings.....	1
§ 102. Authority.....	1
§ 103. Definitions.....	1
§ 104. Environmental Review Fee.....	2
§ 105. Payment.....	2

**§ 101. Purpose and Findings**

- (a) **Purpose.** These regulations provide for the charging of fees for environmental review services conducted by the Navajo Nation Superfund Program (“NSP”) at the request of various Navajo Nation departments and entities, state and federal agencies, and private businesses to determine whether proposed construction and other development projects are located on or near any sites that have been placed on the National Priorities List or CERCLIS.
  
- (b) **Findings.** In light of the frequency of these environmental review requests; the number of requests received; and the expertise, specialized resources, and staff time needed to respond to the requests, the NSP finds it necessary to charge a fee to cover requests for environmental review services.

**§ 102. Authority**

These regulations are promulgated pursuant to the NNCERCLA, 4 N.N.C. § 2105(A)(11), for the purpose of preventing the release of hazardous substances on the Navajo Nation. *See also* NNCERCLA, 4 N.N.C. § 2102(C).

**§ 103. Definitions**

- (a) The definitions found in the NNCERCLA, 4 N.N.C. § 2104, apply to these regulations. In addition, the following definitions shall apply:
  - (1) *National Priorities List* or *NPL* means the prioritized list compiled under the federal Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), or Superfund law, of the most severely contaminated sites throughout the United States and its territories that are targeted for cleanup under CERCLA.

- (2) *CERCLIS* means the Comprehensive Environmental Response, Compensation, and Liability Information System, a public access federal database containing information on NPL-listed sites and other Superfund sites.

#### § 104. Environmental Review Fee

- (a) **Fees.** The following fees will be charged for environmental review services:
  - (1) a flat fee of \$100 for all requests for review;
  - (2) an additional fee of \$25 for all expedited requests; and
  - (3) an additional fee of \$25 for requests lacking the documentation needed for the review or containing incorrect information (the NSP will attempt to provide the missing or corrected information).

For example, a request for review that does not include a map (or that incorrectly identifies the location of the site) and that requests a 24-hour turnaround will require a \$150 fee.

- (b) **Basis.** The flat fee reflects the hourly rate (salary and benefits) for each NSP staff position that is engaged in the review and the time that each individual generally requires to perform the review, together with photocopying, supplies, and other miscellaneous overhead.

#### § 105. Payment

- (a) The environmental review fee shall be paid by government check, certified check, or money order in the exact amount required, and shall be submitted to the NSP together with a completed environmental review request form. The form may be obtained from the NSP.
- (b) Pursuant to the NNCERCLA, 4 N.N.C. § 2701(B)(7), the NSP will deposit such payments into the Hazardous Substances Fund established under 4 N.N.C. § 2701(A). The NSP will report annually to the Navajo Nation Council regarding the amount of fees received and their disposition. *See* 4 N.N.C. § 2701(C)(1).

Navajo Nation Superfund Program  
Navajo Nation EPA  
P.O. Box 2946  
Window Rock AZ 86511  
phone: (928) 871-6859  
fax: (928) 871-7333  
email: nnepansp@frontiernet.net

Physical Address:  
Highway 264  
43 Crest Road  
Saint Michaels AZ 86511

For Program Use Only

Site Number \_\_\_\_\_

## **ENVIRONMENTAL REVIEW REQUEST FORM**

Please complete this form and return it to the Navajo Nation Superfund Program ("NSP") with your payment. [NSP Regulations - Fees for Environmental Review Services, § 105(a)]

PLEASE PRINT OR TYPE

### **I. CONTACT INFORMATION**

Applicant: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Owner: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

### **II. PROPERTY INFORMATION**

Name of Proposed or Existing Business or Other Development for which Review is Sought: \_\_\_\_\_

Brief Description of Proposed Activity for which Review is Sought: \_\_\_\_\_

Physical Address or Description of Location: \_\_\_\_\_

Parcel Identification Number: \_\_\_\_\_



County: \_\_\_\_\_ Township: \_\_\_\_\_  
Parcel Size (in acres): \_\_\_\_\_ GPS Coordinates: \_\_\_\_\_

**III. SUPPLEMENTAL PROPERTY INFORMATION**

To facilitate the environmental review, please attach the following items to this form:

- vicinity map identifying the property in relation to major crossroads or geographic features
- plat or city map identifying the property
- other (describe): \_\_\_\_\_  
\_\_\_\_\_

**IV. PAYMENT INFORMATION**

<input type="checkbox"/> Regular Review .....	\$ 100.00
<input type="checkbox"/> Expedited Review (24-Hour Turnaround) .....	additional \$ 25.00
<input type="checkbox"/> No Documentation Provided .....	additional \$ 25.00
Total.....\$ _____	
Payment Enclosed:	\$ _____
Form of Payment	<input type="checkbox"/> Government Check No. _____
	<input type="checkbox"/> Certified Check No. _____
	<input type="checkbox"/> Money Order No. _____

**V. SIGNATURE**

This document and all attachments were prepared under my direction or supervision and all information submitted is, to the best of my knowledge, true, accurate, and complete.

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**NAVAJO NATION COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION, AND LIABILITY ACT**

**Release Reporting Regulations**

**April 27, 2015**

**Navajo Nation Superfund Program  
Highway 264  
43 Crest Road  
St. Michael's, AZ 86511**

**NAVAJO NATION COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION, AND LIABILITY ACT**

**Release Reporting Regulations**

**Table of Contents**

Part 1. General Provisions .....	1
§ 101. Purpose, Applicability, and Scope .....	1
§ 102. Authority .....	1
§ 103. Definitions.....	1
Part 2. Notification and Reporting.....	3
§ 201. Release Notification.....	3
§ 202. Reporting Requirements .....	3
§ 203. Penalties for Noncompliance .....	4

**Part 1. General Provisions**

**§ 101. Purpose, Applicability, and Scope**

- (a) These regulations provide procedures under the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act (“NNCERCLA”), 4 N.N.C. §§ 2101-2805, for the reporting of releases of hazardous substances in accordance with 4 N.N.C. § 2201.
- (b) Questions arising at any stage during a release, reporting, remedial action, or cleanup action that are not addressed in the NNCERCLA, these regulations, or other regulations implementing the NNCERCLA shall be resolved at the discretion of the Director.

**§ 102. Authority**

These regulations are promulgated pursuant to the NNCERCLA, 4 N.N.C. § 2801(A).

**§ 103. Definitions**

The following definitions apply to these regulations:

- (a) *Director* means the Executive Director of the Navajo Nation Environmental Protection Agency (“NNEPA”), or his or her authorized delegate.
- (b) *Hazardous substance* means --

- (1) any substance designated pursuant to § 311 of the Clean Water Act, 33 U.S.C. § 1321(b)(2)(A);
- (2) any element, compound, mixture, solution, or substance designated pursuant to 4 N.N.C. § 2105(B) or 42 U.S.C. § 9602;
- (3) any hazardous waste having the characteristics identified under or listed pursuant to § 3001 of the Solid Waste Disposal Act, 42 U.S.C. § 6921;
- (4) any toxic pollutant listed under § 307 of the Clean Water Act, 33 U.S.C. § 1317(a);
- (5) any hazardous air pollutant listed under § 112 of the Clean Air Act, 42 U.S.C. 7412; and
- (6) any imminently hazardous chemical substance or mixture with respect to which the Administrator of the United States Environmental Protection Agency has taken action pursuant to § 7 of the Toxic Substances Control Act, 15 U.S.C. § 2606.

This term includes petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under Paragraphs (1) through (6) of this subsection, casinghead gas, natural gas liquids, condensate, and liquefied natural gas, but does not include dry natural gas.

- (c) *Permitted release* means a discharge in compliance with a permit issued by NNEPA or the United States Environmental Protection Agency.
- (d) *Person* means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, the United States, state, tribe, municipality, commission, political subdivision of a state or tribe, or any interstate or other intergovernmental body.
- (e) *Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant).
- (f) *Reportable quantity* means, unless revised by regulation issued pursuant to the NNCERCLA, 4 N.N.C. §§ 2105(B) and 2801, the amount prescribed in 40 C.F.R. § 302.4 or one pound, if not listed in that section, except in the case of petroleum,

where the reportable quantity shall be 1 barrel for crude oil and 25 gallons for gasoline or natural gas liquids, including condensate, for releases on land and, for releases into surface water, such quantity as violates applicable water quality standards or causes a film or sheen upon or discoloration of the surface of the water or causes a sludge or emulsion to be deposited beneath the surface of the water.

(g) *Site* means --

- (1) any facility, building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or
- (2) any area where a hazardous substance, pollutant, or contaminant (but not including any consumer product in consumer use) has been deposited, stored, disposed, placed, or otherwise come to be located.

## **Part 2. Notification and Reporting**

### **§ 201. Release Notification**

- (a) Any person in charge of a site shall notify the Navajo Nation Department of Emergency Management ("NNDEM") and the Navajo Nation Superfund Program ("NSP") within 24 hours of learning of a release of a hazardous substance (other than a permitted release) in quantities equal to or greater than the reportable quantity for that substance.
- (b) Notification need not be given more than annually for a release subject to Subsection 201(a) when that release is a continuous release, stable in quantity and rate, and notification has already been given for that release pursuant to Subsection 201(a) for a period sufficient to establish the continuity, quantity, and regularity of such release. If there is any statistically significant increase in the quantity of any hazardous substance released or of any constituent thereof from what has been previously reported, however, notice shall be given immediately pursuant to these regulations.

### **§ 202. Reporting Requirements**

- (a) **Immediate Verbal Notification.** The person reporting a release pursuant to Section 201 of these regulations shall provide verbal notification within 24 hours of learning of such release. Verbal notification of the release shall include all

information required by the Release Notification Form for either petroleum or other hazardous substances, as applicable, to the extent known at the time of the notice. Verbal notification shall be made to the NNDEM in person or by phone at (928) 871-6892 and to the NSP in person or by phone at (928) 871-6859.

