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UNITED STATES DEPARTMENT OF JUSTICE,  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8  
AND  
THE STATE OF SOUTH DAKOTA

\_\_\_\_\_)  
IN THE MATTER OF: )  
 )  
Gilt Edge Mine Site )  
 )  
 )  
Agnico Eagle Mines Limited, )  
Agnico Eagle (USA) Limited, )  
Lessee. )  
\_\_\_\_\_)

CERCLA Docket No. CERCLA-08-2023-0001

**ADMINISTRATIVE SETTLEMENT  
AGREEMENT FOR REUSE  
ASSESSMENT AND PAYMENT OF  
RESPONSE COSTS BY  
PROSPECTIVE LESSEE**

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## **I. GENERAL PROVISIONS**

1. This Administrative Settlement Agreement for a Reuse Assessment and Payment of Response Costs by Prospective Lessee (Settlement) is entered into voluntarily by and between the United States on behalf of the Environmental Protection Agency (EPA), the State of South Dakota (State), and the prospective Lessee, Agnico Eagle Mines Limited (and its wholly owned subsidiary Agnico Eagle (USA) Limited (collectively “Lessee”). This Settlement provides for the performance of a reuse assessment by Lessee and the payment of certain response costs to be incurred by the United States and the State at or in connection with the Property as defined below, located 4.5 miles southeast of the town of Lead in the northern Black Hills in Lawrence County, South Dakota, included within the Gilt Edge Mine Superfund Site (Site).

2. This Settlement is entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §§ 9601-9675. EPA is proceeding under the CERCLA authority vested in the President of the United States and delegated to the Administrator of EPA and further delegated to the undersigned regional official.

3. Lessee agrees to undertake all actions required by the terms and conditions of this Settlement. In view of the risk of claims under CERCLA being asserted against Lessee upon it becoming a lessee of the Site, one of the purposes of this Settlement is to resolve Lessee’s potential CERCLA liability in accordance with the covenants not to sue in Section XVIII (Covenants Not to Sue by United States and the State), subject to the reservations and limitations contained in Section XIX (Reservations of Rights by United States and the State).

4. The resolution of this potential liability, in exchange for Lessee’s performance of the Work and payments provided for herein, is fair, reasonable, in the public interest, and consistent with CERCLA.

5. The United States, the State, and Lessee (collectively, the “Parties”) recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Lessee in accordance with this Settlement do not constitute an admission of any liability. Lessee does not admit and it retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement, the validity of the statement of facts and determinations in Sections IV (Statement of Facts) and V (Determinations) of this Settlement. Lessee agrees to not contest the basis or validity of this Settlement or its terms, or the United States’ right to enforce this Settlement.

## **II. PARTIES BOUND**

6. This Settlement is binding upon the United States, the State, and Lessee and upon Lessee’s successors. Any change in ownership or corporate status of Lessee does not alter Lessee’s responsibilities under this Settlement. Lessee’s responsibilities under this Settlement

cannot be transferred or assigned except under a modification executed by the Parties in accordance with Section XXVI (Modification).

7. Lessee shall provide a notice of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing Lessee with respect to the Site or the Work. Lessee is responsible for ensuring that such parties act in accordance with the terms of this Settlement.

### III. DEFINITIONS

8. Terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA have the meaning assigned to them in CERCLA or the regulations promulgated under CERCLA. Whenever terms listed below are used in this Settlement, the following definitions apply:

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“DANR” means the South Dakota Department of Agricultural and Natural Resources and any successor departments or agencies of the State.

“Day” or “day” means a calendar day. In computing any period of time under this Settlement, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“DOJ” means the United States Department of Justice.

“Effective Date” means the effective date of this Settlement as provided in Section XXXIV.

“EPA” means the United States Environmental Protection Agency.

“EPA Hazardous Substance Superfund” means the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Existing Contamination” means:

- a. any hazardous substances, pollutants or contaminants present or existing on or under the Property prior to or as of the Effective Date;
- b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and
- c. any hazardous substances, pollutants or contaminants present or existing at the Property as of the Effective Date that migrate onto, under or from the Property after the Effective Date.

“Gilt Edge Mine Site Special Account” means the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Interest” means interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund, as provided under section 107 of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest is the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Lessee” means Agnico Eagle Mines Limited, a Canadian company, and Agnico Eagle (USA) Limited, a Nevada company doing business in the State of South Dakota.

“NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to section 105 of CERCLA, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Oversight Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States and the State incur or pay in supporting, developing, implementing, overseeing, or enforcing this Settlement, including: (1) in developing, reviewing and approving deliverables generated under this Settlement, (2) in overseeing Lessee’s performance of the Work, (3) in taking action under Paragraph 44 (Emergency Response); (4) in implementing a Work Takeover under Paragraph 76 (Work Takeover); (5) in securing, implementing, monitoring, maintaining, or enforcing the requirements of Section VIII (Property Requirements); (6) in taking action under Paragraph 94 (Access to Financial Assurance); and (7) in enforcing this Settlement, including all costs paid under Section XIV (Dispute Resolution), and all litigation costs. Oversight Costs also includes all Interest accrued on EPA’s unreimbursed costs.

“Paragraph” means a portion of this Settlement identified by an Arabic numeral or an upper- or lower-case letter.

“Property” means those interests leased by the State to Lessee that are within the Site as further identified in the lease agreements known as 9DENR1, 9DENR2, and 9DENR3, between the State of South Dakota by and through its Office of Public Lands, and Lessee, dated March 23, 2018 (collectively the “Leases”).

“Parties” means the United States, State, and Lessee.

“RCRA” means the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“RPM” means the Remedial Project Manager as defined in 40 C.F.R. § 300.5.

“Section” means a portion of this Settlement identified by a Roman numeral.

“Settlement” means this Administrative Settlement Agreement for Reuse Assessment and Payment of Oversight Costs by Prospective Lessee, all appendices attached hereto, and all deliverables included under and incorporated by reference into this Settlement. In the event of conflict between this Settlement and any appendix, this Settlement controls.

“Site” means the Gilt Edge Mine Superfund Site, located 4.5 miles southeast of the town of Lead in the northern Black Hills in Lawrence County, South Dakota, and depicted generally on the map attached as Appendix A.

“State” means the State of South Dakota, and each department, agency, and instrumentality thereof.

“SPM” means the State Project Manager designated by the Secretary of DANR.

“Statement of Work” or “SOW” means the document describing the activities Lessee must perform to implement the reuse assessment pursuant to this Settlement, as set forth in Appendix B, and any modifications made thereto in accordance with this Settlement.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” means (a) any “hazardous substance” under section 101(14) of CERCLA; (b) any pollutant or contaminant under section 101(33) of CERCLA; (c) any “solid waste” under section 1004(27) of RCRA; and (d) any “hazardous substances” under South Dakota Chapter 43A-11.

“Water Treatment Costs” means the costs EPA expects to incur in performing the interim remedy selected by EPA for OU2 for the Site as set forth in the Early Action - Interim Record of Decision – Operable Unit 2 - Water Treatment Operations issued on April 23, 2001, and the Interim Record of Decision – Operable Unit 2 – Interim Water Treatment issued on November 30, 2001, during the term of this Settlement.

“Work” means all activities and obligations Lessee is required to perform under this Settlement, except those required by Section X (Record Retention).

#### **IV. STATEMENT OF FACTS**

9. The Site is an abandoned gold mine located approximately 4.5 miles southeast of the town of Lead, in the northern Black Hills of Lawrence County, South Dakota.

