



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

June 6, 2007

MEMORANDUM

SUBJECT: Interim Guiding Principles for Good Samaritan Projects at Orphan Mine Sites and Transmittal of CERCLA Administrative Tools for Good Samaritans

FROM: Granta Nakayama, Assistant Administrator, /s/
Office of Enforcement and Compliance Assurance

Susan Parker Bodine, Assistant Administrator, /s/
Office of Solid Waste and Emergency Response

Benjamin Grumbles, Assistant Administrator, /s/
Office of Water

Roger Martella, General Counsel, /s/
Office of General Counsel

TO: Regional Administrators, Regions I-X
Ronald Jay Tenpas, Acting Assistant Attorney General,
Environment & Natural Resources Division, U.S. Department of Justice

I. Background

EPA's Good Samaritan Initiative is an Agency-wide effort to facilitate the cleanup of certain watersheds affected by Orphan Mine Sites (as defined below) by encouraging the efforts of certain non-liable parties ("Good Samaritans") who are willing to voluntarily clean up some of these sites. Concerns about incurring potential liability under the Clean Water Act ("CWA") and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as a result of performing cleanup work at orphan mines have long discouraged voluntary cleanups at many of these sites. The Good Samaritan Initiative's principal purpose is to use the federal government's authority to provide greater legal certainty to Good Samaritans and resolve to the extent possible the threat of potential federal liabilities so that voluntary cleanups at these sites can proceed.

This guidance is intended to assist the Regions in the implementation of the Good Samaritan Initiative and focuses on administrative tools developed under CERCLA. As EPA

gains more experience implementing this Initiative, the Agency may revise this guidance and the attached administrative tools.

Importantly, the Good Samaritan Initiative preserves CERCLA's "polluter pays" principle. These administrative tools are not intended in any way to absolve responsible parties of their liability under existing federal law for any environmental pollution. Rather, the tools are intended solely to aid non-liable parties in cleaning up Orphan Mine Sites.

EPA Regions, in consultation with the states, have the lead role in implementing the Good Samaritan Initiative. As early as practicable, prior to the implementation of a Good Samaritan project, a Region should consult with the state and any affected tribes regarding planning and implementation of the project. EPA will work with federal land management agencies to determine lead agency status for sites that are partially on federal and non-federal land.¹

The administrative tools discussed in (and attached to) this Memorandum are intended for the performance of a removal action by a Good Samaritan at an Orphan Mine Site where the Good Samaritan's voluntary effort will accelerate partial or complete cleanup and will result in environmental improvement. Good Samaritan cleanups may allow for limited recycling or incidental reprocessing of historic tailings and waste piles to the extent that such actions are necessary for, and directly related to, the cleanup. A Good Samaritan project will not include the new extraction of remaining reserves. New extraction activities would need to comply with all applicable mining requirements. EPA anticipates that Good Samaritan cleanups will take place at sites that are not of federal interest. Thus, EPA does not expect that sites listed (or proposed for listing) on the National Priorities List and sites that are the subject of ongoing or planned removal actions, would be eligible for Good Samaritan cleanups under this Initiative.

II. Important Terms

For purposes of this guidance, the terms below have the following definitions:

"Good Samaritan" means a Person (as defined in CERCLA § 101(21)) who is rendering care, assistance, or advice in accordance with the NCP or at the direction of an onscene coordinator ("OSC"), by voluntarily agreeing to clean up contamination at an Orphan Mine Site, and who:

1. is not a past owner or current owner of the Property (i.e., a specified portion of the site) and has no intention of purchasing the Property in the future;
2. is not potentially liable for the remediation of the Existing Contamination (as defined below) pursuant to Sections 106 or 107 of CERCLA; and
3. is not potentially liable under any other federal, state or local law for the remediation of the Existing Contamination.

¹ For sites where the ownership includes both federally owned and non-federally owned land, EPA and the federal land management agency will need to coordinate with the Good Samaritan concerning the proposed activity. Regions should consult the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") and Exec. Order No. 12,580, 52 Fed. Reg. 2,923 (1987), as amended by Exec. Order 13,016, 61 Fed. Reg. 45,871 (1996), in determining which agency will be the lead agency for a site.