- (b) **Timely Written Notification.** The person reporting a release pursuant to Section 201 of these regulations shall provide written notification within 15 days of learning of such release by completing and filing the applicable Release Notification Form: (1) with the NNDEM via facsimile at (928) 871-7569 or in person by delivery to the NNDEM office, and (2) with the NSP electronically at [nnepansp@frontiernet.net](mailto:nnepansp@frontiernet.net), via facsimile at (928) 871-7333, or in person by delivery to the NSP office.
  
- (c) **National Response Center.** These regulations do not replace requirements under CERCLA § 103, 42 U.S.C. § 9603, to report oil and chemical spills to the National Response Center, 800-424-8802.

### **§ 203. Penalties for Noncompliance**

Failure to comply with these Release Reporting Regulations, including but not limited to failure to provide immediate notification to NNEPA or NNDEM of a release covered by these regulations, failure to file a written report of such a release with NNEPA or NNDEM, and providing false or misleading information concerning such a release, is subject to judicial enforcement and civil, criminal, and/or administrative penalties pursuant to NNCERCLA, 4 N.N.C. §§ 2509 and 2510.

Navajo Nation EPA  
 Navajo Nation  
 Superfund Program  
 Phone: (928) 871-6859  
 Fax: (928) 871-7333

Navajo Nation EPA  
 Navajo Nation Storage  
 Tank Program  
 Phone: (928) 871-7993  
 Fax: (928) 871-7599

Navajo Nation Dept.  
 Of Emergency Mgt.  
 Phone: (928) 871-6892  
 Fax: (928) 871-7569

For NNEPA and  
 NNDEM use only  
 Approved By:  
 Approval Date:

## RELEASE NOTIFICATION FORM - HAZARDOUS SUBSTANCES OTHER THAN PETROLEUM

FOR REPORTING RELEASES OF HAZARDOUS SUBSTANCES, EXCEPT PETROLEUM, EQUAL TO OR EXCEEDING REPORTABLE QUANTITIES UNDER NNCERCLA, 4 N.N.C. § 2201, AND IMPLEMENTING REGULATIONS. THIS FORM MAY ALSO BE USED TO SATISFY WRITTEN REPORTING REQUIREMENTS FOR RELEASES OF HAZARDOUS SUBSTANCES UNDER THE NAVAJO NATION STORAGE TANK ACT, 4 N.N.C. § 1544, AND FOR RELEASES OF EXTREMELY HAZARDOUS SUBSTANCES UNDER EPCRA, 42 U.S.C. § 11004(c).

THIS REPORTING FORM DOES NOT APPLY TO RELEASES OF PETROLEUM UNDER NNCERCLA, 4 N.N.C. § 2201, OR UNDER NNSTA, 4 N.N.C. § 1544. RELEASES OF PETROLEUM SHOULD BE REPORTED ON THE SEPARATE NNEPA RELEASE NOTIFICATION FORM FOR PETROLEUM.

Operator Contact Information	
Name of Company	Designated Contact Person
Address	Telephone Number
Facility Name	Facility Type
Additional Information for Storage Tanks Only	
Tank Owner	Address of Tank Owner
Tank Operator	Address of Tank Operator
Tank Identification Number	Tank System Size
Location of Release	
Location of release, including description of area (e.g. business site, farm, etc.), conditions (e.g. sandy, rocky, temperature, vegetation, precipitation, slope, etc.), and GPS coordinates:  If GPS coordinates are not available, please fill in the following: <u>Unit Letter</u> <u>Section</u> <u>Township</u> <u>Range</u> <u>Feet from the North/South Line</u> <u>Feet from the East/West Line</u> <u>Chapter</u>	
Nature of Release	
Substance(s) Released	Into what medium/media?
Whether substance(s) listed pursuant to EPCRA § 11002(a)	Volume of Release

Source of Release/Suspected Release (if storage tank, indicate whether from tank, piping, dispenser, etc.)	Volume Recovered
Date, Hour, and Duration of Release	Date and Hour of Discovery
Was Notice Given?	If YES, To Whom?
If YES, By Whom?	If YES, Date, Hour, and Method of Notice
Was Spill Contained on Site in a Bermed Area?	Was a Watercourse Reached? If YES, Volume Impacting the Watercourse
Depth to Groundwater and Direction of Groundwater Flow	Location of Nearest Water Well
Any known/anticipated acute or chronic health risks?	If YES, advice regarding necessary medical attention
If a Watercourse or Groundwater was Impacted, Describe Fully:	
Describe Cause of Release (for storage tanks, specify if spill, overflow, corrosion, etc.) and Remedial Action Taken to Control Release and Prevent it from Recurring:	
Describe Effects of Release and Cleanup Action Taken:	
Describe Health Precautions Taken, if Any, Including Evacuation, as Result of Release:	
Please Add Any Additional Information Relevant to Release:	
Please Attach Additional Sheets As Necessary to Complete Answers to Any of the Questions Above.	



I hereby certify that the information given above is true and complete to the best of my knowledge. The filing of a Hazardous Substance Release Notification Form does not relieve the owner or operator of liability should they fail to adequately investigate and remediate contamination. In addition, the filing of a Hazardous Substance Release Notification Form does not relieve the owner or operator of responsibility for compliance with any other federal, tribal, state, or local laws or regulations, including other reporting requirements.

Name	Signature
Title	Date
Phone Number	Email Address

Additional Instructions

1. This form is intended to provide both operators and the Navajo Nation with the most accurate information available to address releases of hazardous substances. Accordingly, it must be filled out as accurately and completely as possible to ensure compliance with applicable provisions of the Navajo Nation Code and governing regulations.
2. Some fields contained in this reporting form may not apply to every type of release. Operators should make every reasonable effort to ensure that all applicable fields are completed and accurate.
3. For some fields contained in this reporting form, the operator may need to estimate or approximate the information requested. Operators should make every reasonable effort to ensure that each field is completed with the most accurate and complete information available to them at the time of the report.

Navajo Nation EPA  
 Navajo Nation  
 Superfund Program  
 Phone: (928) 871-6859  
 Fax: (928) 871-7333

Navajo Nation EPA  
 Navajo Nation Storage  
 Tank Program  
 Phone: (928) 871-7993  
 Fax: (928) 871-7599

Navajo Nation Dept.  
 Of Emergency Mgt.  
 Phone: (928) 871-6892  
 Fax: (928) 871-7569

For NNEPA and  
 NNDEM use only  
 Approved By:  
 Approval Date:

## RELEASE NOTIFICATION FORM – PETROLEUM

FOR REPORTING RELEASES OF PETROLEUM EQUAL TO OR EXCEEDING REPORTABLE QUANTITIES UNDER NNCERCLA, 4 N.N.C. § 2201, AND IMPLEMENTING REGULATIONS. THIS FORM MAY ALSO BE USED TO SATISFY WRITTEN REPORTING REQUIREMENTS FOR RELEASES OF PETROLEUM UNDER NNSTA, 4 N.N.C. § 1544, AND IMPLEMENTING REGULATIONS.

### Operator Contact Information

Name of Company	Designated Contact Person
Address	Telephone Number
Facility Name	Facility Type

### Additional Information for Storage Tanks Only

Tank Owner	Address of Tank Owner
Tank Operator	Address of Tank Operator
Tank Identification Number	Tank System Size

### Location of Release

Location of release, including description of area (e.g. business site, farm, etc.), conditions (e.g. sandy, rocky, temperature, vegetation, precipitation, slope, etc.), and GPS coordinates:

If GPS coordinates are not available, please fill in the following:  
Unit Letter   Section   Township   Range   Feet from the North/South Line   Feet from the East/West Line   Chapter

### Nature of Release

Type of Petroleum Product Released	Into what Medium/Media?
Source of Release/Suspected Release (if storage tank, indicate whether from tank, piping, dispenser, etc.)	Volume of Release
Is Release Confirmed (storage tank only)	Volume Recovered

Date, Hour, and Duration of Release	Date and Hour of Discovery
Was Notice Given?	If YES, To Whom?
If YES, By Whom?	If YES, Date, Hour, and Method of Notice
Was Spill Contained on Site in a Bermed Area?	Was a Watercourse Reached? If YES, Volume Impacting the Watercourse
Depth to Groundwater and Direction of Groundwater Flow	Location of Nearest Water Well
If a Watercourse or Groundwater was Impacted, Describe Fully:	
Describe Cause of Release (for storage tanks, specify if spill, overflow, corrosion, etc.) and Remedial Action Taken to Control Release and Prevent it from Recurring:	
Describe Effects of Release and Cleanup Action Taken:	
Please Add Any Additional Information Relevant to Release:	
Please Attach Additional Sheets As Necessary to Complete Answers to Any of the Questions Above.	
I hereby certify that the information given above is true and complete to the best of my knowledge. The filing of a Petroleum Release Notification Form does not relieve the owner or operator of liability should they fail to adequately investigate and remediate contamination. In addition, the filing of a Petroleum Release Notification Form does not relieve the owner or operator of responsibility for compliance with any other federal, tribal, state, or local laws or regulations, including other reporting requirements.	
Name	Signature
Title	Date
Phone Number	Email Address

Additional Instructions

1. This form is intended to provide both operators and the Navajo Nation with the most accurate information available to address releases of petroleum. Accordingly, it must be filled out as accurately and completely as possible to ensure compliance with applicable provisions of the Navajo Nation Code and governing regulations.
2. Some fields contained in this reporting form may not apply to every type of release. Operators should make every reasonable effort to ensure that all applicable fields are completed and accurate.
3. For some fields contained in this reporting form, the operator may need to estimate or approximate the information requested. Operators should make every reasonable effort to ensure that each field is completed with the most accurate and complete information available to them at the time of the report.



