

**ARARs for NAUM EE/CAs – April 20, 2023**  
**Attachment [X to the EE/CA for the Site]**

**Applicable or Relevant and Appropriate Requirements (ARARs) and To Be Considered (TBC) Materials for Engineering Evaluation/Cost Analysis (EE/CA)**

**Introduction to ARARs and TBC Tables**

Tables A-1 and A-2 below list the federal and Navajo location- and action-specific ARARs and TBC materials, respectively, that have been identified for all the alternative response actions described in the draft EE/CA for the [redacted] Site (Site). EPA did not identify chemical specific ARARs or TBCs because potential chemical-specific ARARs were not as conservative as the risk based cleanup standards developed for this action. Chemical related requirements tied to an action such as cap design were included in the action-specific table. Following Tables A-1 and A-2 is a list of federal and Navajo ARARs that must be attained if certain conditions are present at the Site. Identification and evaluation of ARARs is an iterative process that continues throughout the response process. As a better understanding is gained of Site conditions, contaminants, and response alternatives, the lists of ARARs, TBCs and their relevance to the removal action may change. ARARs and TBCs are finalized in the Action Memo for the selected response action.

Cleanup standards were derived through the EPA risk assessment process, in accordance with the following EPA guidance.

*Office of Solid Waste and Emergency Response (OSWER) Directive No. 9200.4-18, Establishment of Cleanup Levels for CERCLA Sites with Radioactive Contamination (August 1997).*

*Office of Solid Waste and Emergency Response (OSWER) Directive No. 9200.4-23, Clarification of the Role of Applicable, or Relevant and Appropriate Requirements in Establishing Preliminary Remediation Goals under CERCLA (August 1997).*

*Office of Solid Waste and Emergency Response (OSWER) Directive No. 9200.4-25, Use of Soil Cleanup Criteria in 40 CFR Part 192 as Remediation Goals for CERCLA Sites (February 1998).*

*Office of Solid Waste and Emergency Response (OSWER) Directive No. 9200.4-40, Radiation Risk Assessment at CERCLA Sites: Q&A (May 2014).*

The following Navajo Nation laws, regulations and guidances are not considered ARARs or TBCs for the response actions anticipated by this EE/CA; however, they are listed here because situations may arise during implementation of the alternatives discussed in the EE/CA, or during future actions at the Site, where these requirements may be applicable.

Navajo Nation CERCLA, 4 N.N.C. §§2101-2805 – The NNCERCLA requirements must be complied with during implementation of the response action if petroleum contamination is discovered at the Site, because NNCERCLA § 2104.Q includes petroleum in the definition of hazardous substance. Based on Site investigations thus far, petroleum contamination is not anticipated.

Navajo Nation Underground and Aboveground Storage Tank Act of 2012, 4 N.N.C. §§ 1501-1577 (NNSTA) – If any permanent storage tanks are found at a site, including both USTs and ASTs and tanks holding not only petroleum but any hazardous substances, NNSTA §1542(C)(1) requires their removal. (The guidance for temporary/mobile storage tanks brought on site is included in Table A-2 below as a TBC because that situation is anticipated to arise.)

Navajo Nation Business Opportunity Act, 5 N.N.C. §§201-214, and the Navajo Preference in Employment Act, 15 N.N.C §§ 601-619 – While these are not environmental regulations and therefore, not ARARs, these regulations give preference to Navajo Nation businesses and individuals when hiring employees and contractors to perform the response actions contemplated by this EE/CA.

Navajo Nation Dine Radioactive Materials Transportation Act, 18 N.N.C. §§1304-1307 (“RMTA”) – The RMTA is not applicable to onsite activities; however, its requirements may be applicable to transportation on public roads on the Navajo Nation between sites that are subject to a combined action pursuant to CERCLA § 104(d)(4), as well as for shipment of radioactive materials through the Navajo Nation generally. RMTA § 1307 includes specific requirements that are not found in federal law, including advance notice of the transportation of radioactive and related substances, equipment, vehicles, persons, and materials over and across Navajo Nation lands, as well as license fees, bonding requirements, route restrictions and curfews.