10. Mining at the Site began in the late 1800s, and continued intermittently until 1999, when operator Brohm Mining Company became insolvent and abandoned the Site with approximately 150 million gallons of acidic, lead, arsenic, and cadmium laden water in three open pits, as well as significant amounts of unsecured and uncontrolled acid generating waste rock.

11. In 2000, EPA added the Site to the National Priorities List. EPA has organized the Site into three operable units (OUs).

12. Operable unit 1 (OU1) is the primary mine disturbance area and addresses existing contaminant sources within the primary mine disturbance area, such as acid generating waste rock and fills, spent ore, exposed acid generating bedrock, and sludge.

13. Operable unit 2 (OU2) consists of water treatment, groundwater, and lower Strawberry Creek. OU2 addresses (1) acid rock drainage, including acid rock drainage collection systems, pumping stations, pipelines, water treatment, and the future generation of acid rock drainage sludge; (2) groundwater contamination associated with the Site; and (3) contaminant sources, surface water and sediments in the lower Strawberry Creek area.

14. Operable unit 3 (OU3) is the Ruby Gulch Waste Rock Dump. OU3 addresses contaminant sources located within the Ruby Gulch Waste Rock Dump.

15. EPA issued an Early Action Interim Record of Decision for OU2 in April 2001 to continue water treatment activities previously assumed by the State, followed by an Interim Record of Decision for OU2 in November 2001. The interim OU2 remedy included additional collection of acid rock drainage and construction of a new water treatment plant to treat contaminated waters generated at the Site. The Site currently generates an average of 95 million gallons of acid rock drainage per year, which is collected and treated before discharge into Strawberry Creek.

16. EPA's investigation of the releases of hazardous substances in OU2 is ongoing.

17. EPA issued an Interim Record of Decision for OU3 in August 2001 to address contamination associated with the largest acid rock drainage source on the Site, the Ruby Gulch Waste Rock Dump.

18. EPA issued a Record of Decision for OU1 in 2008, and selected a remedy focused on containment of contaminant sources within the primary disturbance area. In 2014, EPA issued an Explanation of Significant Differences, modifying the OU1 Record of Decision to further reduce the volume of acid rock drainage generated at the Site. Construction on the OU1 remedy began in 2017.

19. On February 12, 2018, EPA, the State, and Lessee entered an Administrative Settlement Agreement and Order on Consent for Work, captioned CERCLA-08-2018-0004 (2018 Agreement). Under the terms of the 2018 Agreement, Lessee took certain actions to aid the remedial investigation at the Site. That work is now complete and Lessee desires to conduct a reuse assessment to investigate the viability of re-mining the Site.

## **V. DETERMINATIONS**

20. Based on the Statement of Facts set forth above, and the administrative record, EPA has determined that:

- a. The Site is a "facility" as defined by section 101(9) of CERCLA.

- b. The contamination found at the Site, as identified in the Statement of Facts above, includes “hazardous substance” as defined by section 101(14) of CERCLA.
- c. Lessee is a “person” as defined by section 101(21) of CERCLA.
- d. The conditions described in the Statement of Facts above constitute an actual or threatened “release” of a hazardous substance from the Site as defined by section 101(22) of CERCLA.

## **VI. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND REMEDIAL PROJECT MANAGER**

21. Lessee shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA and DANR of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within 7 days after the Effective Date. Lessee shall also notify EPA and DANR of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 7 days prior to commencement of such Work. EPA, after consultation with and opportunity for comment by DANR, retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Lessee. If EPA disapproves of a selected contractor or subcontractor, Lessee shall retain a different contractor or subcontractor and shall notify EPA and DANR of that contractor’s or subcontractor’s name, title, contact information, and qualifications within 30 days after EPA’s disapproval. With respect to any proposed contractor, Lessee shall demonstrate that the proposed contractor demonstrates compliance with industry standards applicable to the Work, by submitting a copy of the proposed contractor’s Quality Management Plan (QMP). The QMP should be prepared in accordance with “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Lessee are subject to EPA and DANR’s review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

22. Lessee has designated, and EPA has not disapproved, Sandor Ringhoffer as its Project Coordinator who shall be responsible for administration of all actions by Lessee required by this Settlement. Lessee has the right, subject to Paragraph 21, to change its designated Project Coordinator. Lessee shall notify EPA and DANR at least 7 days before such a change is made. The initial notification by Lessee may be made orally to EPA but shall be promptly followed by a written notice. EPA retains the right, after consultation with and opportunity for comment by DANR, to disapprove of any subsequent designated Project Coordinator who does not meet the requirements of Paragraph 21. If EPA disapproves of any subsequent designated Project Coordinator, Lessee shall retain a different Project Coordinator and shall notify EPA and DANR of that person’s name, title, contact information, and qualifications within 30 days following EPA’s disapproval.

23. Notice or communication relating to this Settlement from EPA to Lessee’s Project Coordinator constitutes notice or communication to Lessee. Lessee will ensure, to the greatest



extent possible, that its Project Coordinator is present on the Site or readily available during the Work.

24. EPA has designated Joy Jenkins of the Superfund Remedial Program, as its RPM. EPA has the right to change its designated RPM. All deliverables, notices, notifications, proposals, reports, and requests specified in this Settlement must be in writing, unless otherwise specified, and be submitted by email to Joy Jenkins at [jenkins.joy@epa.gov](mailto:jenkins.joy@epa.gov).

25. The State has designated Mark Lawrensen as the SPM. The State has the right to change its designated SPM. All deliverables, notices, notifications, proposals, reports, and requests specified in this Settlement must be in writing, unless otherwise specified, and be submitted by email to Mark Lawrensen at [mark.lawrensen@state.sd.us](mailto:mark.lawrensen@state.sd.us).

26. The RPM is responsible for overseeing Lessee's implementation of this Settlement. The RPM has the authority stated in the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action undertaken at the Site. Absence of the RPM from the Site is not cause for stoppage of Work unless specifically directed by the RPM.

## VII. WORK TO BE PERFORMED

27. Lessee shall perform, at a minimum, all actions necessary to implement a reuse assessment as set forth in the SOW.

28. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Lessee receives notification from EPA of the modification, amendment, or replacement.

### 29. Submission and Review of Deliverables

#### a. General Requirements for Deliverables

(1) Except as otherwise provided in this Settlement, Lessee shall direct all deliverables required by this Settlement to the RPM at: [jenkins.joy@epa.gov](mailto:jenkins.joy@epa.gov) and to the SPM at [mark.lawrensen@state.sd.us](mailto:mark.lawrensen@state.sd.us). Lessee shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan to EPA and DANR in accordance with the schedule set forth in such plan.

(2) Lessee shall submit all deliverables in electronic form unless otherwise specified by the RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Lessee shall also provide EPA and DANR with paper copies of such exhibits.

b. **Review and Incorporation of Deliverables.** Unless otherwise provided, EPA, after a reasonable opportunity for review and comment by DANR, will approve, disapprove, require revisions to, or modify deliverables in whole or in part that are submitted by Lessee under this Settlement. If

EPA requires revisions, EPA will provide a deadline for the resubmission, and Lessee shall submit the revised deliverable by the required deadline. Once approved or approved with modifications, Lessee shall commence implementation as required by the deliverable, and the deliverable will be incorporated into and fully enforceable under this Settlement. Lessee shall not commence or perform any Work except in conformance with the terms of this Settlement.