**NAVAJO NATION COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION, AND LIABILITY ACT**

**Regulations Governing the Preservation of Records  
Under 4 N.N.C. § 2202**

**Final  
April 27, 2015**

**Navajo Nation Superfund Program  
Highway 264  
43 Crest Road  
St. Michael's, AZ 86511**

**NAVAJO NATION COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION, AND LIABILITY ACT**

**Regulations Governing the Preservation of Records  
Under 4 N.N.C. § 2202**

**Table of Contents**

§ 101. Purpose and Authority .....	1
§ 102. Definitions.....	1
§ 103. Notification to NNEPA.....	3
§ 104. Records Required to be Retained under NNCERCLA § 2202(A) .....	4
§ 105. Preservation of Records .....	4
§ 106. Waiver.....	5
§ 107. Penalties .....	5

**§ 101. Purpose and Authority**

Section 2202(A) of the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act (“NNCERCLA,” or the “Act”) requires the preservation of records that have been created pursuant to the recordkeeping requirements of Section 103(d) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9603(d), by any person required to provide notice to U.S. EPA under CERCLA § 103(c), 42 U.S.C. § 9603(c). These regulations prescribe (a) the notice to be given to the Director regarding the existence of facilities within the Navajo Nation at which hazardous substances are or have been stored, treated, or disposed of; (b) the records required to be retained under NNCERCLA § 2202(A); (c) requirements for preserving these records; (d) procedures for waivers from the record preservation requirements; and (e) penalties for violations of the record-preservation requirements.

**§ 102. Definitions**

(a) The following definitions apply to these regulations:

- (1) *Comprehensive Environmental Response, Compensation, and Liability Act* or *CERCLA* means the federal law codified at 42 U.S.C. §§ 9601-9675.
- (2) *Director* means the Executive Director of the Navajo Nation Environmental Protection Agency (“NNEPA”) or, where appropriate, his or her designee.
- (3) *Facility* means:
  - (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment

works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

- (B) any site or area where a hazardous substance, pollutant, or contaminant (but not including any consumer product in consumer use) has been deposited, stored, disposed of, or placed, or otherwise come to be located.
- (4) *Hazardous substance* means:
- (A) any substance designated pursuant to § 311 of the Clean Water Act, 33 U.S.C. § 1321(b)(2)(A);
  - (B) any element, compound, mixture, solution, or substance designated pursuant to 4 N.N.C. § 2105(B) or 42 U.S.C. § 9602;
  - (C) any hazardous waste having the characteristics identified under or listed pursuant to § 3001 of the Solid Waste Disposal Act, 42 U.S.C. § 6921;
  - (D) any toxic pollutant listed under § 307 of the Clean Water Act, 33 U.S.C. § 1317(a);
  - (E) any hazardous air pollutant listed under § 112 of the Clean Air Act, 42 U.S.C. 7412; and
  - (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator of the United States Environmental Protection Agency has taken action pursuant to § 7 of the Toxic Substances Control Act, 15 U.S.C. § 2606.

This term includes petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under Paragraphs (1) through (6) of this subsection, casinghead gas, natural gas liquids, condensate, and liquefied natural gas, but does not include dry natural gas.

- (5) *Navajo Nation* means, when referring to governmental territory, Navajo Indian country, as that term is defined under 18 U.S.C. § 1151.
- (6) *Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act* or *NNCERCLA* means the Navajo environmental law codified at 4 N.N.C. §§ 2101-2805.
- (7) *Person* means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, the United States, state, tribe, municipality, commission, political subdivision of a state or tribe, or any interstate or other intergovernmental body.

**§ 103. Notification to NNEPA**

**(a) Persons required to provide notification.**

- (1) Any person required to provide notification to U.S. EPA pursuant to 42 U.S.C. § 9603(c) of a treatment, storage, or disposal facility located within the Navajo Nation shall provide a copy of such notification to the Director.
- (2) Any person who owns or operates or who at the time of disposal subsequent to February 26, 2008 owned or operated, or who during the same period accepted hazardous substances for transport and selected, a facility within the Navajo Nation at which hazardous substances are or have been stored, treated, or disposed of, and who has not already notified U.S. EPA pursuant to 42 U.S.C. § 9603(c) of such facility, shall provide notification of such facility to the Director.
- (3) Notwithstanding paragraph (2) of this subsection, notification is not required for storage tanks subject to the Navajo Nation Storage Tank Act, 4 N.N.C. §§ 1501-1577, as amended.

**(b) Contents of Notification.** Notifications required under subsection (a)(2) shall specify, in writing:

- (1) The nature and amount of each hazardous substance to be found at the facility, including the identity, characteristics, quantity, origin, and condition (such as containerization and previous treatment) of such each hazardous substance;
- (2) The location, title, and condition of the facility; and
- (3) Any known, suspected, or likely releases of hazardous substances from such facility.

When necessary to satisfy the requirements of this subsection, the person providing notification may rely on recent release data, engineering estimates, the operating history of the facility, and other relevant information.

**(c) Exceptions to Notification.** Notification is not required for any facility that would be reportable solely as a result of a stoppage in transit that is temporary, incidental to the transportation movement, or at the ordinary operating convenience of a common or contract carrier.

**(d) Notification Not To Be Used in a Criminal Case.** Notification provided under this section or information obtained by the exploitation of such notification shall not be used against any owner, operator, or transporter in a criminal case, except a prosecution for perjury or for making a false statement.



**§ 104. Records Required to be Retained under NNCERCLA § 2202(A)**

- (a) Any person required to provide notification to the Director pursuant to § 103(a) of these regulations shall retain a copy of that notification, which shall constitute a record for the purpose of these regulations and shall be considered public information subject to the provisions of 4 N.N.C. §2301(E) (protection of confidential information).
- (b) All documents, materials, and other information relied upon in providing the notification required under § 103 of these regulations shall be considered part of the record under subsection (a).

**§ 105. Preservation of Records.**

- (a) **Preservation of Records.** It shall be unlawful for any person required to maintain records under § 104 of these regulations to knowingly destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify those records. Records shall be maintained such that:
  - (1) The integrity of the records is preserved and it is ensured that records are not or have not been altered after notification has been submitted to the Director;
  - (2) The physical condition of the records is preserved by inventorying the threats to their preservation and taking appropriate action to prevent damage to the records or correct such damage if it occurs. Threats may include overhead water pipes, electrical equipment, excessive heat and/or humidity, mold, vermin, and inadequate security;
  - (3) The usability and identification of the records is preserved by indexing; and
  - (4) A plan is in place for safely transferring the records and maintaining their organization in case the records must be moved.
- (b) **Period of Retention.** Records required to be retained under these regulations shall be retained for 50 years after February 26, 2008 or for 50 years after the date of establishment of the record, whichever is later. Notwithstanding the foregoing, the Director may require any such record to be retained for such longer period as the Director determines, in his or her discretion, to be necessary to protect the public health or welfare.
- (c) **Location of Records.** Records shall be kept on file at the facility to which they pertain or, alternatively, may be retained at an office of the person required under § 104 to maintain the records, provided that the records can be transferred to the facility within four (4) business days of a request of the Director for the records.

- (d) **Premature Loss or Destruction of Records.** If records are destroyed or lost before the expiration of the prescribed retention period, the person responsible for maintaining the records shall prepare and submit to the Director a list of the unavailable records and a description of the circumstances under which they became unavailable.

#### **§ 106. Waiver**

The Director may grant a waiver from the 50-year record retention period in § 105(b) of these regulations upon the receipt of a written waiver request by any person required to maintain records under § 104 of these regulations. The request for waiver shall demonstrate that unusual circumstances warrant a departure from the 50-year retention period or that compliance with such retention period would impose an unreasonable burden on such person, or both. The Director may grant such waiver request if, in his or her discretion, such waiver would not unreasonably interfere with the attainment of the purposes and provisions of the Act and implementing regulations or with the public interest.

#### **§ 107. Penalties**

Any person who violates NNCERCLA § 2202(A) and these implementing regulations is subject to judicial enforcement and/or civil, criminal, or administrative penalties pursuant to NNCERCLA, 4 N.N.C. §§ 2509 - 2510.



**NAVAJO NATION COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION, AND LIABILITY ACT**

**Regulations Governing Notice of Intent  
to Bring a Citizen Suit under 4 N.N.C. § 2804**

**Final  
May 5, 2015**

**Navajo Nation Superfund Program  
Highway 264  
43 Crest Road  
St. Michael's, AZ 86511**

**NAVAJO NATION COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION, AND LIABILITY ACT**

**Regulations Governing Notice of Intent  
to Bring a Citizen Suit under 4 N.N.C. § 2804**

**Table of Contents**

§ 101. Purpose and Authority.....	2
§ 102. Service of Notice.....	2
§ 103. Contents of Notice.....	2
§ 104. Timing of Notice.....	2
§ 105. Copy of Complaint.....	3
§ 106. Addresses.....	3

**§ 101. Purpose and Authority**

The citizen suit provision of the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act ("NNCERCLA" or the "Act"), 4 N.N.C. § 2804, authorizes any person to bring a civil action in Navajo Nation District Court to enforce the Act. Such an action may be brought against any person except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises, who is alleged to be in violation of a requirement or standard of the Act, a regulation promulgated pursuant to the Act, or an agreement or order agreed to or issued pursuant to the Act. The action must be filed in accordance with the rules of the Navajo Nation District Court in which the action is brought. These regulations prescribe the procedures governing the notice required by the NNCERCLA, 4 N.N.C. § 2804(B) as a prerequisite to the commencement of such civil actions.