The EE/CAs for which the ARARs tables were prepared do not address groundwater, and therefore ARARs for groundwater are not included. If any groundwater contamination is found at the Site, the related ARARs for the Site will be addressed at that time.

**Table A-1  
Location-Specific ARARs and TBC Information**

<b>Media</b>	<b>Requirement</b>	<b>Requirement Synopsis</b>	<b>Prerequisites, Status and Rationale</b>
Cultural Resources	FEDERAL <b>The Native American Graves Protection and Repatriation Act 25 USC §§ 3002(c) and (d)</b>  43 CFR §§ 10.3(b)-(c) and 10.4(b)-(e)	Protects Native American cultural items from unpermitted removal and excavation and requires the protection of such items in the event of inadvertent discovery. Excavation or removal of cultural items must be done under procedures required by this Act and the Archaeological Resources Protection Act (Sec. 3 (c)(1)).	<b>Applicable</b>  Substantive requirements are applicable if cultural items (meaning human remains and associated or unassociated funerary objects, sacred objects, or cultural patrimony), are inadvertently discovered or are intentionally excavated or removed within area to be disturbed.  If cultural items are discovered, on-going activity in the area of discovery must stop, the relevant Indian tribe official must be notified immediately, and reasonable effort must be made to protect such cultural items.
Cultural Resources	FEDERAL <b>National Historic Preservation Act 54 USC §§ 306101(a), 306102, 306107, and 306108</b>  36 CFR §§ 800.3(a) and (c); 800.4(a)-(c); 800.5(a)-(b); 800.6(a)-(b); 800.10(a); 800.13(b)-(d)	Federal agencies are required to consider the effects of federally funded (in whole or in part) activity on any historic property or objects and minimize harm to any National Historic Landmark. Federal agencies may be required to identify historic properties or objects, determine whether proposed activity will have an adverse effect on historic properties or objects, and develop alternatives or modifications to the proposed action that could avoid, minimize, or mitigate adverse effects, through NHPA's section 106 process.	<b>Applicable</b>  Substantive requirements are applicable if federally funded activity could adversely affect historic property (meaning a prehistoric or historic district, site, building, structure, or object) included on, or eligible for inclusion on, the National Register of Historic Places.

**Table A-1  
Location-Specific ARARs and TBC Information**

<b>Media</b>	<b>Requirement</b>	<b>Requirement Synopsis</b>	<b>Prerequisites, Status and Rationale</b>
Cultural Resources	FEDERAL <b>Preservation of Historical and Archaeological Data</b> <b>54 USC §§ 312502(a) and 312503</b>	Protects significant scientific, prehistorical, historical, and archaeological data. When a federal agency action may cause irreparable loss or destruction of significant data, the agency must notify DOI and either recover, protect, and preserve the data itself, or request DOI to do so.	<b>Applicable</b>  Substantive requirements are applicable if federal agency action may cause irreparable loss or destruction to significant scientific, prehistorical, historical, or archaeological data.
Cultural Resources	FEDERAL <b>Archaeological Resources Protection Act of 1979</b> <b>16 USC §§ 470cc(a)-(c) and 470ee(a)</b>  43 CFR §§ 7.4(a), 7.5(a), 7.7, 7.8(a), 7.9(c), and 7.35	Prohibits the excavation, removal, damage, or alteration or defacement of archaeological resources on public or Indian lands, unless by permit or exception.	<b>Applicable</b>  Substantive requirements are applicable if eligible archaeological resources are located within the area to be disturbed.
Cultural Resources	FEDERAL <b>American Indian Religious Freedom Act</b> <b>42 USC § 1996</b>	Policy of the United States to protect access to and the use of religious, ceremonial, and burial sites and sacred objects by Native American groups.	<b>TBC</b>  Policy should be followed if Native American sacred sites are identified within area to be disturbed.