As stated above, a Good Samaritan is an entity willing to perform cleanup work under CERCLA at an Orphan Mine Site even though it does not own the property, and does not intend to own it in the future. A person who would otherwise qualify as a bona fide prospective purchaser (BFPP) pursuant to Section 101(40) of CERCLA (because, among other things, the person acquires the property being cleaned up) should not be considered a Good Samaritan, but rather would have the protection from CERCLA liability provided by Section 107(r).²

Good Samaritans can include individuals, corporations, non-profit organizations, states, local governments, and municipalities that meet the criteria discussed above.

“Orphan Mine Site” means an abandoned, inactive hard rock mine or primary metal processing mill site for which, despite reasonable and diligent efforts, no financially viable party (except, for purposes of this guidance, the owner of the site who did not cause, contribute to, or exacerbate the contamination) is potentially liable to perform or pay for, or has been required to perform or pay for, environmental cleanup actions under applicable law.

“Existing Contamination” means any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the effective date of the applicable settlement agreement (discussed below); any hazardous substances, pollutants or contaminants that migrated from the Property prior to the specified date; and any hazardous substances, pollutants or contaminants presently at the site that migrate onto or under or from the Property after the effective date of the applicable settlement agreement.

III. Tools to Address Good Samaritan Liability Concerns

Regions should work with states to encourage Good Samaritans to explore the use of state voluntary cleanup programs (VCPs) to perform cleanups at Orphan Mine Sites. VCPs generally are tailored to non-liable parties that volunteer to clean up abandoned, contaminated, lower-risk sites that are not of federal interest. The use of a VCP may be particularly appropriate where a Good Samaritan wishes to perform cleanup work that does not involve discharges to water. Typically, parties performing cleanups in compliance with VCPs receive a covenant not to sue from the relevant state. In addition, under CERCLA, Good Samaritans that clean up “eligible response sites” as defined in CERCLA § 101(40) in compliance with a VCP may enjoy an “enforcement bar” under CERCLA § 128(b), which provides that EPA may not use its CERCLA § 106 and 107 authorities except in specific circumstances.

EPA has developed two administrative tools for situations where a Region determines that potential federal liability under CERCLA should be addressed. These tools are intended to shield a qualifying Good Samaritan from potential liability under CERCLA that could arise as a result of conducting the cleanup of contamination. The first tool is a model Good Samaritan

² Often, BFPPs pursue cleanups at brownfields through state voluntary cleanup programs. In addition, EPA has developed a model work agreement for BFPPs performing significant removal work (beyond their statutory “reasonable steps” obligations) at sites of federal interest. See November 27, 2006 “Agreement and Order on Consent for Removal Action by Bona Fide Prospective Purchaser” at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/bfpp-ra-mem.pdf>.

Comfort/Status Letter. The second is a Model Good Samaritan Settlement Agreement and Order for Removal Actions at Orphan Mine Sites (“Good Samaritan Settlement Agreement”). Both tools cite to CERCLA § 107(d).³ Guidelines for using these tools are provided in Section IV, below.

EPA, in consultation with the Good Samaritan, will choose the administrative tool that is most appropriate for a specific cleanup at an Orphan Mine Site. Regions should consider several factors when evaluating the most appropriate administrative tool, including:

1. the complexity and scope of the cleanup,
2. the risk and scope of potential liability, including the possibility of contribution litigation by third parties,
3. the availability of EPA resources (e.g., enforcement resources to prepare the administrative tool, oversight resources, etc.) and
4. the Good Samaritan’s risk tolerance.

Regions should collect relevant information from a party wishing to be considered a Good Samaritan and to obtain one of the administrative tools. Relevant information includes:

1. Name and contact information for the Good Samaritan, description of entity (e.g., 501(c)(3), municipality, etc.), and any other information necessary to show the person qualifies as a Good Samaritan;
2. Description of mine site, current and historic owners/operators, nature and extent of contamination, and any prior site investigations or cleanup work performed (and CERCLIS number, if applicable);
3. Proposed work plan and description of the proposed cleanup project and monitoring, including a discussion of how the work will be consistent with the NCP;
4. A draft Health & Safety Plan and Quality Assurance and Sampling Plan;
5. Access agreement between the Good Samaritan who will conduct the work and the landowner;
6. Consent (or indicia thereof) by landowner to enter into agreement with EPA for site access using EPA model access agreement;
7. Evidence satisfactory to EPA that the Good Samaritan has sufficient financial resources to ensure timely and adequate completion of work;
8. A description of any contractual ties and financial arrangements (e.g., funding, site access, etc.) with any party who may have legal responsibility for the cleanup of the mine site;
9. A description of all funding sources for the work, including any funding being provided, directly or indirectly, by an owner of all or part of the site;
10. A description of the Good Samaritan’s environmental record, including, for example, its involvement in prior Good Samaritan or similar cleanup projects, its involvement