**§ 102. Service of Notice**

- (a) **Manner of service.** Notice of intent to file suit under 4 N.N.C. § 2804 shall be served upon the alleged violator of any standard, regulation, condition, requirement, or order that has become effective pursuant to the NNCERCLA. Depending on whether the alleged violator is a private or government entity, service shall be made in the following manner:

- (1) If the alleged violator is a private individual or business entity, notice shall be served by personal service upon, or by certified mail, return receipt requested, addressed to the person alleged to be in violation. If the alleged violator is a business entity, a copy of the notice shall also be served by personal service upon or by certified mail, return receipt requested, addressed to the registered agent, if any, of that business entity within the Navajo Nation. For both a private individual and a business entity, a copy of the notice shall in addition be served by personal service upon or by certified mail, return receipt requested, addressed to the Navajo Nation Attorney General and the Executive Director of the Navajo Nation

Environmental Protection Agency ("NNEPA"). A list of addresses that may be useful in providing notice of citizen suits is provided in § 106. These addresses are subject to change and must be verified prior to use.

(2) If the alleged violator is a tribal, state, or local agency, notice shall be served by personal service upon or by certified mail, return receipt requested, addressed to the head of that agency. A copy of the notice shall in addition be served by personal service upon or by certified mail, return receipt requested, addressed to the Navajo Nation Attorney General and the Executive Director of NNEPA. A list of addresses that may be useful in providing notice of citizen suits is provided in § 106. These addresses are subject to change and must be verified prior to use.

(3) If the alleged violator is a federal agency, notice shall be served by personal service upon or by certified mail, return receipt requested, addressed to the head of that agency. A copy of the notice shall in addition be served by personal service upon or by certified mail, return receipt requested, addressed to the Navajo Nation Attorney General; the Executive Director of NNEPA; and the Regional Administrator of the U.S. Environmental Protection Agency, Region 9. A list of addresses that may be useful in providing notice of citizen suits is provided in § 106. These addresses are subject to change and must be verified prior to use.

- (b) **Date of service.** Notice given in accordance with these regulations shall be considered to have been served on the date of receipt. If notice or a copy of the notice is required to be served on more than one entity, notice shall be considered to have been served on the date of receipt by the last entity served. If service was accomplished by mail, the date of receipt shall be considered to be the date noted on the return receipt card. If the addressee fails to claim or refuses to accept delivery of certified mail, or if the return receipt card is returned without a date of delivery, service shall be deemed complete on the date of mailing.

### § 103. Contents of Notice

- (a) **Information regarding alleged violation.** The notice shall include sufficient information to allow the recipient to identify the specific standard, regulation, condition, requirement, or order that has allegedly been violated; the activity alleged to constitute a violation; the name and address of the site and facility alleged to be in violation, if known; the person or persons responsible for the alleged violation; the date or dates of the alleged violation; and the full name, address, and telephone number of the person giving notice.
- (b) **Identification of counsel.** The notice shall state the name, address, and telephone number of the attorney, if any, representing the person giving the notice.

### § 104. Timing of Notice

- (a) No action may be commenced under 4 N.N.C. § 2804(A)(1) fewer than 60 days after the plaintiff has served notice of the violation as specified in § 102 of these regulations.
- (b) No action may be commenced under 4 N.N.C. § 2804(A)(1) if the Executive Director of NNEPA has commenced and is diligently prosecuting a civil action in tribal court to require compliance with the requirement, standard, regulation, agreement, or order at issue.

**§ 105. Copy of Complaint**

At the time of filing an action under the NNCERCLA, the plaintiff shall provide a copy of the complaint to the Navajo Nation Attorney General and to the Executive Director of NNEPA.

**§ 106. Addresses**

Navajo Nation Attorney General, P.O. Box 2010, Window Rock, Arizona 86515

Executive Director, Navajo Nation Environmental Protection Agency, P.O. Box 339, Window Rock, Arizona 86515

Regional Administrator, Region IX, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105



**NAVAJO NATION COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
COMPENSATION, AND LIABILITY ACT**

**Voluntary Cleanup Program Regulations**

**Final  
June 2, 2015**

**Navajo Nation Superfund Program  
Highway 264 43 Crest Road  
St. Michael's, Arizona 86511**

**NAVAJO NATION COMPREHENSIVE ENVIRONMENTAL  
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**Table of Contents**

Part 1. General Provisions .....	1
§ 101. Purpose and Authority .....	1
§ 102. Background.....	1
§ 103. Effective Date .....	1
§ 104. Applicability .....	2
§ 105. Definitions .....	2
§ 106. Voluntary Investigation & Remediation Activities .....	2
§ 107. Requirement for Authorized Actions .....	3
§ 108. Performance Standards and Associated Requirements .....	4
§ 109. Compliance .....	5
§ 110. No Admission of Liability .....	5
§ 111. General Reservation of Rights .....	6
Part 2. Eligibility and Application Procedures.....	6
§ 201. Basic Eligibility and Exceptions.....	6
§ 202. Rejection of Application and Resubmission .....	6
§ 203. Application Procedures.....	7
§ 204. Application Fee.....	10
Part 3. Voluntary Cleanup Program Agreement and Work Plan.....	10
§ 301. Voluntary Cleanup Program Agreement.....	10
§ 302. Community Involvement.....	11
§ 303. Final Work Plan.....	14
§ 304. Deadlines for Execution of VCP Agreement and for Construction .....	15
Part 4. Oversight Costs and Progress Reports.....	16
§ 401. Reimbursement of Oversight Costs.....	16
§ 402. Fund Management .....	16
§ 403. Estimated Oversight Costs and Advance Payment.....	16
§ 404. Billing Procedures .....	16
§ 405. Progress Reports.....	17
Part 5. Termination of Liability and Termination of an Agreement.....	17
§ 501. Certificate of Completion .....	17
§ 502. Denial of Certificate of Completion.....	19
§ 503. Covenant Not to Sue .....	20
§ 504. Termination of an Agreement .....	21



# NAVAJO NATION COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT

## Voluntary Cleanup Program Regulations

### Part 1. General Provisions

#### § 101. Purpose and Authority

These regulations are promulgated pursuant to the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act ("NNCERCLA"), 4 N.N.C. § 2402 (Voluntary Response). They set forth policies and procedures for a Voluntary Cleanup Program ("VCP" or "Program") to provide for voluntary cleanup activities at contaminated sites within the Navajo Nation that are not already undergoing or scheduled for remediation. These regulations include requirements for applications to the VCP, VCP Agreements, and work plans. The Program is intended to increase the pace of response activities at contaminated sites and to promote the economic security, political integrity, and health, welfare, and environment of the Navajo Nation by returning contaminated sites to economically productive uses.

#### § 102. Background

The Navajo Nation Superfund Program ("NSP"), a program within the Waste Regulatory & Compliance Department of the Navajo Nation Environmental Protection Agency ("NNEPA"), is responsible for locating, investigating, prioritizing, remediating or arranging for the remediation of, and managing abandoned and uncontrolled sites on the Navajo Nation that have been contaminated with hazardous substances, pollutants or contaminants. Potential sites are screened and evaluated for the threat they pose to the public health, safety, and environment and are included and prioritized as part of the Navajo Site List when appropriate.

The NSP annually prepares a comprehensive planning document, called the Scope of Work ("SOW"), which lists the sites on the Navajo Site List currently undergoing remediation activities and the sites to be addressed in the coming fiscal year. Sites are included in the SOW based on their prioritized public health and/or environmental risk and on available staff resources and funding. Under the VCP, additional remediation may take place when an applicant volunteers to undertake cleanup, under NSP oversight, of a site that is not on the SOW. It is the NSP's intent to first address those sites posing the highest risk, but also to attract and welcome the voluntary assessment and remediation of other contaminated sites insofar as the managerial and financial capacity of the Program allows.

The VCP will be funded by application fees and payment of the Program's oversight costs, as provided by these regulations.

#### § 103. Effective Date

These regulations are effective immediately upon approval by the Resources &

Development Committee of the Navajo Nation Council.

**§ 104. Applicability**

These regulations apply to all persons and all property within the Navajo Nation, as provided in the NNCERCLA, 4 N.N.C. § 2106(A).

**§ 105. Definitions**

The definitions found in the NNCERCLA, 4 N.N.C. § 2104, apply to these regulations. In addition, the following definitions apply to these regulations:

- (a) *Applicant* means a person who:
  - (1) submits an application to undertake the voluntary cleanup of a site under the NNCERCLA and these regulations; or
  - (2) enters into a VCP Agreement under these regulations.
  
- (b) *Facility* means:
  - (1) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or
  - (2) any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located,but does not include any consumer product in consumer use or any vessel.
  
- (c) *VCP Agreement* or *Agreement* means an agreement entered into pursuant to the NNCERCLA, 4 N.N.C. §2402, and these regulations, to undertake voluntary remediation activities at a site deemed eligible under these regulations.

**§ 106. Voluntary Investigation & Remediation Activities**

- (a) Voluntary investigation and remediation activities (“voluntary cleanup”) may include, but are not limited to:
  - (1) research to establish: the history of ownership and operation of the site or facility; release(s) of hazardous substances; contaminant use, storage, and management; and environmental permits and compliance;
  - (2) subsurface investigations, including both intrusive and non-intrusive

techniques, to assess the hydrogeologic characteristics of the site;

(3) Collection and analysis of environmental media, such as soil, sediment, surface water, groundwater, soil gas, atmospheric and/or indoor air, and/or structural or biological samples;

(4) assessment of the source, nature, extent, migration pathways, and environmental fate and transport of contaminants;

(5) performance of a human health and ecological risk assessment;

(6) implementation of resource recovery and/or waste disposal systems;

(7) installation of soil vapor extraction or other vadose zone remediation systems (including bioremediation) along with, or independently of, air sparging (injection) wells;

(8) on- or off-site treatment, recycling and/or reuse capacity of contaminated environmental media;

(9) off-site removal of drums, barrels, tanks, or other bulk containers that contain or may contain contaminants, and/or the off-site removal of their contents;

(10) capping or covering of contaminated environmental media;

(11) other approved measures to mitigate potential exposure to contaminants and the associated risks to public health and/or ecological receptors;

(12) post-remediation verification sampling and/or post-completion monitoring; and/or

(13) any other remediation action consistent with the purpose of achieving the performance standards and associated requirements listed in § 108 below.

