

UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 REGION IX

IN THE MATTER OF:)	UNILATERAL ADMINISTRATIVE ORDER
)	FOR REMOVAL RESPONSE ACTIVITIES
Santa Fe Mine No.2)	
Red Mountain,)	
San Bernardino County,)	U.S. EPA Region
California)	CERCLA
)	Docket No. 9-2012-05
)	
)	
William E. Peterson,)	Proceeding Under Section 106(a) of the
)	Comprehensive Environmental Response,
)	Compensation, and Liability Act, as amended,
)	42 U.S.C. §9606(a)
<u>Respondent</u>)	

I. JURISDICTION AND GENERAL PROVISIONS

1. This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B and further delegated within Region IX to Superfund Assistant Directors (formerly known as Branch Chiefs) pursuant to R9-1290-14A.

2. This Order pertains to property located in Red Mountain, San Bernardino County, California, commonly known as the Santa Fe Mine No. 2 Lode Mining Claim, designated as Survey No. 5813 ("the Site"). This Order requires the Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

3. EPA has notified the State of California ("State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). EPA began investigating the Site in response to a Request for Federal Action from the San Bernardino County Fire Department on September 29, 2010.

II. PARTIES BOUND

4. This Order applies to and is binding upon Respondent and Respondent's heirs, directors, officers, employees, agents, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.
5. Respondent shall ensure that his contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Order that are defined in CERCLA or in Section 103 of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. § 6903, or in regulations promulgated under CERCLA or RCRA, shall have the meaning assigned to them in such statute or regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
- b. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- c. "Effective Date" shall be the effective date of this Order as provided in Section XIX.
- d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- e. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- f. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section

105 of CERCLA, 42 U.S.C. § 9605, codified at 40 CFR Part 300, and any amendments thereto.

g. “Order” shall mean this Unilateral Administrative Order, EPA CERCLA Docket No. 09-2012-05. In the event of conflict between this Order and any appendix, this Order shall control.

h. “Paragraph” shall mean a portion of this Order identified by an Arabic numeral.

i. “Parties” shall mean EPA and Respondent.

j. “RCRA” shall mean the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*.

k. “Respondent” shall mean William E. Peterson.

l. “Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 20(ii) (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation) and Paragraph 24 (emergency response).

m. “Section” shall mean a portion of this Order identified by a Roman numeral.

n. “Site” shall mean the Santa Fe No. 2 Mine Site including any area where a Waste Material from the WGSJ has come to be located.

o. “State” shall mean the State of California.

p. “Waste Material” shall mean 1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); or 4) any “hazardous material” as may be defined under State law.

q. “Work” shall mean all activities Respondent is required to perform under this Order.

IV. FINDINGS OF FACT

7. The Site is in Red Mountain, San Bernardino County, California. The geographic coordinates of the approximate center of the Site are latitude 35.356047° north and longitude 117.618172° west. The parcel number for the site is APN: 0503-381-14000. The address is 60501 – 60509 Broadway Ave., Red Mountain. A site vicinity map (Figure 1) and a site location map (Figure 2) are located in Appendix A, Site Maps.

8. Respondent owns the property upon which the Site is located. Respondent acquired the Site by quitclaim deed from the former owner on October 27, 2010.

9. The Site was used for precious metal recovery and processing. The Site contains a 10' x 10' mine shaft that is fenced and covered. A newspaper article from 1925 indicates that the shaft extended to a depth of 925 feet below ground surface (bgs) at that time.

10. The Site also contains a pile of waste rock and/or mine tailings, measuring approximately 15 feet high, 30,000 square feet (0.7 acres) in area and 13,500 cubic yards in volume ("the Pile"). The Pile is not fenced and sits directly on unlined surface soils. The Pile is not covered and is exposed to wind and rain.

11. The Site is bounded on all sides by residential structures. It is unknown to EPA whether all adjacent structures are occupied. One such structure is an occupied family residence that abuts directly against the northern end of the Pile. This residence is on privately-owned property surrounded by a chain-link fence. There are a house and two small out-buildings on the property. Mine waste from the Pile was visually observed against the side of the house and on the southern end of the property where the Pile is leaning against the structures.