**Table A-1  
Location-Specific ARARs and TBC Information**

<b>Media</b>	<b>Requirement</b>	<b>Requirement Synopsis</b>	<b>Prerequisites, Status and Rationale</b>
Biological Resources	FEDERAL <b>Migratory Bird Treaty Act</b> <b>16 USC § 703(a)</b>  50 CFR §§ 10.13 and 21.10	Prohibits the killing, capturing, taking and incidental taking of protected migratory bird species, their parts, nests and eggs, without DOI's prior approval. The species of protected migratory birds are listed at 50 CFR § 10.13.	<b>Applicable</b>  Substantive requirements are applicable if migratory birds, or their nests, are present at or near the site.
Biological Resources	FEDERAL <b>Bald and Golden Eagle Protection Act</b> <b>16 USC §§ 668(a)</b> 50 CFR §§ 22.10; 22.80(a), (c)-(f); 22.85(a)-(b) and (d)-(e)  50 CFR § 13.21(b)	Prohibits the unpermitted taking, including the killing, disturbing, or incidental taking, of bald and golden eagles, their parts, nests, and eggs.	<b>Applicable</b>  Substantive requirements applicable if bald or golden eagles, or their nests, are identified at or near the site.

**Table A-1  
Location-Specific ARARs and TBC Information**

<b>Media</b>	<b>Requirement</b>	<b>Requirement Synopsis</b>	<b>Prerequisites, Status and Rationale</b>
Biological Resources	<p>FEDERAL <b>Endangered Species Act</b> <b>16 USC §§ 1531(c); 1536(a)(2), (c)-(d), (g)-(h), and (l); 1538(a) and (g); 1539(a)</b></p> <p>50 CFR §§ 17.21(a)-(c);17.22(b); 17.31(a) and (c);17.32(b); 17.82; and 17.94(a)</p> <p>50 CFR §§ 402.09; 402.12 (a)-(b) and (i); 402.14(a); 402.15(a)</p>	<p>Federal agencies must ensure that any activities funded, carried out, or authorized by them do not jeopardize the continued existence of any threatened or endangered species, nor result in the destruction or alteration of such species' habitats. List of endangered and threatened species can be found at 50 CFR Part 17, Subpart B.</p>	<p><b>Applicable</b></p> <p>Substantive requirements applicable if endangered or threatened species are identified at the site.</p>
Cultural Resources	<p>NAVAJO NATION <b>Navajo Nation Cultural Resources Protection Act (NNCRPA)</b> <b>11 N.N.C. §§ 1003(S); 1021; and 1031</b></p>	<p>Prohibits alteration, damage, excavation, defacement, destruction, or removal of cultural properties.</p>	<p><b>Applicable</b></p> <p>Substantive requirements applicable to activities at the AUM sites where cultural resources may be encountered.</p>

**Table A-1  
Location-Specific ARARs and TBC Information**

<b>Media</b>	<b>Requirement</b>	<b>Requirement Synopsis</b>	<b>Prerequisites, Status and Rationale</b>
Cultural Resources	<p>NAVAJO NATION  <b>Navajo Nation Policy for the Disposition of Cultural Resources Collections Sections 2 and 6.1</b>  <b>These sections would trigger other provisions in the policy.</b></p>	<p>Establishes procedures and guidelines to be followed for excavation (as a last resort) and disposition of cultural resources recovered on Navajo Nation Lands, including handling of inadvertent discovery.</p>	<p><b>TBC</b></p> <p>TBC for activities on AUMs where cultural resources may be encountered.</p>
Cultural Resources	<p>NAVAJO NATION  <b>Navajo Nation Guidelines for the Treatment of Discovery Situations</b></p>	<p>Establish procedures and guidelines to be followed in any situation involving the discovery of cultural or historic property, including historical and prehistoric archaeological sites and traditional cultural properties and human remains, whether or not previously identified.</p>	<p><b>TBC</b></p> <p>The Navajo Nation Historic Preservation Dept. (NN HPD) performs these functions pursuant to a contract with the BIA, under which the NN HPD serves as the BIA's agent.</p>