³ CERCLA § 107(d) provides, in part:

“ . . . no person shall be liable under this subchapter for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the [NCP] or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.”

in environmental litigation or as a potentially responsible party at any other site; or its receipt of notices of violations, and

11. Documentation of findings that there are no liable, viable potentially responsible parties at the site (except for an owner of the site who did not cause, contribute to, or exacerbate the contamination at the site).

As a general matter, all on-site actions performed by a Good Samaritan pursuant to a Section 107(d) comfort/status letter or a Good Samaritan Settlement Agreement are required, to the extent practicable as determined by EPA considering the exigencies of the situation, to attain applicable or relevant and appropriate requirements (ARARs) under federal or state environmental or facility siting laws. Regions are encouraged to prepare Action Memoranda and Administrative Records for Good Samaritan cleanup projects.

Because Good Samaritan cleanups are anticipated to involve watersheds impacted by Orphan Mine Sites, the potential applicability of water quality standards to discharges from these sites as ARARs will need to be carefully considered and will be decided on a case-by-case basis. In some cases, Regions may determine that attainment of water quality standards at Orphan Mine Sites by Good Samaritans performing limited removal actions may not be practicable. Factors that Regions should consider in determining whether compliance with ARARs is practicable include: (1) the urgency of the situation and (2) the scope of the removal action to be conducted. 40 C.F.R. § 300.415(j). Regions should document such site-specific determinations in the Action Memorandum/ Administrative Record for the particular site. Regions should follow their standard procedures for coordinating with appropriate program offices (e.g., the Regional water office) and states in making these determinations. In cases where a Region has determined that attainment of water quality standards is not practicable given the exigencies of the situation, Good Samaritans will be required to meet site-specific work plan requirements for water quality in order to ensure that the project results in environmental improvement.

The Agency views the development of the work plan as a critical component of the Good Samaritan effort, as that is the best opportunity for the parties to discuss factors such as permanency, durability, and future uncertainties. This is particularly important to the success of Good Samaritan efforts, as their work is anticipated to be limited and/or of a defined duration. Completion of the project will be more readily recognized by both parties if uncertainties are acknowledged and expectations are clear from the start. While EPA wants to encourage as many capable and willing Good Samaritans as possible, the Agency always reserves the right to reject any proposed project if there is any concern regarding the environmental benefits that will be achieved, the financial viability or ability of the Good Samaritan to complete the work, or if the success of the project is in doubt.

IV. Guidelines Specific to the Use of the CERCLA § 107(d) Comfort/Status Letter

This administrative tool is intended as a straightforward, non-negotiable document that can be issued relatively quickly at the Regional level. A model Section 107(d) comfort/status letter is attached (see Attachment 1) and can be found at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/goodsam-comfort-mod.pdf>. The letter is intended to encourage Good Samaritans to perform NCP-compliant work at Orphan Mine Sites without having to invest

time and resources in negotiating a formal settlement agreement with the federal government. EPA has successfully used comfort/status letters to provide information and assuage liability concerns since issuing its Comfort/Status Letter Policy in 1997.⁴ Comfort/status letters addressing aspects of the 2002 Brownfield Amendment landowner liability protections have proven particularly effective at promoting redevelopment. The attached Section 107(d) Comfort/Status Letter is modeled on this success.

Regions should provide a Section 107(d) comfort/status letter only when they determine that the Good Samaritan's proposed work plan is consistent with the NCP. A Regional OSC will oversee the work performed, as necessary, by the Good Samaritan. The extent of the OSC's oversight will depend on the complexity of the work to be performed. Regions should note that the comfort/status letter does not seek oversight reimbursement from the Good Samaritan. Accordingly, Regions should analyze whether their Superfund budgets can absorb the cost of the OSC's time, and should factor these costs into their analysis when deciding whether to provide a Good Samaritan with a Section 107(d) comfort/status letter.