**30. Reuse Assessment Work Plan**

- a. Within 30 days after the Effective Date, in accordance with Paragraph 29 (Submission of Deliverables), Lessee shall submit to EPA and DANR for review and approval a draft work plan for performing the reuse assessment (Reuse Assessment Work Plan) as described in the SOW. The draft Reuse Assessment Work Plan must provide a description of, and an expeditious schedule for completing field investigations within three years of the Effective Date and completing the Reuse Assessment within four years of the Effective Date.
- b. If EPA, after a reasonable opportunity for review and comment by DANR, requires revisions, Lessee shall submit a revised draft Reuse Assessment Work Plan within 15 days of receipt of EPA's notification of the required revisions. Upon approval or approval with modifications of the Reuse Assessment Work Plan, Lessee shall commence implementation of the Reuse Assessment Work Plan as approved in writing by EPA and in accordance with the schedule included therein.

31. **Health and Safety Plan.** Within 30 days after the Effective Date, Lessee shall submit for EPA and DANR review and comment a plan that ensures the protection of the public health and safety during performance of on-Site Work under this Settlement. Lessee shall prepare the plan in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (November 2002), available on the NSCEP database at <https://www.epa.gov/nscep>, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at [https://www.epaossc.org/\\_HealthSafetyManual/manual-index.htm](https://www.epaossc.org/_HealthSafetyManual/manual-index.htm). In addition, Lessee shall ensure that the plan complies with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan must also include contingency planning. Lessee shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the Work.

32. **Progress Reports.** Lessee shall submit written progress reports to EPA and DANR concerning actions undertaken pursuant to this Settlement on a monthly basis, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Reuse Assessment Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVII, unless otherwise directed in writing by the RPM. These reports must describe all significant developments during the preceding period, including the actions performed and any

problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems. Upon request, Lessee will participate in teleconferences with EPA and/or the State to provide additional progress updates.

33. **Final Report: Reuse Assessment.** Within 60 days after completion of all requirements in the Reuse Assessment Work Plan, other than continuing obligations listed in Paragraph 101 (Notice of Completion), Lessee shall submit for EPA and DANR review a final report that includes the Reuse Assessment and summarizes the actions taken to comply with this Settlement.

34. **Off-Site Shipments**

- a. Lessee may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if it complies with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Lessee will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Lessee obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).
- b. Lessee may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the RPM. This written notice requirement does not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Lessee also shall notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Lessee shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.
- c. Lessee may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if it complies with section 121(d)(3) of CERCLA, 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (January 1992), and any IDW-specific requirements contained in any Site-specific decision document. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440. Lessee may place IDW into an on-Site

sludge storage cell, subject to EPA approval of the location and compatibility with existing Site contaminants.

### VIII. PROPERTY REQUIREMENTS

35. **Access, Appropriate Care, and Non-Interference.** Commencing on the Effective Date, Lessee shall: (i) provide EPA, the State, and their representatives, including contractors, and subcontractors, with full cooperation, assistance, and access to the Property at all reasonable times to conduct any activity regarding the Site and to any other persons that are authorized to conduct response actions or natural resource assessment or restoration at the Site, including those activities listed in Paragraph 35.a (Access Requirements); (ii) exercise appropriate care with respect to hazardous substances found at the Site as described in Paragraph 35.b (Appropriate Care), and (iii) refrain from using the Site in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial action.

- a. **Access Requirements.** The following is a non-exclusive list of activities for which access to the Property is required pursuant to this Settlement:
- (1) Monitoring the Work;
  - (2) Verifying any data or information submitted to the United States or the State;
  - (3) Conducting investigations regarding contamination at or near the Site;
  - (4) Obtaining samples;
  - (5) Assessing the need for, planning, implementing, or monitoring response actions;
  - (6) Implementing a response action by persons performing under EPA oversight;
  - (7) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Lessee or its agents consistent with Section IX (Access to Information);
  - (8) Assessing Lessee's compliance with the Settlement;
  - (9) Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement or an EPA decision document for the Site; and

- (10) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any institutional controls regarding the Site.

b. **Appropriate Care.** Lessee shall take reasonable steps to stop any continuing releases; prevent any threatened future releases; and prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance associated with the Work.

36. Notwithstanding any provision of this Settlement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land, water or other resource use restrictions and institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

## **IX. ACCESS TO INFORMATION**

37. Lessee shall, subject to the record retention period in Section X, and, if necessary, in accordance with Paragraph 38, provide to EPA or the State upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Lessee's possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Lessee shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work and any other activities undertaken on the Property.

### **38. Privileged and Protected Claims**

- a. Lessee may assert all or part of a record requested by EPA or the State is privileged or protected as provided under federal law or State law, in lieu of providing the record, provided Lessee complies with Paragraph 38.b, and except as provided in Paragraph 38.c.
- b. If Lessee asserts such a privilege or protection, it shall provide EPA and the State with the following information regarding such record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a record, Lessee shall provide the record to EPA and the State in redacted form to mask the privileged or protected portion only. Lessee shall retain all records that it claims to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Lessee's favor.

- c. Except for Business Confidential Claims permitted in Paragraph 39, Lessee may make no claim of privilege or protection regarding: (1) any data related to the Work regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any record that Lessee is required to create or generate pursuant to this Settlement.

39. **Business Confidential Claims.** Lessee may assert that all or part of a record provided to EPA and the State under this Section or Section X (Record Retention) is business confidential to the extent permitted by and in accordance with section 104(e)(7) of CERCLA, and 40 C.F.R. § 2.203(b). Lessee shall segregate and clearly identify all records or parts thereof submitted under this Settlement for which Lessee asserts business confidentiality claims. Records that Lessee claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B and South Dakota Codified Laws §§ 1-27-1, et. seq. and 1-27-3 and applicable State regulations. If no claim of confidentiality accompanies records when they are submitted to EPA and the State, or if EPA has notified Lessee that the records are not confidential under the standards of section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Lessee.

40. Notwithstanding any provision of this Settlement, EPA and the State retain all their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## **X. RECORD RETENTION**

41. For a period of 10 years following the date of the final report submitted by Lessee pursuant to Paragraph 33, unless EPA agrees in writing to a shorter time period after consultation with and opportunity for comment by DANR, Lessee shall preserve all documents and information relating to the Work and any hazardous substances, pollutants or contaminants found on or released from the Site. At the conclusion of the document retention period, Lessee shall notify EPA at least 90 days prior to the destruction of any such records, and upon request by EPA, except as provided in Paragraph 38 (Privileged and Protected Claims), Lessee shall deliver any such records to EPA. These record retention requirements apply regardless of any corporate retention policy to the contrary and is in addition to, and not in lieu of, reporting under section 103(c) of CERCLA, and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA).

## **XI. COMPLIANCE WITH OTHER LAWS**

42. Nothing in this Settlement limits Lessee's obligations to comply with the requirements of all applicable state and federal laws and regulations, and the Leases to the extent the Leases' terms are not pre-empted by CERCLA or otherwise inconsistent with CERCLA, the Site remedy, or the Work, except as provided in section 121(e)(1) of CERCLA, and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement shall, to the extent practicable, as determined

by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

43. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-Site, including studies, if the action is selected and carried out in compliance with section 121 of CERCLA. Where any portion of the Work that is not on-Site requires a federal or state permit or approval, Lessee shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Lessee may seek relief under the provisions of Section XV (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation, including, but not limited to, South Dakota Codified Laws chap. 45-6B and South Dakota Administrative Rule 74:29.

## **XII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

44. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Lessee shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Lessee shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Lessee shall also immediately notify the RPM and SPM or, in the event the RPM's unavailability, the Regional Duty Officer at 303-293-1788 of the incident or Site conditions. If Lessee fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Lessee shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIII (Payment of Response Costs).

45. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Lessee is required to report pursuant to section 103 of CERCLA, or section 304 of EPCRA, Lessee shall immediately orally notify the RPM and SPM or, in the event of the RPM's unavailability, the Regional Duty Officer at 303-293-1788, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under section 103 of CERCLA, and section 304 of EPCRA or South Dakota law. The SPM may be contacted during regular office hours (8 a.m. to 5 p.m. Central time). After office hours, weekends, or holidays, reporting is to be through State Radio Communications at 605-773-3231.

46. For any event covered under this Section, Lessee shall submit a written report to EPA and DANR within seven days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

### XIII. PAYMENT OF RESPONSE COSTS

47. **Payment of Water Treatment Costs.** Within 30 days after the Effective Date Lessee shall pay to EPA \$ 2,500,000 (Base Amount) for EPA performance of ongoing water treatment in accordance with the OU2 Record of Decision. For each year thereafter on the anniversary of the Effective Date for the duration of this Settlement, Lessee shall pay to EPA the Base Amount adjusted cumulatively by an annual change, which will be the percentage change in the Consumer Price Index for all Urban Consumers, U.S. City Average, all items index, as published by the United States Department of Labor, Bureau of Labor Statistics (BLS Price Index). In the event that the BLS Price Index should not be available so as to permit the adjustments, such adjustment will be based on a then available price index, substituted by agreement of the Parties, which is determined under principles most nearly comparable to those underlying the BLS Price Index. Lessee shall make such payments in accordance with Paragraph 49.

48. **Payment of Oversight Costs.** Lessee shall pay to EPA all Oversight Costs EPA incurs that are not inconsistent with the NCP. On a periodic basis, EPA will send Lessee a bill requiring payment that includes a regionally prepared cost summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, the State, and the United States Department of Justice. Lessee shall make all payments within 30 days of Lessee's receipt of each bill requiring payment in accordance with Paragraph 49, except as otherwise provided in Paragraph 52 (Contesting Oversight Costs).

49. **Payment Instructions.**

- a. Lessee shall make all payments to EPA at <https://www.pay.gov> in accordance with the following payment instructions: enter "sf0 1.1" in the search field to access EPA's Miscellaneous Payments Form - Cincinnati Finance Center. Complete the form including the Site Name, CERCLA docket number and Site/Spill ID Number 087T. Lessee shall send to EPA a notice of this payment including these references.

50. **Deposit of Payments.** The total amount to be paid by Lessee to EPA pursuant to Paragraphs 47 (Payment of Water Treatment Costs) and 48 (Payments of Oversight Costs) may be deposited by EPA in the Gilt Edge Mine Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Gilt Edge Mine Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Lessee pursuant to the dispute resolution provisions of this Settlement or in any other forum.

51. **Interest.** If any payment is not made by the date required, Lessee shall pay Interest on the unpaid balance. The Interest on Oversight Costs under Paragraph 48 (Payments of Oversight Costs) shall begin to accrue on the date of the bill. The Interest shall accrue



through the date of Lessee's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Lessee's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI (Stipulated Penalties).

52. **Contesting Oversight Costs.** Lessee may initiate the procedures of Section XIV (Dispute Resolution) regarding payment of any Oversight Costs billed under Paragraph 48 (Payments of Oversight Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Oversight Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Lessee shall submit a Notice of Dispute in writing to the RPM and SPM within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Oversight Costs and the basis for objection. If Lessee submits a Notice of Dispute, Lessee shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Oversight Costs to EPA in the manner described in Paragraph 49, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Oversight Costs. Lessee shall send to the RPM a copy of the transmittal letter and check paying the uncontested Oversight Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within five days after the resolution of the dispute, the escrow agent shall release the sums due (with accrued interest) to EPA in the manner described in Paragraph 49. If Lessee prevails concerning any aspect of the contested costs, the escrow agent shall release that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 48. Lessee shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes under Lessee's obligation to reimburse EPA for its Oversight Costs.

#### **XIV. DISPUTE RESOLUTION**

53. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. EPA and Lessee shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally. If EPA contends that Lessee is in violation of this Settlement, EPA, after consultation with and opportunity for comment by DANR, will notify Lessee in writing, setting forth the basis for its position. Lessee may dispute EPA's position pursuant to Paragraph 54 (Informal Dispute Resolution).

54. **Informal Dispute Resolution.** If Lessee objects to any EPA action taken pursuant to this Settlement, including billings for Oversight Costs, Lessee shall send the RPM, EPA counsel, and DANR a written Notice of Dispute describing the objection(s) within 14 days after such action. EPA and Lessee shall have 30 days from EPA's receipt of Lessee's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The

Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by EPA and Lessee pursuant to this Section shall be in writing and will, upon signature by EPA and Lessee, be incorporated into and become an enforceable part of this Settlement.

55. **Formal Dispute Resolution.** If EPA and Lessee are unable to reach an agreement within the Negotiation Period, Lessee shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the RPM, EPA counsel and DANR. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the supervisory level or higher will issue a written decision on the dispute to Lessee. EPA's decision will be incorporated into and become an enforceable part of this Settlement. Lessee shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

56. Except as provided in Paragraph 52 (Contesting Oversight Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Lessee under this Settlement. Except as provided in Paragraph 63, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. If Lessee does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).

## **XV. FORCE MAJEURE**

57. "Force Majeure," for purposes of this Settlement, is defined as any event arising from causes beyond the control of Lessee, of any entity controlled by Lessee, or of Lessee's contractors that delays or prevents the performance of any obligation under this Settlement despite Lessee's best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Lessee exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

58. If any event occurs for which Lessee will or may claim force majeure, Lessee shall notify EPA's RPM and SPM orally or, in the event EPA's RPM is unavailable, the Director of the Superfund and Emergency Management Division, EPA Region 8, within 7 days of when Lessee first knew that the event might cause a delay. Within 7 days thereafter, Lessee shall provide in writing to EPA and DANR an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or expected to be taken to prevent or minimize the delay; a schedule for implementation of any measures expected to be taken to prevent or mitigate the delay or the effect of the delay; Lessee's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Lessee, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Lessee shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Lessee shall be deemed to know of any circumstance

of which Lessee, any entity controlled by Lessee, or Lessee’s contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Lessee from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 57 and whether Lessee has exercised best efforts under Paragraph 57, EPA may, in its unreviewable discretion, excuse in writing Lessee’s failure to submit timely or complete notices under this Paragraph.

59. EPA, after consultation with and opportunity for comment by DANR, will notify Lessee of its determination whether Lessee is entitled to relief under Paragraph 58, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. Lessee may initiate dispute resolution under Section XIV regarding EPA’s determination within 15 days after receipt of the determination. In any such proceeding, Lessee has the burden of proving that it is entitled to relief under Paragraph 57 and that its proposed extension was or will be warranted under the circumstances.

60. The failure by EPA to timely complete any activity under this Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Lessee from meeting one or more deadlines under this Settlement, Lessee may seek relief under this Section.