**Table A-1  
Location-Specific ARARs and TBC Information**

<b>Media</b>	<b>Requirement</b>	<b>Requirement Synopsis</b>	<b>Prerequisites, Status and Rationale</b>
Cultural Resources	<b>NAVAJO NATION Navajo Nation Policy for the Protection of Jishchaá: Gravesites, Human Remains, and Funerary Items</b>	Establishes principles for locating and handling of gravesites, human remains, and associated artifacts and soil in the area to be disturbed by AUM removal activities. See in particular Section IV (Traditional Concerns), which contains requirements if the AUM activity comes into contact with gravesites, human remains, or funerary items. It imposes specific requirements for how to navigate around, prepare for, and respond to burial grounds and uncovered remains. See also Section V (Encountering Gravesites, Human Remains, and Funerary Items), which specifies the procedures when an inadvertent discovery is made. Sections VI and VII contain additional requirements in that event.	<b>TBC</b>



**Table A-1  
Location-Specific ARARs and TBC Information**

<b>Media</b>	<b>Requirement</b>	<b>Requirement Synopsis</b>	<b>Prerequisites, Status and Rationale</b>
Biological Resources	<p>NAVAJO NATION <b>Navajo Nation Endangered Species Act (NNEA) 17 N.N.C. §§ 500-508</b></p> <p><b>Navajo Nation Endangered Species List – Resource Committee Resolution RCAU-103-05</b></p>	<p>NNEA § 507 makes it unlawful for any person to “take, possess, transport, export, process, sell or offer for sale or ship any species or subspecies of wildlife” listed as endangered or threatened on federal or Navajo Nation lists, which also protect those species’ critical habitat. NNEA §§ 500-504 and 506-508 also protect, to various extents, game fish, game birds, songbirds, game animals, fur-bearing animals (all defined under § 500), and hawks, vultures, and owls from being taken.</p> <p>The Navajo Nation Endangered Species List includes species that are not on the federal list. It also provides broader criteria for when species would be listed, based on their prospects of survival or recruitment within the Navajo Nation. (See Categories “G2” and “G3”).</p> <p>Category G4 provides a means for the Navajo Nation Department of Fish and Wildlife to include additional species (or exclude species), making it possible for the list to change during the course of work.</p>	<p>Applicable</p> <p>Substantive requirements applicable if protected species or habitat are identified within area to be disturbed on AUM sites.</p>