Where appropriate (e.g., the work will involve a discharge to a navigable water), the Section 107(d) comfort/status letter may state that EPA has determined that attainment of water quality standards is not practicable considering the exigencies of the situation, applying 40 C.F.R. § 300.415(j) as a matter of policy. Factors that Regions should consider in determining whether compliance with ARARs is practicable include the urgency of the situation and the scope of the removal action to be conducted. *Id.* As discussed above, this determination is appropriate where justified by site-specific factors and properly documented in an Action Memorandum kept in the Administrative Record for the site. As stated above, Regions should follow their standard procedures for coordinating with appropriate program offices (e.g., the Regional water office) and states in making these determinations.

In addition, the comfort/status letter seeks to address concerns a Good Samaritan may have regarding CERCLA contribution suits by third parties as a result of taking on the voluntary work. The letter states that in the event that a third party brings or threatens a contribution lawsuit, EPA will be prepared to discuss entering into a Good Samaritan Settlement Agreement if appropriate, providing for (among other things) federal contribution protection under CERCLA.

V. Guidelines Specific to the Use of the Sample Good Samaritan Settlement Agreement

A Good Samaritan Settlement Agreement provides a federal CERCLA covenant not to sue and contribution protection in exchange for cleanup work by a Good Samaritan at an Orphan Mine Site. Approval by the U.S. Department of Justice ("DOJ") is required for Good Samaritan Settlement Agreements because the agreements rely on the inherent authority of the Attorney General to compromise and settle claims. A Model Good Samaritan Settlement Agreement is attached (see Attachment 2), and can also be found at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/goodsam-agreement-mod.pdf>. Good Samaritan Settlement Agreements may be particularly appropriate where the proposed cleanup work is technically

⁴ "Policy on the Issuance of Comfort/Status Letters," Memorandum from Steven A. Herman, Assistant Administrator, Office of Enforcement and Compliance Assurance, November 8, 1996; reprinted at 62 Fed. Reg. 4,642 (Jan. 30, 1997).

complicated and/or where there is a significant possibility of third party litigation. As with the Section 107(d) comfort/status letter, Regions should consider a Good Samaritan Settlement Agreement only where the proposed work is consistent with the NCP and the person qualifies as a Good Samaritan.

Cleanup projects using the model Good Samaritan Settlement Agreement will require evidence of the Good Samaritan's financial responsibility to conduct the cleanup (either up-front financial assurances, or a description of financial assurances that will be obtained after the agreement is signed, but prior to the start of any work), subject to EPA approval.

Possible forms of financial responsibility include:

1. A surety bond unconditionally guaranteeing payment and/or performance of the work;
2. One or more irrevocable letters of credit, payable to or at the direction of EPA;
3. A trust fund established for the benefit of EPA;
4. A policy of insurance that provides EPA with acceptable rights as a beneficiary;
5. A demonstration by the Good Samaritan that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the estimated cost of the work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied;
6. A written guarantee to fund or perform the work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of the Good Samaritan, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with the Good Samaritan; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the estimated cost of the work that it proposes to guarantee hereunder; or
7. A written commitment of grant or other similar funding from a governmental entity, nonprofit or not-for-profit foundation or trust, or similar entity, where the Good Samaritan demonstrates to EPA's satisfaction (i) that the funding entity has adequate financial ability to fulfill its commitment and (ii) that the terms and conditions of such commitment sufficiently secure the funding of the work.

Selecting an appropriate financial responsibility mechanism for a Good Samaritan project is intended to offer maximum flexibility and will be decided on a case-by-case basis considering a host of factors, including but not limited to, the scope and complexity of the cleanup and the financial resources available for the project. EPA does not expect it will be necessary for Good Samaritans to set up an escrow account or put aside funds separate from those needed to complete the project.

EPA understands that a Good Samaritan may have limited funds with which to conduct its voluntary cleanup at an Orphan Mine Site. In the event that a Good Samaritan discovers new information or encounters unknown conditions during a project, and the new information or unknown conditions would result in cleanup costs substantially higher than the estimated cost of the work, EPA will work with the Good Samaritan in good faith to resolve any issues and modify the work plan if appropriate.

VI. Consultation Requirements

Regional consultation at the Division Director level within OECA/OSRE is required prior to issuance of a Section 107(d) comfort/status letter or the negotiation of a Good Samaritan Settlement Agreement. Consultation at the Division Director level within OSWER/OSRTI is required prior to the approval of any work plan submitted by a Good Samaritan. Questions regarding this document, or the attached models, may be directed to Cate Tierney at EPA (tierney.cate@epa.gov) or Tom Carroll at DOJ (thomas.carroll@usdoj.gov).

