

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

<p>IN THE MATTER OF:</p> <p>El Paso Natural Gas, L.L.C.,</p> <p>Respondent</p>	<p>U.S. EPA Region 9</p> <p>CERCLA Docket No. 2013-9</p> <p>FIRST MODIFICATION TO ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR MINE ASSESSMENTS AND INTERIM REMOVAL ACTIONS</p> <p>Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622</p>
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**FIRST MODIFICATION OF ORIGINAL ADMINISTRATIVE
SETTLEMENT AGREEMENT AND ORDER ON CONSENT
REMOVAL SITE EVALUATION COMPLETION
FOR PRIORITY MINE SITES
CHARLES HUSKON #12 and #14**

I. RELATIONSHIP OF MODIFICATION TO ORIGINAL AGREEMENT

The Administrative Order on Consent and Settlement Agreement, CERCLA Docket No. 2013-09, entered into on August 23, 2013 (“Original Agreement” or “2013 AOC”) between El Paso Natural Gas Company, L.L.C. (“EPNG” or “Respondent”) and the United States Environmental Protection Agency (“USEPA”), provided for modification of any requirements of this Settlement Agreement “in writing by mutual agreement of the parties.” *See* 2013 AOC, Section XXVII. MODIFICATIONS at para. 87. Pursuant to this First Modification of the 2013 AOC, Respondent agrees to perform additional work as provided herein.

II. ADDITIONAL WORK PROVISIONS

The purpose of this First Modification of the 2013 AOC is completion of the following additional tasks that Respondent has agreed to perform: (1) posting a minimum of two signs at all of the 19 mine sites that currently do not have signage, and (2) completing removal site evaluations (“RSE”) for two of the original 19 mine sites that have been designated by USEPA as Priority Mine Sites, specifically, Charles Huskon #12 and Charles Huskon #14 (collectively the “Priority Mine Sites”). This additional work shall be completed in accordance with (1) the Scope of Work provided as Attachment C to the Original Agreement, and (2) the provisions of this First Modification, including Attachments A (Supplemental Scope of Work) and B (Outline for RSE Report) to this First Modification, which are incorporated herein by this reference.

III. ALL OTHER PROVISIONS OF ORIGINAL AGREEMENT TO APPLY

All provisions of the Original Agreement remain in full force and effect, except to the extent that any of these provisions conflict with this First Modification. In the event of any conflict between the Original Agreement and this First Modification, this First Modification shall control.

IV. Effective Date

This First Modification shall be effective (“Effective Date”) three (3) days after Respondent is notified that it has been signed by the Assistant Director of the Superfund Division.

The undersigned representative of Respondent certifies that s/he is fully authorized to enter into the terms and conditions of the First Modification and to bind the party s/he represents to this document.

Agreed this 14th day of June, 2017
For Respondent, El Paso Natural Gas Company, L.L.C.

By (Name): [Signature]
(Title): PRESIDENT PRODUCT TRAINING

APPROVED
AS TO FORM
DATE 7/6/13/2017

It is so ORDERED and Agreed, this 28 day of June, 2017

By: 
Will Duncan
Acting Assistant Director, Superfund Division
Partnership, Land Revitalization and Cleanup Branch
United States Environmental Protection Agency, Region 9

**Attachment A to First Modification of EPNG 2013 AOC
Supplemental Scope of Work for
Supplemental Signage &
Removal Site Evaluation Completion for Priority Mine Sites
Charles Huskon #12 and #14**

This Supplemental Scope of Work (“Supplemental SOW”) describes the additional work (“Additional Work”) to be performed by EPNG pursuant to the First Modification (“First Modification”) to the Administrative Order and Settlement Agreement, CERCLA Docket No. 2013-9, dated August 23, 2013 (“2013 AOC”).

- 1. Phase 3 and 4 – Completion of Background and Correlation Studies and Gamma Scanning for Priority Mine Sites:** The results of the background and correlation studies and gamma scanning required by the 2013 AOC are needed for completion of the soil studies required in Phase 7 below. Respondent shall complete the background and correlation studies and supplemental gamma scanning for the Priority Mine Sites and submit required data and reports on the schedule specified in Section 6a of this Supplemental SOW.
- 2. Phase 5 - Biological Assessment for Priority Mine Sites RSE:** Respondent shall consult with United States Fish and Wildlife Service (“USFWS”) to determine whether additional biological assessment work is needed to identify plants, animals, or habitat requiring protection, prior to proceeding with any potentially intrusive field work pursuant to this Supplemental SOW. Respondent’s 2015 Biological Assessment was reviewed and received concurrence from the Navajo Nation Department of Fish and Wildlife (“NNDFW”). If USFWS does not recommend additional biological assessment work, Respondent shall provide USEPA, NNEPA, and NNDFW with a copy of USFWS’ “no further action” recommendation for USEPA final approval. If USFWS recommends additional biological assessment work, Respondent shall promptly commence and diligently pursue completion of the additional biological assessment work, and thereafter shall promptly prepare a Supplemental Biological Assessment Report and submit it to USFWS for its review. Respondent shall provide USEPA, NNEPA, and NNDFW with contemporaneous copies of all communications Respondent submits to or receives from USFWS.
- 3. Phase 6 – Installation of Warning Signs at All Sites:** Respondent shall install a minimum of two warning signs at all Sites that currently lack such signage. The placement of these signs shall be done in consultation with USEPA, NNEPA, and the applicable Navajo Nation Chapter officials.
- 4. Phase 7 – RSE Field Work at Each Priority Mine**
 - i. Vertical Delineation:** Using available historical data (e.g., pre-reclamation surveys) and other relevant information, Respondent shall estimate the nature and extent of vertical impacts within the lateral boundaries found to be impacted by mining-related activities. Based on the results of this review, Respondent shall include a proposal for additional field investigations in the Workplan in accordance with the Schedule provided in Section 6.a.