**Table A-2  
Action-Specific ARARs and TBC Information**

<b>Media</b>	<b>Requirement</b>	<b>Requirement Synopsis</b>	<b>Prerequisites, Status and Rationale</b>
Air	FEDERAL <b>Clean Air Act</b> <b>42 U.S.C. §§ 7401, et seq.</b>  40 CFR § 61.92	Emissions of radionuclides to the ambient air from DOE facilities shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 mrem/yr.	<b>Relevant and appropriate</b>  This standard is applicable to a DOE facility. The Site is not a DOE facility; therefore, this standard is not applicable. However, this standard has been determined to be relevant and appropriate during removal action activities because of potential emissions of radionuclides during excavation of the waste and movement of the waste.
Air	FEDERAL <b>Clean Air Act</b> <b>42 U.S.C. §§ 7401, et seq.</b>  40 CFR §§ 61.222(a)	Radon-222 emissions to the ambient air from a uranium mill tailings pile that is no longer operational shall not exceed 20 pCi/m <sup>2</sup> -sec.	<b>Relevant and appropriate</b>  These requirements are applicable to non-operational uranium mill tailings piles. The Site's waste to be disposed of, is not uranium mill tailings. These requirements have been determined to be relevant and appropriate to the design of the engineered cover to be constructed in Alternative (fill in Alt. #), which consists of onsite containment of the contaminated soil and uranium waste rock.
Water	FEDERAL <b>Clean Water Act</b> <b>33 USC § 1342(p)(3)(A)</b>  NPDES – Stormwater Discharges 40 CFR § 450.21	Requires BMPs to abate discharges of pollutants from stormwater discharges, including erosion and sediment control BMPs. All treatment and control systems and facilities will be properly operated and maintained.	<b>Applicable</b> if there are discharges to WOTUS.  <b>Relevant and appropriate</b> if there are discharges to Navajo Nation Surface Waters (as defined in Table 206.1, see <a href="https://www.epa.gov/sites/default/files/2014-12/documents/navajo-tribe.pdf">https://www.epa.gov/sites/default/files/2014-12/documents/navajo-tribe.pdf</a> (Waters of the NN)).
Water	FEDERAL <b>Clean Water Act</b> <b>33 USC § 1342(p)</b>  NPDES 2022 Construction General Permit (CGP) for Stormwater Discharges from Construction	<b>"2.2 EROSION AND SEDIMENT CONTROL REQUIREMENTS</b> You must implement erosion and sediment controls in accordance with the following requirements to minimize the discharge of pollutants in stormwater from construction activities. 2.2.1 Provide and maintain natural buffers and/or equivalent erosion and sediment controls for discharges to any receiving waters that is located	<b>Applicable</b> for operators of construction activities if weather events necessitating stormwater runoff controls occur during on-site excavation, waste consolidation, and repository construction.

**Table A-2  
Action-Specific ARARs and TBC Information**

Media	Requirement	Requirement Synopsis	Prerequisites, Status and Rationale
	<p>Activities</p> <p>Part 2. Technology-Based Effluent Limitations. Section 2.2. Erosion and Sediment Control Requirements, Subsection 2.2.1.</p>	<p>within 50 feet of the site's earth disturbances.</p> <p>a. Compliance Alternatives. For any discharges to receiving waters located within 50 feet of your site's earth disturbances, you must comply with one of the following alternatives: i. Provide and maintain a 50-foot undisturbed natural buffer; or ii. Provide and maintain an undisturbed natural buffer that is less than 50 feet and is supplemented by erosion and sediment controls that achieve, in combination, the sediment load reduction equivalent to a 50-foot undisturbed natural buffer; or iii. If infeasible to provide and maintain an undisturbed natural buffer of any size, implement erosion and sediment controls to achieve the sediment load reduction equivalent to a 50-foot undisturbed natural buffer.</p> <p>See Appendix F, Part F.2 for additional conditions applicable to each compliance alternative.</p> <p>b. Exceptions. See Appendix F, Part F.2 for exceptions to the compliance alternatives."</p>	
Repository	<p>FEDERAL <b>Uranium Mill Tailings Radiation Control Act 42 USC §§ 7918 and 2022</b></p> <p>40 CFR §§192.02(a) and (d)</p>	<p>Requires design of uranium mill tailings disposal sites to provide for control of residual radioactive materials for up to 1,000 years to the extent reasonably achievable and, in any case, for at least 200 years. The uranium mill tailings disposal site must also be designed and stabilized in a manner that minimizes the need for future maintenance.</p>	<p><b>Relevant and Appropriate</b></p> <p>These standards are applicable to UMTRCA Title I sites. The Site is not a Title I Site; therefore, these requirements are not applicable. These requirements have been determined to be relevant and appropriate to the design of the engineered cover to be constructed under Alternative (insert #), which consists of onsite containment of the contaminated soil and uranium waste rock.</p>
Repository	<p>FEDERAL <b>Uranium Mill Tailings</b></p>	<p>In selecting and designing uranium mill tailings disposal sites, certain criteria must be considered,</p>	<p><b>Relevant and Appropriate</b></p>