## **XVI. STIPULATED PENALTIES**

61. Lessee shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraph 62 for failure to comply with the obligations set forth in this Settlement unless excused under Section XV (Force Majeure). “Comply” as used in the previous sentence include compliance by Lessee with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

### **62. Stipulated Penalty Amounts – Payments, Major Deliverables, if included: Financial Assurance, and Other Milestones**

- a. The following stipulated penalties shall accrue per violation per day for failure to comply with any of the obligations set forth in this Settlement, including without limitation, failure to submit timely or adequate deliverables in accordance with Section VII (Work to be Performed) or failure to timely submit payments to EPA in accordance with Section XIII (Payment of Response Costs):

<b>Penalty per Violation per Day</b>	<b>Period of Noncompliance</b>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

63. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 30 (Reuse Assessment Work Plan), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Lessee of any deficiency; and (b) with respect to a decision by an EPA management official at the supervisory level or higher, under Paragraph 55 (Formal Dispute Resolution), during the period, if any, beginning on the 21<sup>st</sup> day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

64. Following EPA's determination that Lessee has failed to comply with a requirement of this Settlement, EPA may give Lessee written notification of the failure and describe the noncompliance. EPA may send Lessee a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Lessee of a violation.

65. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Lessee's receipt from EPA of a demand for payment of the penalties, unless Lessee invokes the Dispute Resolution procedures under Section XIV (Dispute Resolution) within the 30-day period. Lessee shall make all payments and shall send notice of such payments in accordance with the procedures under Paragraph 49 (Payment Instructions). Lessee should indicate in the comment field on the <https://www.pay.gov> payment form that the payment is for stipulated penalties.

66. If Lessee fails to pay stipulated penalties when due, Lessee shall pay Interest on the unpaid stipulated penalties as follows: (a) if Lessee has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 63 until the date of payment; and (b) if Lessee fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 64 until the date of payment. If Lessee fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

67. The payment of penalties and Interest, if any, shall not alter in any way Lessee's obligation to complete the performance of the Work required under this Settlement.

68. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Lessee's violation of this Settlement or of the statutes and regulations upon which it is based including, but not limited to, penalties pursuant to section 106(b) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to section 106(b) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement.

69. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

## **XVII. CERTIFICATION**

70. Lessee certifies that to the best of its knowledge and belief after thorough inquiry and as of the date of signature (a) it has not caused or contributed to a release or threat of release of hazardous substances, pollutants or contaminants at the Site; (b) it has fully and accurately disclosed to EPA all information known to Lessee and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site; and (c) it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies).

## **XVIII. COVENANTS BY UNITED STATES AND THE STATE**

71. Except as provided in Section XIX (Reservations of Rights by United States and the State), the United States and the State covenant not to sue or to take administrative action against Lessee pursuant to sections 106 and 107(a) of CERCLA, for Existing Contamination, the Work, and payments under Section XIII (Payment of Response Costs). These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Lessee of its obligations under this Settlement. These covenants are also conditioned upon the veracity of the information provided to EPA and the State by Lessee relating to Lessee's involvement with the Site and the certification made by Lessee in Paragraph 70. These covenants extend only to Lessee and do not extend to any other person.

72. Nothing in this Settlement constitutes a covenant not to sue or not to take action or otherwise limits the ability of the United States or the State to seek or obtain further relief from Lessee if the information provided to EPA or the State by Lessee relating to Lessee's involvement with the Site or the certification made by Lessee in Paragraph 70 is false or in any material respect inaccurate.

## **XIX. RESERVATIONS OF RIGHTS BY UNITED STATES AND THE STATE**

73. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the United States, EPA or the State to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent the United States or the State from seeking legal or equitable relief to enforce the terms of this Settlement or from taking other legal or equitable action as it deems appropriate and necessary.

74. The covenants set forth in Section XVIII (Covenants by United States and the State) do not pertain to any matters other than those expressly identified therein. The United

States and the State reserve, and this Settlement is without prejudice to, all rights against Lessee with respect to all other matters, including, but not limited to:

- a. liability for failure by Lessee to meet a requirement of this Settlement;
- b. criminal liability;
- c. liability for violations of federal or state law that occur during or after implementation of the Work;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;
- f. liability resulting from an act or omission that causes exacerbation of Existing Contamination by Lessee, its successors, assigns, lessees, or sublessees; and
- g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Property, except as provided in the definition of Existing Contamination.

75. Except to the extent expressly provided herein, nothing in this Settlement constitutes a waiver of the sovereign immunity of the State.

76. With respect to any claim or cause of action asserted by the United States or the State, Lessee shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

**77. Work Takeover**

- a. If EPA determines, after consultation with and opportunity for comment by DANR, that Lessee: (1) has ceased implementation of closing any drilled holes, (2) is seriously or repeatedly deficient or late in its performance of closing any drilled holes, or (3) is closing holes in a manner which may cause endangerment to human health or the environment, EPA may issue a written notice (Work Takeover Notice) to Lessee. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Lessee a period of 30 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.
- b. If, after expiration of the 30-day notice period specified in Paragraph 77.a, Lessee has not remedied to EPA's satisfaction the circumstances giving

rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of closing the holes as EPA deems necessary (Work Takeover). EPA will notify Lessee in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 77.b. Funding of Work Takeover costs is addressed under Paragraph 93.

- c. Lessee may invoke the procedures set forth in Paragraph 55 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 77. However, notwithstanding Lessee's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 77 until the earlier of (1) the date that Lessee remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 55 (Formal Dispute Resolution).
- d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## **XX. COVENANTS BY LESSEE**

### **78. Covenants by Lessee**

- a. Subject to Paragraph 81, Lessee covenants not to sue and shall not assert any claim or cause of action against the United States or State under CERCLA, section 7002(a) of RCRA, the Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State of South Dakota Constitution, State law, or common law regarding Existing Contamination, the Work, payments under Section XIII (Payment for Response Costs), and this Settlement.
- b. Subject to Paragraph 81, Lessee covenants not to seek reimbursement from the EPA Hazardous Substance Superfund through CERCLA or any other law for the costs regarding the Existing Contamination, the costs of the Work, payments under Section XIII (Payment for Response Costs), or any claim arising out of response actions at or in connection with the Site.

79. The covenants in Paragraph 78 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States or the State to the extent such claim, cause of action, or order is within the scope of a reservation under Paragraph 74.d through 74.g.

80. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of section 111 of CERCLA, or 40 C.F.R. § 300.700(d), or section 112 of CERCLA, or 40 C.F.R. Part 307.

81. Lessee Reservations

- a. Lessee reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Lessee's deliverables or activities.
- b. Lessee reserves, and this Settlement is without prejudice to, arguments that any claim or cause of action, or part thereof, is attributable solely to Existing Contamination.

## XXI. OTHER CLAIMS

82. By agreeing to this Settlement, the United States, EPA, and the State assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Lessee. Neither the United States nor EPA nor the State shall be deemed a party to any contract entered into by Lessee or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

83. Except as expressly provided in Section XVIII (Covenants by United States and the State), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Lessee or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under sections 106 and 107 of CERCLA.

84. No action or decision by EPA pursuant to this Settlement gives rise to any right to judicial review, except as set forth in section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

## XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

85. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Lessee), each of the Parties expressly reserves any and all rights (including under



section 113 of CERCLA), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

86. The Parties agree that (a) this Settlement constitutes an administrative settlement pursuant to which Lessee has, as of the Effective Date, resolved liability to the United States and the State within the meaning of sections 113(f)(2) and 113(f)(3)(B) of CERCLA, and (b) Lessee is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work, payments under Section XIII (Payment of Response Costs), and all response actions taken or to be taken and all response costs incurred or to be incurred in connection with Existing Contamination by the United States, the State, or any other person. However, if the United States or the State exercises rights under the reservations in Section XIX (Reservations of Rights by United States and the State), other than in Paragraphs 74.a (liability for failure to meet a requirement of the Settlement), 74.b (criminal liability), or 74.c (violations of federal/state law during or after implementation of the Work), the “matters addressed” in this Settlement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

87. Lessee shall, with respect to any suit or claim brought by it against any party for matters related to this Settlement, notify EPA and the State in writing no later than 60 days prior to the initiation of such suit or claim. Lessee shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA and the State in writing within 10 days after service of the complaint or claim upon it. In addition, Lessee shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

88. Nothing in this Settlement diminishes the right of the United States under sections 113(f)(2) and (3) of CERCLA to pursue any person not a Party to this Settlement to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2).