VII. Disclaimer

This document is intended as guidance for employees of the U.S. Environmental Protection. It does not constitute rulemaking by the Agency and may not be relied on to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency reserves the authority to take action at variance with this guidance document or its implementing procedures.

cc: Allison Starmann, Associate Deputy General Counsel, Office of General Counsel
Lynn Buhl, Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance
Michael Shapiro, Deputy Assistant Administrator, Office of Water
Scott Sherman, Associate Assistant Administrator, Office of Solid Waste and Emergency Response
Director, Office of Site Remediation and Restoration, Region I
Director, Emergency and Remedial Response Division, Region II
Director, Hazardous Site Cleanup Division, Region III
Director, Waste Management Division, Region IV
Directors, Superfund Division, Regions V, VI, VII and IX
Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, Region VIII
Director, Office of Environmental Cleanup, Region X
Director, Office of Environmental Stewardship, Region I
Director, Environmental Accountability Division, Region IV
Regional Counsel, Regions II, III, V, VI, VII, IX, and X
Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, Region VIII
Chief, Deputy Chief, and Assistant Chiefs, Environmental Enforcement Section, U.S. Department of Justice
Chief, Deputy Chief, and Assistant Chiefs, Environmental Defense Section, U.S. Department of Justice

Model Good Samaritan Comfort/Status Letter

Dear *****,

At the request of **[INSERT NAME OF GOOD SAMARITAN REPRESENTATIVE]**, I have reviewed the submitted project plan for the performance of work at the **[INSERT NAME]** Site. The work involves _____ (*describe the work and how it relates to rendering care, assistance, or advice with respect to an incident creating a danger to public health or welfare or the environment resulting from the release of hazardous substance(s)*). **[NAME GOOD SAMARITAN]** seeks to limit its potential liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as provided in Section 107(d)(1), 42 U.S.C. § 9607(d)(1), by ensuring the work performed at the **[INSERT NAME]** Site is consistent with the National Contingency Plan (NCP), 40 C.F.R. 300 et seq., and at the direction of an On-Scene Coordinator. The work will be consistent with the NCP if performed in accordance with the project plan you provided and that I have approved.

The project plan for the work performed at the **[INSERT NAME]** Site is generally in accordance with the NCP. (*If there are issues requiring modification prior to a finding that the plan is consistent with the NCP, note them here and indicate that if corrected, the plan will be in accordance with the NCP.*) (*If the work involves a discharge to a navigable water, consider adding the following language if the determination is justified in the Action Memorandum that is part of the Administrative Record for the site: As documented in the Action Memorandum located in the Administrative Record for this Site, and guided by 40 C.F.R. § 300.415(j), EPA has determined that attainment of water quality standards as a result of the work is not practicable considering the exigencies of the situation and the limited scope of the removal action to be conducted.*)

If you should choose to volunteer to perform cleanup at this site, I, the On-Scene Coordinator, direct you to perform the work in accordance with the project plan in order to remove the release described therein. You should proceed with work ("*after you have made the appropriate modifications to the project plan requested in this letter*") by **[INSERT DATE TO BEGIN WORK]** and inform me when the work has been completed. EPA strongly supports your Good Samaritan efforts to protect public health and the environment by (*briefly describe activity*).

In the event that a third party brings or threatens to bring a CERCLA contribution lawsuit against you, EPA will be prepared to discuss with you entering into a Good Samaritan Settlement Agreement, if appropriate, providing for, among other things, protection from contribution suits. You can find the model Good Samaritan Agreement at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/goodsam-agreement-mod.pdf>

Thank you very much for your voluntary actions in this matter. If you have any questions or need further assistance, please call me at _____.

Sincerely,

On-Scene Coordinator, Region _____

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY MODEL GOOD SAMARITAN
SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTIONS AT ORPHAN
MINE SITES¹**

¹ This model and any internal procedures adopted for its implementation and use are intended as guidance for employees of the U.S. Environmental Protection Agency and the Department of Justice. They do not constitute rulemaking by the Agency and may not be relied on to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. In applying this model to Good Samaritan cleanups, Agency and Department of Justice employees are strongly encouraged to consult the “Interim Guiding Principles for Good Samaritan Projects at Orphan Mine Sites” (June 2007). The Agency may take action at variance with this model or its internal implementing procedures.