12. EPA has performed sampling and analysis of the Pile and determined that it contains levels of arsenic up to 11,000 parts per million (ppm). Background levels of arsenic are approximately 136 ppm. EPA's Preliminary Remediation Goal (PRG) for arsenic is 0.39 ppm for residential exposure. Releases of arsenic from the Pile into the environment may present an imminent and substantial endangerment to human health and the environment.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

13. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

14. The contaminants found at the Site, as identified in the Findings of Fact above, include

arsenic, which is a "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

15. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

16. Respondent is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), because Respondent is the "owner" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

17. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

18. The conditions present at the Site may present an imminent and substantial endangerment to public health, welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a) due to high levels of arsenic, a hazardous substance, in the Pile and/or in soils at or near the surface that are exposed to wind and rain and have migrated, posing an actual or potential exposure to nearby human populations, animals, or the food chain.

VI. ORDER

19. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondent comply with the following provisions, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

A. Notice of Intent to Comply

Respondent shall notify EPA in writing within three (3) days after the Effective Date of this Order of Respondent's intent to comply with this Order. Failure of Respondent to provide such notification within this time period shall be a violation of this Order by Respondent.

B. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

i. Respondent shall perform the removal action itself or retain a contractor to perform the removal action. Respondent shall notify EPA whether it elects to perform the removal action itself or retain a contractor, and shall provide EPA with Respondent's qualifications or the name(s) and qualification(s) of such contractor(s) within five (5) days of the Effective Date of this Order. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the removal action under this Order within five (5) days of

the Effective Date of this Order. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent, or of Respondent's choice to perform the removal action itself. If EPA disapproves of a selected contractor or Respondent, within five (5) days of EPA's disapproval, Respondent shall either retain a different contractor and shall notify EPA of that contractor's name and qualifications, or notify EPA that it will perform the removal action itself and provide its qualifications to perform the work.

ii. Within five (5) days after the Effective Date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name and qualifications within two (2) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

iii. EPA has designated Robert Wise of the EPA Region IX Emergency Response Section as its On-Scene Coordinator (OSC). Respondent shall direct all submissions required by this Order to the OSC Robert Wise at 2445 N. Palm Drive, Ste. 100, Signal Hill, CA 90755 or via email at wise.robert@epa.gov.

C. Work to Be Performed

Respondent shall perform, at a minimum, the following removal actions:

- i. Fence the site. The fence must be a minimum of 6' tall. Post signs on the fence that include the following: "This site contains high concentrations of arsenic. Unauthorized access is not permitted." The posting must include a contact name and phone number.
- ii. Remove all contaminated soil from any part of the site occupied by residents. Place any removed soil onto the Pile.
- iii. Stabilize the Pile so as to prevent migration of hazardous substances due to airborne migration or surface water runoff. Acceptable solutions include use of soil sealant or cap.
- iv. Submit to EPA, as provided in Section 2, Designation of Contractor, Project Coordinator, and On-Scene Coordinator, above, proof of compliance with Title 29 of the Code of Federal Regulations (CFR) Section 1910.120: Hazardous Waste Operations and Emergency Response (HAZWOPER) for Respondent or the selected contractor. Required documents include the written Safety and Health Program Plan (20 CFR § 1910.120(b)(1)) and all accompanying plans;

proof of medical surveillance (29 CFR § 1910.120(f)); proof of 40 hour HAZWOPER compliant training (29 CFR § 1910.120(e)) and proof of Fit Testing protocol to evaluate the fit of a respirator on an individual pursuant to 29 CFR § 1910.134.

D. Work Plan and Implementation

Within ten (10) days after the Effective Date of this Order, the Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the action required by this Order. Respondent shall not commence or undertake any removal actions at the Site without prior EPA approval. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within five (5) days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify EPA at least forty-eight (48) hours prior to performing any on-site work pursuant to the EPA approved Work Plan. Any proposal to modify the EPA-approved Work Plan shall be made in accordance with Section XII, Modifications, of this UAO.