### **XXIII. INDEMNIFICATION**

89. The United States and the State do not assume any liability by entering into this Settlement or by virtue of any designation of Lessee as EPA’s authorized representatives under section 104(e) of CERCLA and 40 C.F.R. 300.400(d)(3). Lessee shall indemnify, save, and hold harmless the United States, the State, their officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Lessee, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Lessee’s behalf or under its control, in carrying out activities pursuant to this Settlement. Further, Lessee agrees to pay the United States and the State all costs they incur, including but not limited to attorneys’ fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Lessee, its officers, directors, employees, agents, contractors, subcontractors, and any persons

acting on its behalf or under its control, in carrying out activities pursuant to this Settlement. The United States and the State shall not be held out as a party to any contract entered into by or on behalf of Lessee in carrying out activities pursuant to this Settlement. Neither Lessee nor any such contractor shall be considered an agent of the United States or the State.

90. The United States or the State shall give Lessee notice of any claim for which the United States or the State plans to seek indemnification pursuant to this Section and shall consult with Lessee prior to settling such claim.

91. Lessee covenants not to sue and agrees not to assert any claims or causes of action against the United States or State for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Lessee and any person for performance of work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Lessee shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Lessee and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

#### **XXIV. INSURANCE**

92. No later than 30 days before commencing any on-Site Work, Lessee shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVII (Notice of Completion of Work) or termination pursuant to Section XXXV (Termination), commercial general liability insurance with limits of \$1 million per occurrence, and automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of at least \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA and the State as additional insureds by endorsement with respect to all liability arising out of the activities performed by or on behalf of Lessee pursuant to this Settlement. In addition, for the duration of the Settlement, Lessee shall provide EPA and DANR with certificates of such insurance. Lessee shall resubmit such certificates each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Lessee shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Lessee in furtherance of this Settlement. If Lessee demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Lessee need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Lessee shall ensure that all submittals to EPA and DANR under this Paragraph identify the Gilt Edge Mine Site, South Dakota and the CERCLA docket number for this action.

#### **XXV. FINANCIAL ASSURANCE**

93. In order to ensure completion of the Work, Lessee shall secure financial assurance, initially in the amount of \$2,000,000 (Estimated Cost of the Work), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form

substantially identical to the relevant sample documents available from EPA or under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Lessee may use multiple mechanisms if it is limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

- a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;
- c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;
- d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

94. Lessee shall diligently monitor the adequacy of the financial assurance. If Lessee becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Lessee shall notify EPA of such information within 30 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Lessee of such determination. Lessee shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Lessee, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Lessee shall follow the procedures of Paragraph 96 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Lessee’s inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

**95. Access to Financial Assurance**

- a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 77, then, in accordance with any applicable financial assurance

mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 95.d.

- b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and Lessee fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 95.d.
- c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 77, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Lessee shall, within 30 days of such demand, pay the amount demanded as directed by EPA.
- d. Any amounts required to be paid under this Paragraph 95 must be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA, the State, or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Gilt Edge Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.
- e. All EPA Work Takeover costs not paid under this Paragraph 95 must be reimbursed as Oversight Costs under Section XIII (Payment of Response Costs).

96. **Modification of Amount, Form, or Terms of Financial Assurance.** Lessee may submit, within 30 days of the anniversary of the Effective Date or at any other time agreed to by the EPA and Lessee, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 93, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Lessee of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Lessee may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XIV (Dispute Resolution). Lessee may change the form or terms of the financial assurance

mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism is not subject to challenge by Lessee pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Lessee shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 93.

97. **Release, Cancellation, or Discontinuation of Financial Assurance.** Lessee may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a notice of completion of work under Section XXVII (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIV (Dispute Resolution); or (d) if the Settlement is terminated pursuant to Section XXXV (Termination) and EPA, after consultation with the State, determines that Lessee has satisfied its obligations in accordance with Section XXXV (Termination).

## **XXVI. MODIFICATION**

98. EPA's RPM may make minor modifications to any plan or schedule or the SOW in writing or by oral direction. EPA will promptly memorialize in writing any oral modification, but the modification has as its effective date the date of the RPM's oral direction, unless otherwise indicated. Any other requirements of this Settlement may be modified in writing by mutual agreement of the Parties, unless otherwise specified in this Settlement.

99. If Lessee seeks permission to deviate from any approved work plan or schedule or the SOW, Lessee's Project Coordinator shall submit a written request to EPA and DANR for approval outlining the proposed modification and its basis. Lessee may not proceed with a requested deviation until receiving oral or written approval from EPA's RPM pursuant to Paragraph 98.

100. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding any deliverable submitted by Lessee shall relieve Lessee of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

## **XXVII. NOTICE OF COMPLETION OF WORK**

101. When EPA determines, after EPA and DANR's review of the final report submitted by Lessee pursuant to Paragraph 33, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, such as compliance with the property requirements in Section VIII, including, but not limited to access, and reasonable steps, EPA will provide written notice to Lessee. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify Lessee, provide a list of the deficiencies, and require that Lessee modify the Reuse Assessment Work Plan if appropriate in order to correct such deficiencies. Lessee shall

implement the modified and approved Reuse Assessment Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Lessee to implement the approved modified Reuse Assessment Work Plan is a violation of this Settlement.

### **XXVIII. INTEGRATION/APPENDICES**

102. This Settlement constitutes the entire agreement among the Parties regarding the subject matter of the Settlement and supersedes all prior representations, agreements and understandings, whether oral or written, regarding the subject matter of the Settlement embodied herein. The following appendices are attached to and incorporated into this Settlement.

- a. Appendix A is the description and/or map of the Site.
- b. Appendix B is the Statement of Work.

### **XXIX. SIGNATORIES**

103. Each undersigned representative of the United States, State, and the undersigned representative of Lessee certifies that the signatory is authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Lessee to this Settlement.

### **XXX. DISCLAIMER**

104. This Settlement is in no way a finding by EPA or DANR as to the risks to human health and the environment that may be posed by contamination at the Site or a representation by EPA or DANR that the Site is fit for any particular purpose.

### **XXXI. ENFORCEMENT**

105. The Parties agree that the United States District Court for the District of South Dakota (Court) will have jurisdiction pursuant to section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any judicial enforcement action brought with respect to this Settlement.

106. Notwithstanding Paragraph 71 of this Settlement, if Lessee fails to comply with the terms of this Settlement, the United States or the State may file a lawsuit for breach of this Settlement, or any provision thereof, in the Court. In any such action, Lessee consents to and agrees not to contest the exercise of personal jurisdiction over it by the Court. Lessee further acknowledges that venue in the Court is appropriate and agrees not to raise any challenge on this basis.

107. If the United States or the State files a civil action as contemplated by Paragraph 106 above, to remedy breach of this Settlement, the United States or the State may seek, and the Court may grant as relief, the following: a) an order mandating specific performance of any term or provision in this Settlement, without regard to whether monetary relief would be adequate; and b) any additional relief that may be authorized by law or equity.