#### § 107. Requirement for Authorized Actions

(a) **Application.** A person may submit a VCP application to the NSP, including the environmental assessment and proposed cleanup plan, based on due diligence, as defined in subsection (b) of this section.

(b) **Due Diligence.** Due diligence means actions designed to collect, develop, and evaluate information sufficient to support conclusions regarding the following:

(1) the source, nature, extent, migration pathways, and environmental fate and transport of contaminants in all environmental media present at the site;

- (2) the threats posed by the site to the public health and/or the environment;
- (3) the need to remediate the site to safeguard against such risks; and
- (4) the selection and design of appropriate response activities.

(c) **Approval.** No person may undertake any remediation activities unless the Director has determined that the criteria and conditions established for participation in the VCP have been met and the Director has approved the application to participate in the Program and the corrective action work plan. Director approval is not required, however, to conduct due diligence for the purpose of submitting an application to the VCP.

#### § 108. Performance Standards and Associated Requirements

(a) When applicable standards are prescribed by law or regulation, they shall be identified in the work plan and voluntary cleanup shall achieve these applicable standards. For purposes of this section, "applicable standards" means the most stringent of those which would be required by U.S. EPA or NNEPA to be met by the media at issue, including but not limited to the Navajo Nation Water Quality Standards and the Navajo Nation Primary and Secondary Drinking Water Regulations, and also shall include the Navajo Nation Storage Tank Cleanup Standards at sites where petroleum contamination is present. When a cleanup standard is below a detection level for its associated analytical method, the detection level for that analytical method shall be the cleanup standard.

(b) The applicable standard for radium in soil shall be background plus 1.24 pCi/g.

(c) An applicant may request or the NSP on its own initiative may require the use of site-specific standards if the use of otherwise applicable cleanup standard(s) is inappropriate (as either insufficient or too stringent). Site conditions for which the NSP may deem site-specific standards appropriate include, but are not limited to, the existence of endangered or protected species; the presence of known carcinogens or chemicals with similar health effects; the presence of rivers, streams, or other water sources which establish a potential for erosion and further concentration of contaminants in aquatic habitats; the presence of plant life that is likely to be ingested by children and adults, including for traditional and cultural purposes; the presence of naturally occurring metals or substances or biodegradable chemicals; the existence of sensitive ecological habitats; and the presence of cultural resources.

(d) When there are no applicable standards or site-specific standards are otherwise deemed appropriate, voluntary cleanup shall achieve a final site condition such that, as determined by the Director, no hazardous substance, pollutant or contaminant will pose a significant threat to public health, safety, or the environment during any foreseeable period of time. Such level of cleanup shall be attained by:

- (1) reducing the risk from exposure to individual carcinogens or suspected

carcinogens to an individual lifetime cancer risk of  $1 \times 10^{-6}$ ; and

(2) reducing the risk from exposure to individual non-carcinogenic hazardous substances, pollutants or contaminants to a hazard quotient of less than 1.

(e) To achieve the performance standards in subsection (d), when there are no applicable cleanup standards or site-specific cleanup standards are otherwise deemed appropriate, the applicant shall evaluate the risk of harm by performing a detailed and site-specific public health and environmental risk assessment, following the procedures and using the screening levels in the U.S. EPA Region 9 Regional Screening Levels.

(f) Voluntary cleanup that will achieve a permanent solution shall be selected, unless the applicant demonstrates to the Director's satisfaction that achieving a permanent solution would be infeasible or impracticable, determined consistent with the NNCERCLA, 4 N.N.C. § 2305(H). Easements, environmental covenants or other institutional controls binding on successors in interest to the site may be required under these circumstances in order to ensure appropriate protections at the site, determined consistent with NNCERCLA § 2305(H).

(g) All voluntary cleanup must achieve residential health-based levels in all environmental media of concern. Notwithstanding the foregoing sentence, the Director may waive compliance with residential health-based levels and allow the application of commercial/industrial health-based levels if:

(1) the site will be used in the foreseeable future only for commercial or industrial purposes and not for residential, traditional, religious, agricultural, or cultural purposes. A waiver shall be based on a demonstration by the applicant that the site's use is restricted to commercial or industrial purposes in light of land-use planning documents, zoning laws, leases, or other similar evidence; or

(2) residential health-based levels cannot be achieved. A waiver shall be based on a demonstration by the applicant that residential levels cannot be achieved; for example, by providing documentation that existing background levels exceed residential levels.

(h) All voluntary cleanup shall be conducted in a manner consistent with the Navajo Nation Contingency Plan, *see* 4 N.N.C. §2303. Until such time as the Navajo Nation Contingency Plan is promulgated, voluntary cleanups will take place on a case-by-case basis, as provided by the Director and consistent with these regulations.

## **§ 109. Compliance**

Participation in this program does not relieve a person from the obligation to comply with other applicable federal and tribal law.

## **§ 110. No Admission of Liability**

Participation in the VCP does not constitute an admission of liability for contamination at a site. Any such liability to the Navajo Nation that otherwise may be found, including future liability, may be limited by a covenant not to sue, as described in §503.

#### **§ 111. General Reservation of Rights**

(a) These regulations do not release, discharge, or in any way affect any claims, causes of action, or demands in law or equity that an applicant or the Navajo Nation may have against any person not a party to a VCP Agreement, for any liability the nonparty may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants, including transportation to or from a site covered by a VCP Agreement.

(b) These regulations do not affect the applicant's right to seek contribution, indemnity, or any other available remedy against any party other than the Navajo Nation who may be responsible or liable for contribution, indemnity, or otherwise for any amounts that have been or will be expended by the applicant in connection with a voluntary site remediation project under these regulations.

### **Part 2. Eligibility and Application Procedures**

#### **§ 201. Basic Eligibility and Exceptions**

(a) **Eligible Sites.** Any site is eligible for participation in the VCP except:

- (1) a treatment, storage, or disposal facility regulated under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*;
- (2) a site or portion of a site listed on the current SOW; or
- (3) a site or portion of a site for which a federal or tribal enforcement action exists or for which there is a pending investigation against the applicant for remediation of the hazardous substances, pollutants, or contaminants described in the VCP application.

(b) **Eligible Applicants.** To be eligible to sign a VCP Agreement, an applicant must be either:

- (1) a past or present owner of the site, lessee of the site, or operator of a facility located on the site, or successor in interest to such owner or operator; or
- (2) a prospective owner or lessee of the site or a prospective operator of a facility located on the site.

#### **§ 202. Rejection of Application and Resubmission**

(a) The Director shall reject an application if the proposed site or the applicant is not eligible for the VCP, as provided in §201. If the application is rejected, the Director shall promptly return or refund the application fee.

(b) The Director may reject an application, in his/her sole discretion, if the applicant has a history of noncompliance with Navajo or federal environmental laws, regulations, or other requirements. Any fee accompanying an application rejected under this subsection shall be promptly returned to the applicant.

(c) The Director may reject an application after processing if s/he determines, in his/her sole discretion, that:

(1) the application is incomplete or inaccurate;

(2) a permit was required under federal or tribal law for the site or facility that is the subject of the application and the owner or operator, if the applicant, did not obtain the required permit; or

(3) the applicant:

(A) has not demonstrated the financial capability to perform the voluntary cleanup; or

(B) has knowingly misrepresented a material fact in an application, plan, or other official document submitted pursuant to Navajo Nation or federal law.

The applicant is not entitled to refund of the application fee for an application rejected under this subsection (c). For purposes of Subsection 3(A), a demonstration of financial capability that would meet the financial assurance requirements of the Navajo Nation Storage Tank Act § 403 may be deemed by the Director in his/her sole discretion to be adequate, depending on the characteristics and extent of contamination at the site. The Director also may contact the applicant directly regarding any concerns about the applicant's financial capability.

(d) If the Director rejects an application because it is incomplete or inaccurate, s/he shall, not later than sixty (60) days after receipt of the application, provide to the applicant a list in writing of the information needed to make the application complete or accurate, as the case may be. The applicant may resubmit an application rejected due to inaccuracy or incompleteness within 120 days after its rejection, without paying another application fee.

### § 203. Application Procedures

(a) **Application.** To participate in the VCP, an applicant shall:

(1) submit to the NSP an application and application fee under subsection (b); and

(2) agree to compensate the NSP for all reasonable costs associated with the Program's oversight of the voluntary site remediation project.

(b) **Contents.** An application submitted under this section shall:

(1) be on a form provided by the NSP;

(2) identify the applicant and the applicant's relationship to the site, provide his/her contact information, and describe the applicant's technical, managerial, legal, and financial capability to undertake the proposed voluntary remediation activities;

(3) provide relevant information regarding the site, including a legal description, history of property ownership, current land use, proposed site development, prior and present contact with regulatory programs that relate to the environmental condition of the property, and objectives for the voluntary cleanup;

(4) provide other background information as requested by the NSP;

(5) include an environmental assessment, as described in subsection (c), of the actual or threatened release of the contaminant(s) at the site;

(6) include a preliminary work plan for the proposed voluntary cleanup as the applicant currently envisions it;

(7) give written consent by the property owner, if different from the applicant, supporting the proposed voluntary cleanup, including access and restrictions on property use;

(8) if the site is either tribal trust land or Navajo fee land, and:

(A) is subject to a lease and the applicant is not the lessee, give written consent by the lessee and the Navajo Nation Land Department and, in addition, if it is a business site lease, by the Navajo Division of Economic Development; and

(B) is not subject to a lease, give written consent by the Navajo Nation Land Department, which may require the applicant to obtain a valid permit, license, easement, or other approval from the Navajo Nation Land Department for access (with the approval of the Bureau of Indian Affairs, if required); and

(C) in either situation, provide notification to the relevant Chapter but consent is not required;



(9) be accompanied by an application fee as established in §204, in the form of a certified or cashier's check or money order made payable to NNEPA;

(10) provide evidence sufficient to establish the applicant's eligibility under § 201; and

(11) include a written declaration of ability and intent, to be signed by the applicant and stating:

I declare under penalty of perjury, as defined by 17 N.N.C. § 479, that:

a. I am the applicant [or title of office held, or general partner, or similar responsible representative of the applicant], and I am fully authorized to make this declaration on behalf of, and to legally bind, the applicant;

b. I have personally examined and am familiar with the requirements of the VCP in the NNCERCLA, 4 N.N.C. § 2402, and these VCP regulations;

c. Based on my inquiry of the person(s) employed or engaged to perform response activities pursuant to this application, and based on my understanding as to the estimated scope and costs of the proposed voluntary site remediation project, I [and the applicant] have the intent, and the technical, managerial, legal, and financial capability, to proceed with the proposed voluntary cleanup; and

d. I will notify the NSP immediately upon becoming aware of any inability to proceed with the proposed voluntary cleanup.