**Table A-2  
Action-Specific ARARs and TBC Information**

<b>Media</b>	<b>Requirement</b>	<b>Requirement Synopsis</b>	<b>Prerequisites, Status and Rationale</b>
	<b>Radiation Control Act 42 USC §§ 7918 and 2022</b> 10 CFR Part 40, Appendix A. Criteria 1, 4, 6(1), 6(3), 6(5) and 6(7)	including remoteness, hydrologic and topographic features, potential for erosion and vegetation. Disposal sites must be covered by an earthen cap, or approved alternative, that meets certain control requirements, including limiting the release of radon 222 to the atmosphere. When the final radon barrier is placed in phases, verification of the radon-222 release rate must be completed for each portion of the final radon barrier as it is emplaced. Waste or rock with elevated levels of radium must not be placed near the surface of disposal sites. Disposal sites must be closed in a manner that, to the extent necessary, controls, minimizes, or eliminates post closure escape of non-radiological hazardous constituents, leachate, contaminated rainwater, or waste decomposition products to the ground or surface waters or atmosphere.	These standards are applicable to UMTRCA Title I sites. The Site is not a Title I sites; therefore, these requirements are not applicable. These requirements have been determined to be relevant and appropriate to the design of the engineered cover to be constructed in Alternative (insert #), which consists of onsite containment for the contaminated soil and uranium waste rock.
Repository	<b>FEDERAL NRC Regulations Protection of the General Population from Releases of Radioactivity</b> 10 CFR § 61.41	“Concentrations of radioactive material which may be released to the general environment in groundwater, surface water, air, soil, plants, or animals must not result in an annual dose exceeding an equivalent of 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ of any member of the public. Reasonable effort should be made to maintain releases of radioactivity in effluents to the general environment as low as is reasonably achievable.”	<b>Relevant and Appropriate</b>  This standard is applicable to NRC sites. The Site is not an NRC site; therefore, this requirement is not applicable. This standard was found to be relevant and appropriate to the design of the engineered cover to be constructed in Alternative (insert #) for the onsite containment of contaminated soil and uranium waste rock.
All	<b>NAVAJO NATION Navajo Nation Fundamental Law 1 N.N.C. §§ 201-206</b>	The Navajo people have an obligation under the Diné Fundamental Law to listen to elders and medicine people and respect, preserve and protect Mother Earth as stewards and guardians for the benefit of	<b>TBC</b>  Navajo Nation Fundamental Law and the 2022 Guidance will be TBCs to the extent that they do not conflict with US CERCLA, the National Contingency Plan, 40 CFR Part

**Table A-2  
Action-Specific ARARs and TBC Information**

<b>Media</b>	<b>Requirement</b>	<b>Requirement Synopsis</b>	<b>Prerequisites, Status and Rationale</b>
	Navajo Nation Guidance on the Uniform Application of Fundamental Law to AUM Cleanup Activities (2022)	<p>future generations.</p> <p>The 2020 Guidance explains the principles of Fundamental Law and how they would be applied at the various stages of AUM cleanup.</p>	300, or other federal requirements.
Soil and Water	<p>NAVAJO NATION <b>Navajo Nation Underground and Aboveground Storage Tank Act of 2012 – 4 N.N.C. §§ 1501-1577, as amended</b></p> <p>NNEPA Storage Tank Program Guidance No. 3 (ASTs at Construction Sites) – Section III (Operating Guidelines)</p>	The Act regulates storage of petroleum and other regulated substances in underground and aboveground storage tanks. This guidance clarifies that the NNSTA applies to ASTs that are temporarily placed at construction sites within the Navajo Nation. It requires such ASTs to file tank information forms with NNEPA, locate the tank within a secondary containment area, secure the tank to prevent movement on the containment surface or mount it on metal skids (not on an elevated stilt rack), and contact the Navajo Nation Storage Tank Program for an inspection of the AST to check for evidence of soil contamination both prior to the first deposit of a regulated substance and when the AST is removed from the site.	<p><b>TBC</b></p> <p>Guidance should be followed for AUM response activities requiring ASTs to be brought to sites, for example for fuel needed for equipment and vehicles.</p>