## XXXII. NOTICES AND SUBMISSIONS

108. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement, are deemed submitted either when an email is transmitted and received, it is hand-delivered, or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Address submissions to Lessee to:

Gregg Loptien  
230 South Rock Blvd., Suite 31  
Reno, Nevada 89502  
[Gregg.loptien@agnicoeagle.com](mailto:Gregg.loptien@agnicoeagle.com)

With copies to:

Chris Vollmershausen Agnico Eagle Mines Limited  
145 King Street East, Suite 400  
Toronto, Ontario, Canada  
M5C 2V7  
[Chris.vollmershausen@agnicoeagle.com](mailto:Chris.vollmershausen@agnicoeagle.com) and [notice@agnicoeagle.com](mailto:notice@agnicoeagle.com)

and

Chad C. Baker  
Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
[cbaker@parsonsbehle.com](mailto:cbaker@parsonsbehle.com)

Address submissions to EPA to:

Joy Jenkins, 8SEMD  
1595 Wynkoop St.  
Denver, CO 80202  
[Jenkins.joy@epa.gov](mailto:Jenkins.joy@epa.gov)

Amelia Piggott, 8ORC  
1595 Wynkoop St.  
Denver, CO 80202  
[Piggott.amelia@epa.gov](mailto:Piggott.amelia@epa.gov)

Address submissions to DOJ to:

Jonah Brown  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division

U.S. Department of Justice  
Jonah.brown@usdoj.gov

Address submissions to the State to:

Mark Lawrensen  
South Dakota Department of Agriculture and Natural Resources  
Joe Foss Building  
523 E. Capital  
Pierre, SD 57501  
Mark.lawrensen@state.sd.us

### **XXXIII. PUBLIC COMMENT**

109. This Settlement is subject to a 30-day public comment period, after which the United States may withhold its consent or seek to modify this Settlement if comments received disclose facts or considerations that indicate that this Settlement is inappropriate, improper or inadequate.

### **XXXIV. EFFECTIVE DATE**

110. The effective date of this Settlement is the date upon which EPA issues written notice to Lessee that the United States and the State have fully executed the Settlement after review of and response to any public comments received.

### **XXXV. TERMINATION**

111. If Lessee determines that it does not intend to seek re-mining of the Site prior to submission of the Final Report, Lessee may submit to EPA and DANR for approval a Termination Plan. The Termination Plan must include the following:

- a. The reason(s) for the termination;
- b. An expeditious schedule to complete the closure of any drill holes not yet closed; and
- c. A summary of all other actions anticipated by Lessee with regard to its activities at the Site.

Lessee must implement the Termination Plan upon approval and, upon completion, submit to EPA and DANR a Termination Completion Report for approval. The Termination Completion Report must include (a) a summary of all field investigations conducted to date; (b) a summary of Work-related data collected to date; and (c) a summary of all actions taken to complete the closure of any drill holes. Upon (i) payment of outstanding Oversight Costs; (ii) payment of additional Water Treatment Costs if needed to ensure adequate funding for water treatment for the six-month period subsequent to Lessee's submission of a Termination Plan; and (iii) EPA approval of the Termination Completion Report, this Settlement will be terminated. Termination will not relieve Lessee of its continuing obligations under Section IX (Access to Information) and Section X (Record Retention). Further, for so long as Lessee leases the Property, termination will not relieve Lessee of its obligations under Section VIII (Property Requirements) and Section

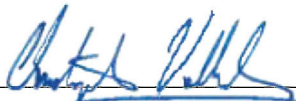


XII (Emergency Response and Notification of Releases). The covenants under Section XVIII (Covenants by United States and the State) and Section XX (Covenants by Lessee) and the reservations of rights under Section XIX (Reservation of Rights by the United States and the State), Section XXIII (Indemnification) and Section XXII (Effect of Settlement/Contribution) shall survive termination.


Signature Page for Administrative Settlement Agreement regarding the Gilt Edge Mine Superfund Site (CERCLA Docket No. \_\_\_\_\_)

IT IS SO AGREED:

BY:

  
\_\_\_\_\_  
Christopher Vollmershausen  
Agnico Eagle Mines Limited Lessee  
General Counsel, EVP Legal and Corporate Secretary

January 6, 2023  
Date

  
\_\_\_\_\_  
Guy Gosselin  
Agnico Eagle (USA) Limited Lessee  
Director

January 6, 2023  
Date

Signature Page for Administrative Settlement Agreement regarding the Gilt Edge Mine Superfund Site (CERCLA Docket No. \_\_\_\_\_)

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

**CHRISTOPHER  
THOMPSON**


 Digitally signed by CHRISTOPHER THOMPSON  
Date: 2023.01.26 08:26:09 -07'00'

---

Christopher Thompson  
Associate Regional Counsel for Enforcement  
U.S. Environmental Protection Agency  
Region 8

Date

**BEN BIELENBERG**

 Digitally signed by BEN BIELENBERG  
Date: 2023.01.26 12:47:06 -07'00'

---

Ben Bielenberg  
Acting Division Director  
Superfund and Emergency Management Division  
U.S. Environmental Protection Agency  
Region 8

Date

Signature Page for Administrative Settlement Agreement regarding the Gilt Edge Mine Superfund Site (CERCLA Docket No. \_\_\_\_\_)

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

Nathaniel Douglas  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

**JONAH BROWN** Digitally signed by JONAH BROWN  
Date: 2023.01.20 15:14:51 -05'00'

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Jonah Brown  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

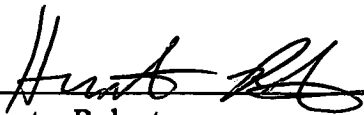
Date


Signature Page for Administrative Settlement Agreement regarding the Gilt Edge Mine Superfund Site (CERCLA Docket No. \_\_\_\_\_)

IT IS SO AGREED:

State of South Dakota

BY:

 1-18-2023  
Hunter Roberts Date  
Secretary  
Department of Agriculture and Natural Resources

 1-10-23  
Deputy Attorney General Date  
1302 East Highway 14, Suite 1  
Pierre, South Dakota 57501-8501