(c) **Environmental Assessment.** The environmental assessment required under NNCERCLA § 2402(C) shall include:

(1) a legal description of the site, including a site map;

(2) a description of the physical, topographical, hydrological, and geological characteristics of the site, including the location of the nearest water supply or wells and surface water bodies;

(3) a delineation of the physical boundaries of the portion of the site that is the subject of the proposed voluntary cleanup;

(4) the operational history of the site to the extent discovered, through due diligence, by the applicant;

(5) information of which the applicant is aware, based on due diligence,

concerning the location, date, nature, and extent of any contamination or release at the site and/or immediately contiguous to the site; and

(6) information of which the applicant is aware, based on due diligence, concerning potential exposure to contaminants and consequent risks to public health or safety and/or ecological receptors.

(d) **Approval Process.** The Director will act on applications in the order in which they are received, unless the Director determines, in his/her sole discretion, that there is an urgent need for a different order to be followed. S/he will review the application, interview the applicant if necessary, and determine the type and degree of oversight likely to be required. The Director shall inform the applicant of approval or rejection of the application in a letter sent via certified mail, return receipt requested, within sixty (60) days of receipt of the application. Such decision, other than a discretionary decision made under §202 or regarding the order of applications under this subsection (d), is a final agency action for purposes of judicial review under the NNCERCLA, 4 N.N.C. §2802.

#### § 204. Application Fee

(a) The application fee for participation in the Program is \$2,000 per application. Upon acceptance into the VCP the fee will be credited against total reimbursable costs, provided that the staff time and other program resources taken to review the application shall be included in such costs.

(b) Pursuant to the NNCERCLA, 4 N.N.C. § 2701(B) and the NNEPA Fund Management Plan, all retained application fees shall be deposited into the Hazardous Substances Fund established under the NNCERCLA and shall be designated exclusively for use for the specific VCP Agreement for which the application fees are paid.

### Part 3. Voluntary Cleanup Program Agreement and Work Plan

#### § 301. Voluntary Cleanup Program Agreement

(a) **Content.** Once the Director approves an application to participate in the VCP, the NSP will arrange to meet with the applicant to discuss the terms of the VCP Agreement for the particular site. The Agreement shall include:

(I) standard provisions to facilitate the NSP's oversight, including at a minimum:

(A) access to the site, and acknowledgement of NSP's authority to access the site at any time for inspection and other oversight activities;

(B) on-site sampling and the inspection and copying of site and facility records;

(C) an estimate of oversight costs and provisions for payment of such costs, in accordance with Part 4 below; and

(D) advance payment of at least 50% of estimated oversight costs, pursuant to §403;

(2) references to applicable statutes, regulations, standards, and guidance, and confirmation that all sampling will be conducted pursuant to the Quality Assurance Project Plan of the NSP;

(3) a provision requiring the site to be remediated to the performance standards of §108;

(4) a work plan, finalized consistent with §§ 302 and 303, describing the voluntary remediation activities to be conducted;

(5) identification of items to be submitted to the NSP for review and approval throughout the term of the VCP Agreement, including but not limited to:

(A) monthly progress reports, as described in §405; and

(B) a final completion report, as described in § 501(b);

(6) a provision requiring the applicant to obtain all applicable permits and any necessary access agreements and to transmit copies of those documents to the NSP; and

(7) a proposed timeline for completing significant tasks, submitting reports, achieving on-site milestones, and receiving scheduled NSP site visits;

(b) **Notification.** A proposed or executed VCP Agreement may be modified at any time at the request of the NSP or the applicant, upon both parties' approval, regardless of whether the on-site work has already begun.

(c) **Effective Date.** The VCP Agreement shall become effective when signed by both the Director and the applicant. The Agreement may not be signed until public comments have been received and addressed, pursuant to §302.

### § 302. Community Involvement

(a) **Public Notice.** Before the VCP Agreement may be executed, the applicant must provide the public with notice and information regarding the proposed response activities. Within two (2) weeks of receipt of the Director's positive determination of eligibility, the applicant must:

(1) make the proposed work plan available for public inspection at a location

conveniently near the site;

(2) notify the following entities by first-class mail of the proposed voluntary cleanup project, and advise them of the location where and the hours when the proposed work plan may be reviewed and how comments may be submitted to the NSP:

(A) Any federal or tribal governmental agency potentially affected by the voluntary remediation activities, including the community services coordinator of the affected chapter, or the equivalent, and the affected Chapter president;

(B) Any owner, operator, or other user of the site, past or present, identified in the VCP application through methods that may include, but are not limited to, inquiring with NNEPA and other tribal, federal and state agencies concerning use of the site; conducting title searches in tribal, federal and state databases; performing other relevant public records searches; and interviewing neighboring residents and/or property owners; and

(C) Any participant in past permit proceedings conducted regarding matters within five (5) miles of the site pursuant to tribal, federal, or state environmental laws, as identified through methods that may include, but are not limited to, inquiring with relevant tribal, federal and state agencies, including NNEPA and EPA, as to permits issued for matters within a five-mile radius of the site; searching relevant tribal, federal and state databases, as available; and interviewing neighboring residents and/or property owners to identify past permittees;

(3) notify the general public of the proposed voluntary cleanup plan by posted notice at the site, by published notice in a newspaper of general circulation in the geographic area of the site, and by broadcast notice over local radio stations in English and Navajo; and

(4) submit to the NSP a copy of the public notice together with a signed declaration that the applicant has complied with all the notice requirements.

(b) **Adequacy of Notice.** The notice requirements of § 302(a)(2) will be deemed satisfied if the applicant demonstrates to the NSP's satisfaction that it has used its best efforts to provide the required notice.

(c) **Comment Period.** The NSP shall provide a comment period of at least thirty (30) days following the last date of publication of the notice or forty-five (45) days after the last date of mailing, whichever is later. During the comment period, interested parties may submit written comments to the NSP concerning the proposed voluntary cleanup work plan.

**(d) Request for Hearing.** At any time during the initial comment period, interested parties may submit a written request to the NSP for a public hearing. If the NSP determines that there is significant public interest, such hearing shall be held at the applicant's expense. The NSP will extend the comment period as necessary to accommodate the public hearing.

**(e) Public Hearing.** In the event of a public hearing:

(1) the applicant shall, at least twenty (20) days before the hearing, mail a notice of the time and place of the hearing to all persons who have submitted written comments or requests, publish notice of the hearing in a newspaper of general circulation in the geographic area of the site, and broadcast notice over local radio stations in English and Navajo;

(2) the NSP may appoint a moderator for the hearing;

(3) the applicant and the NSP may prepare a fact sheet, maps, and/or graphic materials to be distributed at the public hearing, which collectively describe the history of the site or facility and its releases and the applicant's proposed work plan;

(4) the record of the public hearing shall consist of a tape, digital recording, or written transcript, paid for by the applicant. Any copies shall be paid for by the person requesting the copy; and

(5) all interested persons shall be given a reasonable chance to submit data or present their views, orally or in writing, and to ask questions of the NSP and the applicant, or its authorized representative(s).

**(f) Consideration of Public Comments.** In deciding whether to enter into a VCP Agreement and whether to approve a proposed work plan, the Director shall consider public comments and incorporate them into the final documents as appropriate.

**(g) Revisions to Work Plan.** The Director may require the applicant to revise the work plan in light of comments and to prepare a written summary of the comments and a response to comments for the Director's review.

**(h) Notice of Cleanup Activities.** If a VCP Agreement is executed, the applicant must provide the public with reasonable advance notice and information prior to the start of construction. Specifically:

(1) For on-site activities that may result in noise, light, odor, dust, traffic, and other adverse impacts off-site, general public notice shall be provided. This notice may take the form of signage, direct mailing(s), door hangings, or a similar form of notice that is distributed so as to reach as many community members as

possible. These materials shall also give the name and telephone number of a contact for more information or for communicating concerns about the work.

(2) For cleanup activities that will take more than six (6) months to complete, the applicant shall provide general public notice regarding the nature and progress of the work. This notice may take the form of fact sheets, newsletters, or news articles distributed throughout the impacted community by direct mailing(s), door hangings, or any other effective method. These materials shall also give the name and telephone number of a contact for more information or for communicating concerns about the work. In addition, the applicant shall establish a document repository near the site regarding cleanup at the site. This publically accessible place (open during normal business hours or by appointment) shall hold documents and information about the on-site work as selected by the person(s) managing and overseeing the remediation activities.

