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**Navajo Nation Environmental Protection Agency
Navajo Nation Superfund Program
NNCERCLA Implementation Policy**

I. NNSP Response Authority under the NNCERCLA

The Navajo Nation Comprehensive Environmental Response, Cleanup & Liability Act (“NNCERCLA”) provides the Navajo Nation Environmental Protection Agency (“Navajo Nation EPA” or “NNEPA”) and specifically the Navajo Nation Superfund Program (“NNSP”) with broad authority to address contamination caused by releases of hazardous substances on Navajo Nation land. The NNCERCLA authorizes NNEPA, through the NNSP, to identify and provide for the cleanup of sites contaminated with hazardous substances. Under the Act, NNEPA may take immediate action to respond to releases of hazardous substances to address imminent and substantial hazards. NNEPA also may engage in long-term clean-up of contaminated sites, order a party responsible for the contamination to clean up, or allow a party to clean up voluntarily, pursuant to an approved “voluntary response program.”

Some of these authorities overlap with existing authorities in other Navajo Nation environmental statutes. For example, the Navajo Nation Clean Water Act (“NNCWA”), Navajo Nation Safe Drinking Water Act (“NNSDWA”), and Navajo Nation Underground Storage Tank Act (“NNUSTA”) all contain provisions authorizing NNEPA to take actions and issue orders to address imminent and substantial threats to public health and the environment. NNCWA, 4 N.N.C. § 1382(C); NNSDWA, 22 N.N.C. § 2582(C); NNUSTA 4 N.N.C. § 1552(C). However, those provisions do not guarantee that all such threats will be addressed: the NNCWA is limited to discharges into surface waters, for instance; the Underground Injection Control (“UIC”) provisions of the NNSDWA concern underground injections rather than releases, while the public water systems provisions concern only drinking water systems; and the NNUSTA is limited to contamination from USTs. There are therefore gaps in coverage under these statutes. In addition, these programs do not always have adequate resources for a full response to the contamination at issue, and also were not established as response programs but rather as regulatory programs.

The NNCERCLA, on the other hand, provides NNEPA with comprehensive response authority whenever there is a release or threat of release of a hazardous substance into the

environment in general. 4 N.N.C. § 2401. At the same time, the NNCERCLA implicitly recognizes that other statutes have provisions for responding to releases of hazardous substances, by providing that the Navajo Nation EPA is to coordinate activities under the NNCERCLA so as to “assure the efficient use of available resources and minimize duplication of effort.” NNCERCLA, 4 N.N.C. § 2103(C). The NNCERCLA also provides that “Nothing in this Act shall prevent the Director from determining that a cleanup or other action authorized under this Act may be conducted by another branch of the Navajo Nation EPA, where that other branch has concurrent jurisdiction and is prepared to conduct the action.” 4 N.N.C. § 2105(E).

The NNSP interprets these provisions to mean that, in its role as coordinator, it first will determine whether a release or threatened release of a hazardous substance is being addressed or could be addressed by another NNEPA program or other Navajo program (such as the Navajo Nation Department of Emergency Management), or by another federal program (collectively, “Other Law”), and whether that program has the authority and resources to thoroughly address the problem. In making this determination, the NNSP shall consider whether an owner, operator, or potentially responsible party has committed or is willing to commit resources to fully address the problem under Other Law. If so, the NNSP will refrain from undertaking its own response action under the NNCERCLA; however, if not every aspect of the release or threatened release is fully addressed by such Other Law, the NNSP will step in to fill the gap. For example, the NNCERCLA will not be applied to spills or other cleanup response at active oil and gas facilities where the owner or operator fully addresses such spills or other cleanup response in compliance with the applicable rules of the primary agencies having regulatory oversight over oil and gas facilities on Navajo Nation lands, including but not limited to the U.S. Bureau of Land Management, the U.S. Bureau of Indian Affairs, the NNEPA UIC Program, the Navajo Minerals Department, and the Navajo Land Office. It is therefore the policy of NNEPA and the NNSP to rely on NNCERCLA cleanup authority only when the same authority is not already provided or otherwise available under Other Law. That is, NNEPA and specifically the NNSP will use the NNCERCLA as a gap-filling measure, as further described in this document.