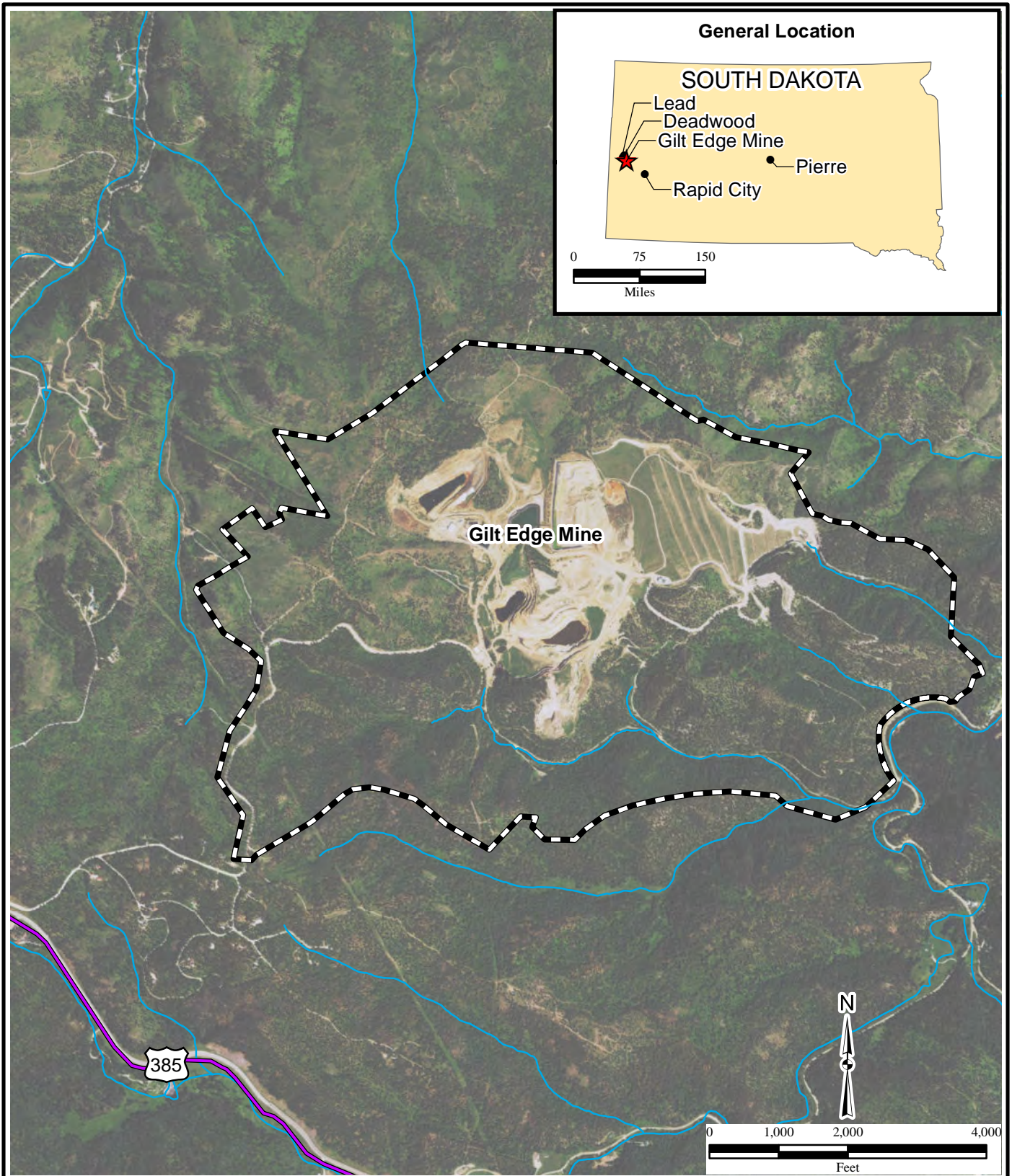
1/27/2023

9:00 AM

Received by  
EPA Region VIII  
Hearing Clerk





CERCLA-08-2023-0001

**Appendix A**  
**Site Location Map**



\\Gst-srv-01\hglgis\Gilt\_Edge\MSIW\  
2015\_Q1\_Quarterly\_Report  
(1-01)Site\_Location.mxd  
8/10/2015 JG  
Source: HGL, CDM Smith,  
ArcGIS Online Imagery

Legend

-  Site Location
-  Town
-  Highway
-  Surface Water Course
-  Gilt Edge Mine Site Boundary

**Figure 1.1**  
**Site Location**



Appendix B  
Statement of Work



## **Statement of Work for a Reuse Assessment for the Gilt Edge Mine Superfund Site**

### **I. Introduction**

- A. This Statement of Work (SOW) is Appendix B to the Administrative Settlement Agreement for Reuse Assessment and Payment of Response Costs by Prospective Lessee (Settlement) between the United States Environmental Protection Agency (EPA), the State of South Dakota (State), and Agnico Eagle Mines Limited, and its wholly owned subsidiary Agnico Eagle (USA) Limited (collectively Lessee). The purpose and objective of the work described by this SOW is to evaluate an alternative future use of the Gilt Edge Mine Superfund Site (Site) that would involve re-mining. Lessee shall undertake the actions required by this SOW in accordance with the Settlement.
- B. Terms used in this SOW shall have the meaning assigned to them in the Settlement. If there is a conflict between this SOW and the Settlement, the Settlement shall control.
- C. Lessee shall perform a Reuse Assessment that will generally:
  - i. provide a summary of material economic and technical information concerning mineral exploration, development, production, and reclamation activities within the Site.
- D. The deliverables (Deliverables) to be prepared by Lessee are described in more detail in section II and include:
  - i. Reuse Assessment Work Plan (Work Plan); and
  - ii. Reuse Assessment Final Report

### **II. Work to be Performed**

- A. Community Involvement:
  - i. EPA has the lead responsibility for developing and implementing community involvement activities at the Site. EPA previously developed a Community Involvement Plan (CIP) for the Site. If requested by EPA, Lessee shall support EPA's community involvement activities.
  - ii. If EPA requests, Lessee shall assist EPA in the development of Fact Sheets and with any community meetings or other engagement. All community involvement activities conducted by Lessee at EPA's request are subject to EPA's oversight, review and approval. Notwithstanding, Lessee may directly perform community engagement activities as part of the Reuse Assessment. No less than 14 days before conducting any site visit related to Lessee's independent community engagement activities, Lessee shall coordinate with EPA and DANR.

**SOW for [BFPP Agreement] For Gilt Edge Mine Site**

**B. Reuse Assessment Work Plan:**

- i. Lessee shall submit a Work Plan in accordance with the Settlement that includes:
  - a. Proposed ground disturbing investigations and associated infrastructure development within the Site. Investigations may include all activities defined as Exploration Operation[s] within South Dakota Codified Laws § 45-6C-3, access road and drill pad construction, exploration drilling, water well drilling, water testing and water resource monitoring, spent leach pad ore reprocessing assessment, borrow material investigation, and other reasonable practices consistent with industry practice for completing pre-feasibility studies (PFS) and feasibility studies. This component of the Work Plan will identify applicable or relevant and appropriate requirements (ARARs) and how Lessee will adhere to them.
  - b. Plan for Technical and Economic Assessment. The Technical and Economic Assessment will provide a summary of material economic, scientific, and technical information concerning mineral exploration, development, production, and reclamation activities within the Site. This assessment will be based on a PFS quality study consistent with customary industry standards that will be performed by Lessee.

The Work Plan shall include a schedule for completion and submission to EPA and DANR of each Deliverable outlined in the Work Plan.

**C. Progress Submittals**

i. Monthly Status Reports:

Lessee shall submit a written monthly progress report to EPA and the State in accordance with the Settlement.

ii. Monthly Calls / Meetings:

Lessee, EPA, and the State shall hold telephone or video conferences in accordance with the Settlement.

**D. Fieldwork Notice and Coordination**

The purpose of coordinating with EPA and the State is to make sure that Lessee's work locations will avoid Site infrastructure and EPA and State "areas of concern" and that work activities will not interfere with or disrupt EPA and its contractors' work. Coordination with EPA and the State will occur before completion and submission of the Work Plan and will continue after approval of Work Plan, as appropriate, to address change in circumstances from those presented in the relevant Work Plan.

**SOW for [BFPP Agreement] For Gilt Edge Mine Site**

- E. Reuse Assessment Final Report
  - i. Upon completion of those activities described in the Work Plan, Lessee shall submit a Reuse Assessment Final Report in accordance with the Settlement.
  - ii. The Final Report shall include discussion of:
    - a. Mineralization, mineral processing, and metallurgy for precious metals as well as for minerals and metals of national interest.
    - b. Market studies, capital and operating cost estimates, and economic analysis.
    - c. Environmental studies, permitting, and social or community impact.
    - d. Lessee's desire, if any, to engage in re-mining at the Site and intent, as applicable, to submit a proposal to EPA and the State to transition the Site from cleanup under Superfund to mining and reclamation under other regulatory authorities. This discussion will evaluate how Lessee's future plans will meet the OU1 surface remedy or remedial action objectives as appropriate.