### § 303. Final Work Plan

(a) **Content.** The final work plan shall provide a detailed description of the response activities to be undertaken with the goal of achieving the performance standards of §108. At a minimum, the final work plan shall include:

(1) a description of the site or facility; a history of the use, storage, treatment, disposal, and release(s) of hazardous substances, pollutants, and contaminants at the site or facility; and the due diligence performed to date;

(2) details, including plans and sketches, of any investigation to be conducted to determine the type, nature, and extent of hazardous substances, pollutants, and contaminants at the site, including but not limited to: location and sample type, sample collection techniques, monitoring techniques, sample analytical methods, and the quality assurance/quality control features of the sampling process;

(3) all hazardous substances, pollutants, and contaminants and environmental media to be addressed by the remediation;

(4) a statement of the work to be done and the methods to be utilized to achieve the agreed-upon performance standards for remediating the site;

(5) the confirmatory sampling and analytical methods to be used in verifying that the remediation activities have met the performance standards of §108 above;

(6) the monitoring plan to be implemented during the remediation activities, if necessary;

(7) a post-remediation monitoring and maintenance plan to ensure that any engineering controls, remediation systems, and post-closure care upon which the final remedy is dependent is maintained after completion;

- (8) a schedule for implementing all investigation and remediation tasks;
- (9) a site-specific health and safety plan complying with all applicable standards and guidance;
- (10) a plan for managing all investigation- and remediation-derived wastes, if necessary;
- (11) A plan for mitigation, to the extent practicable, of noise, light, odor, dust, traffic, and other impacts to nearby residents, permit holders, and businesses;
- (12) copies of, or a schedule for obtaining, all applicable permits and necessary access agreements; and
- (13) any other pertinent information requested by the NSP.

(b) **Modification.** A final work plan may be modified at any time upon the request of the NSP or the applicant and upon both parties' approval, regardless of whether the on-site work has already begun. Any proposed modification to the work plan that the Director, in his or her discretion, deems to be a substantive change rather than an administrative or other minor revision shall be made available for public notice and comment pursuant to the procedures in §302(a) - (e).

#### **§ 304. Deadlines for Execution of VCP Agreement and for Construction**

- (a) After submission of the final work plan, the Director shall determine, in his or her sole and non-reviewable discretion, whether or not to execute the VCP Agreement and approve the final work plan.
- (b) If the VCP Agreement is not executed by the Director within sixty (60) days after submission of the final work plan, after public comments have been received and addressed as provided in § 301(c), or within such other period as is agreed upon by the applicant and the Director, the VCP Agreement shall no longer be eligible for signature and a new application for voluntary cleanup at the site must be submitted to the NSP.
- (c) Cleanup shall begin as soon as possible following execution of the VCP Agreement (including the final work plan). If work on the site does not begin within three (3) months after execution of the VCP Agreement, for reasons within the applicant's control, or within such other period as is agreed upon by the applicant and the Director, the VCP Agreement shall be terminated and a new application for voluntary cleanup at the site must be submitted to the NSP.
- (d) If work does not resume on a site within three (3) months of any approved modification to the work plan, for reasons within the applicant's control, the Director may, in his or her discretion, weighing the benefits of continuing ongoing work against

the need to expedite cleanup, terminate the VCP Agreement and require a new application to be submitted to the NSP. If the applicant requests a modification of the work plan within three (3) months after execution of the VCP Agreement and work on the site has not yet begun, for reasons within the applicant's control, the VCP Agreement shall automatically terminate and a new application must be submitted.

(e) Costs incurred by the NSP prior to an automatic termination under subsection (b), (c), or (d) of this section are recoverable from the applicant.

#### **Part 4. Oversight Costs and Progress Reports**

##### **§ 401. Reimbursement of Oversight Costs**

In accordance with the terms and schedule specified in the VCP Agreement, the applicant shall reimburse the NSP for all reasonable costs associated with its oversight of the voluntary site remediation project. Oversight costs include the salaries, benefits, overhead, and equipment that support the technical, managerial, legal, and secretarial efforts associated with preparing the VCP Agreement and reviewing the applicant's work plans and reports; performing and managing fieldwork (including, for example, travel, on-site sampling, and sample analysis); participating in dispute resolution processes; auditing regularly where a conditional certificate of completion has been issued under §501(b)(5), and the like. Oversight costs will be invoiced based on actual hours of staff engagement, at the rate or rates calculated by the NSP, and expenses will be invoiced based on actual costs.

##### **§ 402. Fund Management**

Pursuant to the NNCERCLA, 4 N.N.C. § 2701(B), and the NNEPA Fund Management Plan, all compensation for oversight costs shall be deposited in the Hazardous Substances Fund and designated exclusively for use for the specific VCP Agreement at issue.

##### **§ 403. Estimated Oversight Costs and Advance Payment**

The applicant shall make an advance payment to the NSP for oversight costs, by certified or cashier's check or money order, at the time the VCP Agreement is executed. The advance payment shall, at a minimum, amount to fifty percent (50%) of the estimated oversight costs, but is not required to exceed \$100,000. The NSP shall provide the applicant with an estimate of its oversight costs in its letter, issued pursuant to §203(d), approving the application to participate in the Program. For estimated oversight costs exceeding \$50,000, the applicant shall pay at least \$25,000 in advance and arrange with the NSP for monthly payments to be made thereafter until the total required deposit is reached. All payments for oversight costs shall be deposited in the Hazardous Substances Fund and designated exclusively for use for the specific VCP Agreement at issue.

##### **§ 404. Billing Procedures**

The applicant shall be billed periodically for oversight costs over the life of the VCP



Agreement, and along with the bill will receive a detailed statement of the NSP's charges to the designated project account within the Hazardous Substances Fund. The statement will indicate the balance remaining from the advance payment and any additional payment that is required. Pursuant to the NNEPA Fund Management Plan, each account will be invoiced a late fee, as necessary, based on current interest rates and/or the fee the Navajo Nation generally charges for bounced checks.

#### **§ 405. Progress Reports**

(a) **Content.** The applicant shall deliver to the NSP on or before the 10th day of each month two (2) copies of a progress report containing descriptions of the following items:

- (1) voluntary remediation activities undertaken during the previous month;
- (2) voluntary remediation activities scheduled to be undertaken in the coming month;
- (3) sampling analyses, test results, and any other site-specific data generated in the previous month (figures may be provided in attachments to the report); and
- (4) any problems experienced during the previous month and the actions taken to resolve them.

The NSP does not anticipate that these progress reports, individually, will exceed two (2) pages in length (not including attachments).

(b) **Review by NSP.** Although no formal approval of these reports is required for the continued implementation of remediation activities, the NSP will review the reports for accuracy and completeness and to determine the quality and progress of the response activities. Furthermore, the NSP may request at any time that the applicant submit additional or corrected information or meet with NSP personnel. Upon request of the applicant, the NSP may modify the schedule for submission of progress reports.

### **Part 5. Termination of Liability and Termination of an Agreement**

#### **§ 501. Certificate of Completion**

(a) **General Provisions**

(1) When the applicant files with the NSP a signed affidavit of completion of the voluntary cleanup and the NSP determines that the applicant has successfully complied with the VCP Agreement, the NSP shall recommend that the Director issue to the applicant a certificate of completion pursuant to the NNCERCLA, 4 N.N.C. § 2402(F).

(2) For voluntary cleanup completed on a portion of a site, the certificate of

completion shall pertain only to that portion of the site and shall include a legal and/or physical description of that specific area.

(3) When the voluntary cleanup requires post-completion monitoring, maintenance of engineering controls or remediation systems, or post-closure care, the Director may issue a conditional certificate of completion. To keep a conditional certificate of completion valid, the applicant shall continue to satisfactorily implement and maintain the post-completion monitoring, engineering controls, remediation systems, and post-closure care upon which the final remedy is dependent.

**(b) Procedure**

(1) The applicant shall demonstrate that site conditions meet the performance standards of §108 as established in the VCP Agreement by submitting a final completion report to the NSP. The report shall include, as appropriate:

(A) a summary of the voluntary cleanup conducted at the site;

(B) sampling methods and the results of verification sampling or monitoring;

(C) the method used to evaluate the potential risks posed by site-related contaminants that successfully demonstrates that the performance standards have been met;

(D) a description of all monitoring, engineering controls, remediation, or systems upon which the final remedy is dependent;

(E) copies of all manifests, waste disposal records, or other documentation of the final disposition of all remediation-derived waste; and

(F) any other information requested by the NSP that is reasonably necessary to inform and support the issuance of the certificate of completion.

(2) The applicant shall submit the final completion report to the NSP with an affidavit of completion of the voluntary cleanup, signed by the same individual who signed the declaration of ability and intent pursuant to §203(b)(10), or by another person with the same or greater level of responsibility on behalf of the applicant, indicating that cleanup is complete upon the property or upon a portion of the property, in accordance with the VCP Agreement and these regulations.

(3) A certificate of completion shall not be issued to an applicant who has not

paid oversight costs in full to the NSP. To facilitate this payment, as soon as practicable following receipt of an applicant's completion report, the NSP shall provide to the applicant a written and itemized notification of all costs for which the applicant is liable, in the same manner as provided in §504(d)(2).

(4) The NSP shall use its best efforts to review and determine the sufficiency of a final completion report within sixty (60) days of receipt. If the NSP approves the report, the NSP shall recommend that the Director issue a certificate of completion or a conditional certificate of completion, as appropriate. If the NSP does not approve the completion report, it will advise the applicant in writing of the material gaps in the report. The applicant shall correct these material gaps and resubmit the completion report within thirty (30) days of receipt of notice of material gaps, where feasible.

(5) If a conditional certificate of completion has been issued, the NSP shall conduct regular audits to ensure the appropriate maintenance of all post-completion monitoring, engineering controls, remediation systems, or post-closure care upon which the final remedy is dependent. These audits shall be performed at least every other year for the first ten (10) years following issuance of the conditional certificate of completion, and every five (5) years thereafter. If, during the course of such an audit, the NSP finds that any of the post-completion monitoring, engineering controls, remediation systems, or post-closure care is not being properly maintained such that the agreed-upon performance standards are no longer being met, the Director may revoke the conditional certificate of completion and initiate an enforcement action pursuant to the NNCERCLA, 4 N.N.C. § 2401 or 2403, if applicable.