II. The NNSP Will Act as Coordinator of NNEPA Actions Involving Hazardous Substances

The NNCERCLA at 4 N.N.C. § 2301(A) requires any person in charge of a site where hazardous substances are present or have been stored, treated, or disposed of to report any release of a hazardous substance from the site in quantities equal to or greater than the reportable quantities designated in federal regulations and under 4 N.N.C. § 2801, *see also* 4 N.N.C. § 2105(B). Reports are made to the Navajo Nation Department of Emergency Management pursuant to 4 N.N.C. § 2201(A) and also to the NNSP pursuant to implementing regulations. In this way, the NNSP will be apprised of all releases or threats of releases of hazardous substances within the Navajo Nation. Under the NNCERCLA, NNEPA will maintain a list of all the sites on the Navajo Nation with releases or threatened releases of hazardous substances, 4 N.N.C. § 2304(A), may prioritize the sites on the list in terms of risk, § 2304(B), and may develop a plan for identifying, evaluating, and responding to releases at such sites, § 2303. The NNSP will ensure that other Navajo Nation EPA programs and, where appropriate, programs in other

Navajo Nation departments are notified of any release or threatened release and will consult with the other programs to determine whether one or more of them has the authority to address the concern. If there is another program with authority, the NNSP will allow that program to take the lead in addressing the problem. If more than one Navajo Nation program is involved, the NNSP will act as coordinator of the activities at the site.

If no other Navajo Nation or federal program has the authority to address the concern, or if another program has only limited authority or limited resources, or if no owner, operator, or potentially responsible party has committed or is willing to commit resources to fully address the problem under Other Law, the NNSP will step in to fill the gaps in coverage, as discussed under Part I of this policy. In those instances, the NNSP may use its comprehensive response authority or its cost recovery and settlement authorities under the NNCERCLA to ensure that a release or threat of release is addressed, or to ensure cleanup and/or payment for cleanup of releases. *See* 4 N.N.C. §§ 2503-2506.

In addition, the NNSP will maintain an electronic database of all facilities subject to the requirements of the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001-11050 (EPCRA), as well as of all reports filed by those facilities pursuant to EPCRA, as provided in the Memorandum of Understanding between NNEPA, the Navajo Nation Department of Emergency Management, and the Navajo Nation Commission on Emergency Management.

III. Intent of NNSP to Address Abandoned Sites

There are currently no contaminated sites within the formal Navajo Reservation that are on the National Priorities List (“NPL”), although there are two NPL sites nearby: the United Nuclear Corporation Church Rock site and the Prewitt abandoned refinery site. Moreover, because of the remote location and low population density of much of the Navajo Nation, it is unlikely that EPA will add a Navajo site to the NPL. Further, if a site is added to the NPL, the NNSP intends for U.S. EPA to be the lead in addressing that site.

There are, however, many contaminated sites within the Navajo Nation that are not NPL sites but that the Navajo Nation nevertheless views as having significant impacts on the public health and environment, and the NNSP intends to address such sites as a priority. For example, the Pinon McGee Traders site has asbestos, mercury, some petroleum products, lead, and PCBs present, and the Old Sawmill site has asbestos, mercury compounds and other heavy metals, herbicides, fungicides, and petroleum waste including solvents. The NNSP will proceed with these sites as described above, determining which are the appropriate NNEPA programs to address the sites, coordinating the activities of those programs, and stepping in only in a gap-filling capacity. In addition, NNEPA hopes to address some contaminated sites under the Brownfields program, in conjunction with the Navajo Nation Division of Economic Development. For these sites the NNSP intends to negotiate voluntary response plans pursuant to NNCERCLA § 2402.