**List of ARARs to be Included in EE/CA ARARs Tables to Address Certain Site Conditions if Encountered**

<b>Media</b>	<b>Requirement</b>	<b>Requirement Synopsis</b>	<b>Prerequisites, Status and Rationale</b>
Soil and Water	<p>NAVAJO NATION <b>Navajo Nation Leaking Storage Tank Soil and</b></p>	<p>Establish cleanup standards for soil and water contaminated by leaking underground and aboveground storage tanks.</p> <p>More stringent than federal requirements, which</p>	<p><b>Applicable</b></p> <p>Applicable if there is a leak from a temporary tank that is brought to a site, for example for fuel needed for equipment and vehicles.</p> <p>Also applicable to response activities resulting from releases of petroleum or other regulated substances from tanks, if there are any, at AUMs.</p>

	<p><b>Water Cleanup Standards 2012 –</b> Resolution of the Navajo Nation Council CAP-47-95</p>	<p>consist of screening levels for contaminated soils and not standards.</p> <p>Also, Cleanup Standards § VI provides that the point of compliance is at the source of the release and not at the nearby receptor, i.e., drinking water well.</p> <p>Cleanup Standards § IX provides that “NNEPA will not consider Monitoring Natural Attenuation as an acceptable cleanup method unless contamination levels are within 10% of the values of the relevant cleanup standard.”</p>	
Surface Water	<p>NAVAJO NATION <b>Navajo Nation Clean Water Act (NNCWA)</b> <b>4 N.N.C. § 1302(43)</b></p> <p>Navajo Nation Surface Water Quality Standards (NNWQS) Table 207.1, Table 206.1</p> <p>See the August 16, 2018 Atlas of Navajo Nation Surface Waters for maps of all NN surface waters.</p>	<p>The surface water quality standards apply to all “waters of the Navajo Nation” pursuant to the NNCWA. They are intended to protect, maintain, and improve the quality of Navajo Nation surface waters for public and private drinking water supplies and other domestic uses, and for fish, wildlife, cultural, agricultural, and recreational uses of water. 4 N.N.C. § 1302(43) defines waters of the Navajo Nation more broadly than the federal definition of waters of the U.S. Therefore, the provisions of the NNCWA are more broadly applicable than those of the federal CWA. All Navajo Nation surface waters are listed in Table 206.1 and depicted in the 2018 Atlas.</p> <p>There are no federal WQS, only federal criteria, so only the NNSWQS would be applicable although the federal criteria would be relevant and appropriate.</p> <p>The NNSWQS are more stringent in that they cover more waters than would be covered under the federal CWA due to the broader definition of waters of the Navajo Nation under the NNCWA, 4</p>	<p><b>Applicable or Relevant and Appropriate</b></p> <p>Applicable to discharges into Navajo Nation Surface Waters (as defined in Table 206.1, see <a href="https://www.epa.gov/sites/default/files/2014-12/documents/navajo-tribe.pdf">https://www.epa.gov/sites/default/files/2014-12/documents/navajo-tribe.pdf</a> (Waters of the NN)) on AUM sites and relevant and appropriate if there may be discharges into such Waters as a result of removal activities.</p> <p>Relevant and appropriate as clean-up standards for Waters of the Navajo Nation contaminated by AUM sites.</p>