(c) **Copies/Recording.** Upon issuance of a certificate of completion, the Director shall file a copy with the Bureau of Indian Affairs - Navajo Region Realty Office and the Navajo Land Department. In the case of post-completion monitoring, maintenance of engineering controls or remediation systems, or post-closure care, it may be necessary for the Director to record a copy of an easement or other legal document binding on successors in interest to the site to ensure continued access for NSP audits.

## § 502. Denial of Certificate of Completion

(a) **Denial.** If an applicant resubmits a completion report following receipt of a notice of material gaps pursuant to § 501(b)(4) and the NSP determines that the applicant still has not successfully completed the final site work plan or has otherwise failed to comply with the VCP Agreement, the Director shall evaluate the report and shall use his or her best efforts to respond within thirty (30) days of receipt of the resubmitted completion report. The Director's response shall:

(1) Notify the applicant via certified mail, return receipt requested, that the certificate of completion has been denied and the VCP Agreement has been terminated;

- (2) present to the applicant a list in writing of the reasons for the second and final denial; and
  - (3) provide to the applicant a written and itemized notification of all outstanding liabilities for which the applicant is liable under §504(d).
- (b) The Director may, in his or her sole and nonreviewable discretion, allow applicant a second and final opportunity to cure any defects in the completion report.
- (c) **Appeal.** The applicant may appeal the determination of the Director as provided in the NNCERCLA, 4 N.N.C. §2802.

### § 503. Covenant Not to Sue

- (a) **General Provisions.** After the Director issues a certificate of completion or a conditional certificate for a site, s/he shall provide a covenant not to sue to the applicant who effectuated the voluntary cleanup. The covenant not to sue shall cover any direct liability, including future liability, for claims based upon the contamination covered by the VCP Agreement and over which NNEPA has authority. Except as may be provided under federal law or as may be agreed to by a federal government entity, the covenant not to sue shall not release or otherwise apply to claims by the federal government for claims based on federal law. The covenant not to sue shall not release or otherwise affect a person's liability to third parties.
- (b) **Specific Reservation of Rights.** The Director expressly reserves, and the certificate of completion shall so provide, the right to take any action, including any response and/or enforcement action authorized by the NNCERCLA, 4 N.N.C. §§ 2401 & 2403 and Subchapter 5, to:
- (1) address any contamination or release not covered by the VCP Agreement, including any release of a contaminant occurring after issuance of the certificate of completion or conditional certificate of completion, or any release of a contaminant not covered by the VCP Agreement;
  - (2) ensure restoration or replacement of natural resources, if any are injured, destroyed, or lost due to the release, contamination, or response activities; and
  - (3) ensure restoration or replacement of cultural resources, if any are injured, destroyed, or lost due to the release, contamination, or response activities.
- (c) **Transferability.** The covenant not to sue under this part shall be transferable with title or lease to the site, unless the title or lease is transferred to a party who has contributed to the site contamination, or is an officer, director, parent, subsidiary, affiliate, partner, managing agent, or employee thereof.
- (d) **Rescission.** The Director may rescind a certificate of completion, conditional

certificate of completion, or a covenant not to sue if the NSP learns, based on reasonable evidence obtained subsequent to issuing the certificate, that:

- (1) the contamination addressed in the VCP Agreement still poses, subsequent to completion of the voluntary cleanup, an unreasonable threat to public health or the environment, or the performance standards of §108 have not in fact been met;
- (2) the voluntary cleanup was performed in a manner that failed to substantially comply with the terms and conditions of the VCP Agreement or voluntary cleanup work plan;
- (3) the post-completion monitoring, engineering controls, remediation systems, or post-closure care upon which the final remedy is dependent have not been implemented or are not being maintained satisfactorily;
- (4) the VCP Agreement was the result of fraud or material misrepresentation;  
or
- (5) the NSP was not properly informed of the type, extent, or magnitude of the contamination present at the site at the time the VCP Agreement was signed, the voluntary remediation work plan was approved, or the certificate of completion was issued.

#### § 504. Termination of an Agreement

(a) **Termination by the Applicant.** The applicant may terminate a VCP Agreement at any time (subject to the notice provision of subsection (c)) and for any reason, provided that:

- (1) the termination does not present an imminent and substantial endangerment to public health or the environment; and
- (2) at the time of termination, the site is in no worse condition, from an environmental and public health perspective, than before the applicant entered into the VCP Agreement.

(b) **Termination by the Director.** The Director may terminate the VCP Agreement for the following reasons:

- (1) if the applicant fails to substantially comply with the terms and conditions of the VCP Agreement, including but not limited to failure to initiate, proceed with, or complete the remedial program in accordance with the work plan or the compliance schedule included in the VCP Agreement;
- (2) if the applicant fails to address an imminent and substantial endangerment to public health or the environment in an effective and timely manner.

such as by refusing to modify the work plan to address such endangerment when requested by the Director under § 303(b); and

(3) as provided in § 304.

(c) **Notice.** A VCP Agreement may be terminated by the Director or the applicant on fifteen (15) days' prior written notice via certified mail, return receipt requested.

(d) **Costs.**

(1) Only those costs appropriately incurred or obligated by the NSP, under the terms of the VCP Agreement and prior to the date of its termination, are recoverable. Any unused amounts already paid by the applicant to the NSP as of the date of termination are refundable to the applicant.

(2) The NSP shall provide to the applicant a written and itemized notification of all costs for which the applicant is liable under paragraph (d)(1) within ninety (90) days of the date of termination.

(3) If the applicant does not pay its outstanding liabilities within ninety (90) days of receipt of the NSP's itemized notification under paragraph (d)(2), the applicant shall be responsible for all unpaid costs as well as interest, reasonable attorney's fees, and costs, and the Director may request the attorney general to bring a court action in the name of the Navajo Nation to recover the amount owed by the applicant.



Environmental Protection Agency Superfund Program

P.O. Box 2946 Window Rock, AZ 86515 • Hwy 264/43 Crest Rd. Saint Michaels, AZ 86511  
Tel: 928.871.6859 Fax: 928.871.7333

**MEMORANDUM**

To: Jill Grant, Nordaus Law Firm, LLP

From: Sararesa Hopkins, Navajo EPA Superfund Public Information Officer. *SBH*

Date: October 4, 2012

RE: Public hearings for NNCERCLA.

The three public hearings were organized by the Navajo Nation EPA/Superfund Program during the days of September 19, 2012 – September 21, 2012 in three different Navajo communities. Here is a listing of the time, date and location of each public hearing for four proposed regulations and one proposed fee under NNCERCLA. The purpose of the hearings was to receive formal comments. Formal comments were due September 24, 2012, but that was extended to October 1, 2012 at the granted request of oil and gas companies.

- 1 p.m. – 5 p.m. (DST), September 19, 2012, Conference Room, Hogan Restaurant, Tuba City, Ariz.
- 1 p.m. – 5 p.m. (DST), September 20, 2012, Large Conference Room, Diné College, Shiprock Campus, Shiprock, N.M.
- 1 p.m. – 5 p.m. (DST), September 21, 2012, Conference Room One, Navajo Nation Museum, Window Rock, Ariz.

During each of the public hearings, Freida White, Environmental Program Supervisor, and I read out loud proposed regulations under the NNCERCLA. For the Tuba City, Ariz. and Shiprock, N.M. locations, no one attended each of these public hearings. One person, Kyle Summers of Aztec, N.M., attended the Window Rock NNCERCLA public hearing at 1 p.m. – 1:20 p.m. Vivian Craig, an NNEPA Superfund Senior Environmental Specialist, was also present.

Mr. Summers who is a contractor for Southwest Geosciences wanted to see the changes made to the NNCERCLA. Mr. Summers had two questions, one about the Partial Settlement Agreement (PSA) and the other about the date of a proposed regulation. He was informed that the PSA was signed by the last of the ratified members by the first week of February 2012. Once he confirmed the date of the proposed regulation, he left. Thereafter, Freida White and Vivian Craig, NNEPA Senior Environmental Specialist, read different sections of the NNCERCLA during the September 21, 2012 Window Rock, Ariz. public hearing.

If you have any questions, I may be reached at my e-mail at [muttonshinnob@yahoo.com](mailto:muttonshinnob@yahoo.com) and my work mobile telephone is (505)713-8228.

**RESOURCES AND DEVELOPMENT COMMITTEE**  
**24<sup>th</sup> Navajo Nation Council**

**ROLL CALL**  
**VOTE TALLY SHEET:**

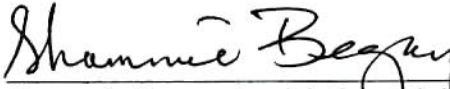
**Legislation # 0131-20:** An Action Relating to Resources and Development Committee; Approving the NN Comprehensive Environmental, Response, Compensation and Liability Act (NNCERCLA) Regulations. *Sponsor: Honorable Kee Allen Begay, Jr.; Co-sponsor: Honorable Wilson C. Stewart, Jr.*

Date: June 17, 2020 - Regular Meeting (Teleconference)  
Meeting Location: (RDC members called in via teleconference from their location within the boundary of the Navajo Nation.)

**Main Motion:**

Motion: Mark A. Freeland                      S: Thomas Walker, Jr.              Vote: 4-0-1 (CNV)  
**In Favor:** Wilson C. Stewart, Jr., Mark A. Freeland, Kee Allen Begay, Jr., and Thomas Walker, Jr.  
**Oppose:** None  
**Excuse:** Herman M. Daniels  
**Not Voting:** Presiding Chairperson Rickie Nez

  
\_\_\_\_\_  
Honorable Rickie Nez, Presiding Chairperson  
Resources and Development Committee

  
\_\_\_\_\_  
Shammie Begay, Legislative Advisor  
Office of Legislative Services