E. Health and Safety Plan

The Work Plan shall include provisions that ensure the protection of the worker and public health and safety during performance of on-site work under this Order. These provisions, hereinafter referred to as the Health and Safety Plan (HSP) shall be prepared in accordance with EPA's Standard Operating Safety Guide, (November 1984, updated July 1988). In addition, the HSP shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations for Hazardous Waste Operations and Emergency Response, found at 40 CFR Part 1910.120(b)(4). Respondent shall incorporate all changes to the HSP recommended by EPA, and implement the HSP during the pendency of the removal action.

F. Quality Assurance and Sampling

i. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow the following documents as appropriate as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers

9360.4-02 through 9360.4-08; and Guidance on Choosing a Sampling Design for Environmental Data Collection (EPA QA/G-5S). If sampling is to be conducted, the Sampling and Analytical Plan should be provided with the Work Plan.

ii. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondent shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

iii. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing actions under this Order. Respondent shall notify EPA not less than three (3) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

G. Reporting

i. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every seven (7) days after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed by the OSC in writing. These reports shall 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 work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

ii. Respondent and any Successor in title shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice to EPA of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with Paragraph 20 of this UAO, Access to Property and Information.

H. Final Report

Within thirty (30) days after completion of all removal actions required under this Order, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in 40 CFR Section 300.165 of the NCP entitled "OSC Reports". The final report shall include a good faith estimate of total costs or statement of actual costs incurred in complying with the Order, a listing of quantities and types of any materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses

performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

20. Access to Property and Information

i. Respondent shall provide and/or obtain access to the Site and off-site areas to which access is necessary to implement this order, and provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees and representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondent shall submit to EPA, as part of the monthly progress reporting required in Paragraph 19.G., Reporting, the results of all sampling or tests and all other data generated by Respondent or Respondent's contractor(s), or on the Respondent's behalf during implementation of this Order.

ii. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within ten (10) days after the Effective Date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. Respondent shall describe in writing its effort(s) to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the removal actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondent for all costs and attorney's fees incurred by the United States in obtaining access for Respondent.

21. Record Retention, Documentation, Availability of Information

i. Respondent shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for ten (10) years following completion of the removal actions required by this Order. At the end of this ten year period and thirty (30) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In

addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the ten year period at the written request of EPA.

ii. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondent. EPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

22. Off-Site Shipments

i. All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with 42 U.S.C. § 9621(d)(3) and "Procedures for Planning and Implementing Off-Site Response Actions" (September 1993) 40 C.F.R. 300.440 (58 Fed. Reg. 49200) Regional Offices will provide information on the acceptability of a facility under Section 121(d)(3) of CERCLA and the above directive.

ii. Respondent shall notify EPA in writing at least seven (7) days prior to out-of-state waste shipments, consistent with OSWER Directive 9330.2-07 (September 14, 1989).

23. Compliance With Other Laws Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state and federal laws and regulations except as provided in CERCLA Section 121(e) and 40 CFR § 300.415(i), including, but not limited to, the those required by the Surface Mining Reclamation Act (SMRA) 30 U.S.C. Sections 1234-1328 and the provisions for handling hazardous waste under the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. §§ 6921-6939f. In accordance with 40 C.F.R. § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility siting laws. (See "The Superfund Removal Procedures for Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

24. Emergency Response and Notification of Releases

i. If any incident, or change in site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable

provisions of this Order, including, but not limited to the HSP, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer (EPA Spill Phone: 800-300-2193) of the incident or site conditions. If Respondent fails to take action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

ii. In addition, in the event of any release of a hazardous substance, Respondent shall immediately notify EPA's OSC (EPA Spill Phone: 800-300-2193) and the National Response Center at telephone number (800) 424-8802. Respondent shall submit a written report to EPA within one (1) day after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA Section 103(c) and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.

VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

25. The OSC shall be responsible for overseeing the proper and complete implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 40 CFR § 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other removal action undertaken by EPA or Respondent (or its contractor(s)) at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

26. EPA and Respondent shall have the right to change their designated OSC or Project Coordinator. EPA shall notify the Respondent, and Respondent shall notify EPA at least seven (7) days before such a change is made. Notification may initially be made orally, but shall be followed promptly by written notice.

VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

27. Violation of any provision of this Order may subject Respondent to civil penalties of up to thirty seven, five hundred dollars (\$37,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

IX. REIMBURSEMENT OF OVERSIGHT COSTS

28. Respondent shall reimburse EPA, on written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. EPA may submit to Respondent on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondent shall, within thirty (30) days of receipt of the bill, remit by cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Attention: Region 9 Receivables
Santa Fe Mine No. 2 Site
P.O. Box 371099M
Pittsburgh, PA 15251

- i. Respondent shall send a cover letter with any check and the letter shall identify the Santa Fe Mine No.2 Site by name and make reference to this Order, including the EPA docket number stated above. Respondent shall send notification of any amount paid, including a photocopy of the check, simultaneously to the EPA OSC.
- ii. Interest at the rate established under Section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

X. RESERVATION OF RIGHTS

29. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States 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, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

XI. OTHER CLAIMS

30. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United

States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

31. This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

32. Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Section 106(a) and 107(a) of CERCLA, 42 U.S.C. § 9606(a) and 9607(a).

XII. MODIFICATIONS

33. Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing soon thereafter; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction.

34. If Respondent seeks permission to deviate from any approved plan and/or schedule (or Statement of Work), Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification, the reason for requesting a modification and the impact of the proposed modification on the approved Plan and/or schedule. Respondent shall not proceed with any proposed modification prior to receiving written approval from EPA.

35. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XIII. NOTICE OF COMPLETION

36. When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of the continuing obligation to monitor the capped Pile as required by this Order, EPA will provide notice to Respondent. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if necessary, and that Respondent correct such deficiencies. Respondent shall implement the work identified by EPA as necessary to correct the deficiencies, in accordance with the Work Plan, modified and approved as necessary, and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement

the work identified by EPA as necessary to correct the deficiencies, in accordance with an approved modified Work Plan as necessary, shall be a violation of this Order.

XIV. ACCESS TO ADMINISTRATIVE RECORD

37. The Administrative Record supporting these removal actions is available for review at EPA's Regional Office at 75 Hawthorne Street, San Francisco, CA 94105. An index of the Administrative Record is attached.

XV. OPPORTUNITY TO CONFER

38. Within three (3) days after the Effective Date of this Order, Respondent may request a conference with EPA. Any such conference shall be held within seven (7) days after the Effective Date unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative. Appearance may be by telephone.

39. If a conference is held, Respondent may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondent may submit any information, arguments or comments in writing to EPA within five (5) days following the conference, or within ten (10) days after the Effective Date of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to Karen Goldberg, Assistant Regional Counsel, at 415-972-3951, or at Goldberg.Karen@EPA.Gov.

XVI. INSURANCE

40. At least seven (7) days prior to commencing any on-site work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of one million dollars (\$1,000,000), combined single limit. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XVII. ADDITIONAL REMOVAL ACTIONS

41. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of

that determination. Unless otherwise stated by EPA, within ten (10) days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Sections VI and XII of this Order. Upon EPA's approval of the plan pursuant to Section VI.D, Work Plan and Implementation, Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XII.

XVIII. SEVERABILITY

42. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XIX. EFFECTIVE DATE

43. This Order shall become effective on the date signed by the Assistant Division Director, Superfund Division.

IT IS SO ORDERED

BY: 
Signature

EFFECTIVE DATE: 21 February 2012

Daniel Meer
Assistant Division Director
Response, Planning and Assessment Branch
Region IX, U.S. Environmental Protection Agency