		<p>NNC § 1302(43). The NNSWQS also are more stringent because they apply to more designated uses. The federal criteria cover 4 uses/scenarios: Aquatic habitat acute and chronic, domestic consumption of organisms (fish) plus water, and domestic consumption of fish. The NNSWQS also include primary and secondary human contact, agricultural watering, and livestock watering. See NNWQS Table 206.1.</p> <p>The following COPCs for the site are included in the NNSWQS and have numeric standards, see Table 207.1: (1) molybdenum for agricultural water supply; (2) vanadium for agricultural and livestock watering; and (3) selenium for both domestic consumption and fish consumption. Also, Navajo Nation uses the MCL for Radium 226/228 for its WQS for domestic water supply, agricultural water supply, and livestock watering, so it would be applicable for these uses. USEPA would use the MCL as relevant and appropriate, rather than applicable. Similarly, Navajo Nation uses the MCL for uranium for its WQS for all uses. Finally Navajo Nation uses the arsenic MCL for all uses, and that would be more stringent than the water quality criteria for primary and secondary human contact, agricultural use, and livestock watering.</p>	
Water	<p>FEDERAL <b>Clean Water Act</b> <b>33 USC § 1344</b></p> <p>CWA § 404(b)</p>	<p>Prohibits the unpermitted discharge of dredge or fill material into waters of the U.S., other than incidental fallback. Should dredge and fill material be discharged to a water of the U.S., the chemical, biological and physical impacts to the WOTUS must</p>	<p><b>Applicable</b> if there are discharges to WOTUS.</p> <p><b>Relevant and Appropriate</b> if there are discharges to Navajo Nation Surface Waters (as defined in NNCWA § 1302(43) and listed in NNSWQS Table 206.1, see <a href="https://www.epa.gov/sites/default/files/2014-12/documents/navajo-tribe.pdf">https://www.epa.gov/sites/default/files/2014-12/documents/navajo-tribe.pdf</a> )</p>

	Guidelines 40 CFR §§230.10; 230.61, and 230.71-76	be tested and evaluated. Any adverse effects shall be minimized by treating the material prior to discharge, limiting the mobility of the discharge materials, and avoiding or limiting impacts to WOTUS that serve as wildlife habitat, recreational space or other use by humans.	(Waters of the NN)).
Water	FEDERAL <b>Clean Water Act</b> <b>33 USC § 1344 (CWA § 404)</b>  33 CFR §323.3(a), 323.4(a)(6), (b), (c)	The construction of temporary roads that result in a discharge of dredge or fill material to a water of the U.S. does not require a permit unless the materials contain toxic pollutants, or the discharge will alter the flow of the WOTUS.	<b>Applicable</b> if there are discharges to WOTUS.  <b>Relevant and Appropriate</b> if there are discharges to Navajo Nation Surface Waters (as defined in NNCWA § 1302(43) and listed in NNSWQS Table 206.1, <i>see</i> <a href="https://www.epa.gov/sites/default/files/2014-12/documents/navajo-tribe.pdf">https://www.epa.gov/sites/default/files/2014-12/documents/navajo-tribe.pdf</a> (Waters of the NN)).
Water	FEDERAL <b>Clean Water Act</b> <b>33 USC § 1344 (CWA § 404)</b>  Nationwide Permit 38 – Clean Up of Hazardous and Toxic Waste	On-site CERCLA actions conducted by a federal agency that involve the discharge of dredged or fill material into waters of the United States must comply with the substantive requirements of the NWP 38 General Conditions, as appropriate, and any regional or case-specific conditions recommended by the Corps District Engineer, after consultation.	<b>Applicable</b> if there are discharges to WOTUS.  <b>Relevant and Appropriate</b> if there are discharges to Navajo Nation Surface Waters (as defined in NNCWA § 1302(43) and listed in NNSWQS Table 206.1, <i>see</i> <a href="https://www.epa.gov/sites/default/files/2014-12/documents/navajo-tribe.pdf">https://www.epa.gov/sites/default/files/2014-12/documents/navajo-tribe.pdf</a> (Waters of the NN)).