ii. Characterization of Surface, Subsurface Soils, and Sediment:

Respondent shall test surface and subsurface soils (and sediments, if present) within the lateral boundaries found to be impacted by mining-related activities. The samples shall be taken from intervals that allow confirmation of the extent of mine-related impacts, and shall be analyzed for ^{226}Ra , uranium, arsenic, molybdenum, selenium, vanadium, and mercury.

iii. Supplemental Gamma Scanning: Based on the background and correlation studies to be performed pursuant to Paragraph 1 above, Respondent shall perform supplemental gamma scanning, if needed, to further define the lateral extent of mining-related impacts.

iv. Waste Volume Estimates: Respondent shall estimate the volume of material impacted by mining activities, as delineated by the lateral and vertical investigations.

v. Characterization of Any Solid Waste: Respondent shall test or gamma scan any solid waste found within the lateral delineation boundaries, such as old fencing materials, old piping, and concrete debris and shall estimate the volume or quantity of such solid waste.

vi. Impacts to Water: Respondent shall evaluate the potential for mine-related impacts to surface and groundwater. This evaluation shall include the following:

- A desktop study of regional and local hydrology and hydrogeology;
- A field survey to identify (a) surface water bodies (including ponds and drainages) within one-half mile of each Priority Mine, and (b) groundwater wells for drinking or livestock purposes within one mile of each Priority Mine;
- An evaluation of potential hydraulic connections between material within the lateral boundaries of mining impacts and identified surface water bodies, including sediment in intermittent surface water bodies (e.g., dry ponds), and groundwater wells, if any;
- If a hydraulic connection is identified as a result of the evaluation described above, Respondent shall collect a water sample from any groundwater wells within a mile, and a surface water sample from any surface water bodies within one-half mile. If surface water is not present, Respondent shall collect a sediment sample from intermittent surface water features (e.g., dry ponds) within one-half mile. Respondent shall analyze these samples for uranium, ^{226}Ra , total dissolved solids, arsenic, molybdenum, selenium, and vanadium.

vii. Streamlined Risk Evaluation: Respondent shall conduct a Streamlined Risk Evaluation consistent with USEPA Guidance EPA540-R-93-057 to establish the contaminants of concern (“COCs”) and to calculate risks to current and potential future receptors for areas within the lateral delineation boundaries. Respondent shall also calculate proposed action levels for COCs that will be protective of users under the current or reasonably anticipated future land use, including traditional Navajo uses.

viii. Geotechnical Evaluation: Respondent shall evaluate the location and characteristics of suitable soil and erosion/stabilization control materials. The volume of suitable materials available in those areas will also be evaluated. This preliminary information will support the development of a future Engineering Evaluation/Cost Analysis, if required.

5. Phase 8 – Removal Site Evaluation Report: Respondent shall prepare and submit a complete draft and final RSE report for USEPA approval in accordance with the schedule provided for in this Supplemental SOW. The topics to be addressed in the RSE report are provided in Attachment B (RSE Outline).

6. Schedule for Workplans, Field Activities, and Reports: The Work to be performed pursuant to the 2013 AOC, the original SOW and this Supplemental SOW shall be performed in compliance with the following schedule, unless otherwise agreed to by the Parties. Respondent may request an extension of any time periods impacted by the need to perform additional biological assessment work and complete the USFWS consultation process prior to potentially intrusive field work.

a. Phases 3 and 4 – Background and Correlation Studies and Supplemental Gamma Scanning Field Work and Reports:

- i.** Respondent shall submit a revised Background and Correlation Studies Workplan for the Priority Mine Sites within **45 days of the Effective Date of the First Modification (“Effective Date”)**.
- ii.** Respondent shall complete Background Studies and Correlation Studies field work within **45 days of EPA approval of the Background and Correlation Studies Workplan.**
- iii.** Respondent shall submit the Background and Correlation Studies Report within **45 days after the receipt of final laboratory data.**
- iv.** Respondent shall complete any required **Supplemental Gamma Scanning field work** within **45 days of EPA approval of the Background and Correlation Studies Report.**

b. Phase 5 - Biological Assessments: Within 15 days of the Effective Date, Respondent shall submit a request to USFWS for a recommendation concerning whether additional biological assessment work should be

performed prior to any potentially intrusive field work pursuant to the First Modification. If USFWS recommends that additional biological assessment work should be performed, Respondent shall complete the additional biological assessment work and provide USFWS and USEPA with a Supplemental Biological Assessment Report within **60 days of receiving notice of the determination by USFWS** that additional biological assessment work is required. Respondent may request an extension of time, if a longer time period is required to complete the USFWS consultation.

- c. **Phase 6 Signage:** USEPA shall provide the updated template for warning signs. Respondent shall propose locations for each sign to EPA, NNEPA, and Navajo Chapter officials within **60 days of the Effective Date**. Signs shall be installed **within 30 days of EPA, NNEPA and relevant Navajo Nation Chapter official approval of the signs and locations**.
- d. **Phase 7 Workplans:** The Workplan for all Phase 7 tasks, except the background and correlation studies, shall be submitted for review and approval within **60 days of the Effective Date**.
 - i. **Health and Safety Plan Addendum:** Respondent shall submit an addendum to HASP for 2013 AOC to address this Supplemental SOW within **60 days of the Effective Date**, concurrent with the Phase 6 Workplan.
 - ii. **Field Sampling and Scanning Plan:** Respondent shall submit the Field Sampling and Scanning Plan within **60 days of the Effective Date**, concurrent with the Phase 6 Workplan.
 - iii. **Quality Assurance Project Plan:** Respondent shall submit the QAPP within **60 days of the Effective Date**, concurrent with the Phase 6 Workplan.
 - iv. **Access Agreements:** Respondent shall use its best efforts to obtain any access agreements needed to address additional areas needed to complete this Supplemental SOW within **45 days of identifying any additional areas for which access is needed**.
 - v. **Data Management Plan:** Respondent shall submit or amend the Data Management Plan not less than **21 days prior to any field mobilization**.
 - vi. **Field Work:** Unless this work is delayed by USFWS requirements for additional field survey work, Respondent shall complete all Phase 7 Field Work within **90 days of Priority Mine RSE Work Plan approval**, except for any Phase 7 Field Work required based on the results of the Supplemental Gamma Scanning. If additional Phase 7

field work is required based on the results of supplemental gamma scanning, Respondents shall perform the supplemental field work within **30 days of completion of the Supplemental Gamma Scanning.**

e. **Phase 8: Submission of RSE Report**

- i. **Draft RSE Report:** Respondent shall submit Draft RSE Report no later than **60 days after the receipt of final laboratory data for the Phase 7 field work;** and
- ii. **Final RSE Report:** Respondent shall submit a Final RSE Report no later than **30 days after receiving EPA's comments on the Draft RSE Report.**

Attachment B to First Modification of EPNG 2013 AOC
Outline for EPNG Removal Site Evaluation Report for Priority Mine Sites

- 1.0 Introduction
- 2.0 Site Description
 - 2.1 Location and Topography
 - 2.2 Climate
 - 2.3 Geology and Soils
 - 2.4 Hydrology and Hydrogeology
 - 2.5 Vegetation and Wildlife
 - 2.6 Cultural Resources
 - 2.7 Land Use and Population
- 3.0 Problem Statement and Objectives
 - 3.1 Previous Environmental Investigations
 - 3.2 Historic Studies
 - 3.3 Navajo Abandoned Mine Lands Program
 - 3.4 USEPA
- 4.0 Radiological and Metals Field Surveys
 - 4.1 Introduction
 - 4.2 Radiological Surveys
 - 4.3 Surface Soil Field Investigations
 - 4.4 Subsurface Soil Field Investigations
- 5.0 Investigation Levels and Correlation
 - 5.1 Development of Investigation Levels
 - 5.2 Development of Correlation Model
- 6.0 Findings and Discussion of Field Surveys
- 7.0 Streamlined Risk Assessment
 - 7.1 Receptors
 - 7.2 Groundwater Pathways
 - 7.3 Soil and Air Pathway
 - 7.4 Surface Water Pathway
 - 7.5 Risk Assessment Results
- 9.0 Regulatory Framework Conclusions (including ARARs and other Considerations)
- 10.0 Evaluation of Potential Impacts
 - 10.1 Potential Human Impacts from Gamma and Metals Exposure
 - 10.2 Potential Ecological Impacts (including impacts to livestock) from Gamma and Metals Exposure
- 11.0 Removal Action Considerations
- 12.0 Summary and Conclusions
- 13.0 References