TABLE OF CONTENTS

I. JURISDICTION AND GENERAL PROVISIONS..... 4

II. PARTIES BOUND..... 4

III. DEFINITIONS..... 4

IV. FINDINGS OF FACT 5

V. CONCLUSIONS OF LAW AND DETERMINATIONS 6

VI. AGREEMENT 6

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR..... 6

VIII. WORK TO BE PERFORMED..... 7

IX. SITE ACCESS 8

X. RECORD RETENTION, DOCUMENTATION, AND AVAILABILITY OF INFORMATION 9

XI. COMPLIANCE WITH OTHER LAWS..... 9

XII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES..... 9

XIII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR..... 10

XIV. PAYMENT OF OVERSIGHT COSTS..... 10

XV. DISPUTE RESOLUTION 10

XVI. FORCE MAJEURE 10

XVII. UNITED STATES COVENANT NOT TO SUE 11

XVIII. UNITED STATES RESERVATION OF RIGHTS..... 11

XIX. GOOD SAMARITAN’S COVENANT NOT TO SUE..... 12

XX. OTHER CLAIMS 12

XXI. CONTRIBUTION 12

XXII. FINANCIAL RESPONSIBILITY 13

XXIII. NOTICE OF COMPLETION 13

XXIV. PUBLIC COMMENT 14

XXV. INTEGRATION/APPENDICES 14

XXVI. CERTIFICATIONS 14

I. JURISDICTION AND GENERAL PROVISIONS

1. This Good Samaritan Settlement Agreement and Order on Consent for Removal Action (the "Settlement Agreement") is entered into voluntarily by the EPA and [Name of Good Samaritan] (hereinafter "Good Samaritan"). This Settlement Agreement provides for the performance of a removal action by Good Samaritan in connection with the Property located in [Location of Site]. This Settlement Agreement requires Good Samaritan to conduct the removal action described herein to abate the actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Site.

2. This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606, 9607 and 9622, 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 Federal Register 2923, and further delegated to the undersigned Regional official, and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. EPA has notified the State of [Name of State] of this action.

4. Good Samaritan's participation in this Settlement Agreement shall not constitute or be construed as an admission of liability, nor of EPA's findings or determinations contained in this Settlement Agreement, except in a proceeding to enforce the terms of this Settlement Agreement. Good Samaritan agrees to comply with and be bound by the terms of this Settlement Agreement. Good Samaritan further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

5. EPA and Good Samaritan agree that Good Samaritan's performance of the Work at the Property in accordance with this Settlement Agreement will constitute "rendering care or advice" at the Site in accordance with Section 107(d)(1) of CERCLA, 42 U.S.C § 9607(d)(1). In view of the nature and extent of the Work to be performed, however, and the risk of claims being asserted against Good Samaritan for costs or damages notwithstanding Section 107(d)(1) as a consequence of Good Samaritan's activities at the Site pursuant to this Settlement Agreement, one of the purposes of this Settlement Agreement is to resolve, subject to the reservations and limitations contained in Section XVIII (United States Reservation of Rights), any potential liability of Good Samaritan under CERCLA for the Existing Contamination at the Site.

6. The resolution of this potential liability, in exchange for Good Samaritan's performance of the Work, is in the public interest.

II. PARTIES BOUND

7. This Settlement Agreement applies to and is binding upon EPA and upon Good Samaritan. Good Samaritan shall ensure that its contractor, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Good Samaritan shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Effective Date" means the date upon which EPA issues written notice to the Good Samaritan that EPA has fully executed the Settlement Agreement after review of and response to any public comments received.

b. "Existing Contamination" means any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the Effective Date; any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date.

c. "Orphan Mine Site" means an abandoned, inactive hardrock mine or primary metal processing mill site for which, despite reasonable and diligent efforts, no financially viable party (except, for purposes of this Settlement Agreement, the owner of the site who did not cause, contribute to, or exacerbate the Existing Contamination) is potentially liable to perform or pay for, or has been required to perform or pay for, environmental cleanup actions under applicable law.

d. "Parties" means EPA and Good Samaritan.

e. "Property" means that portion of the Site, encompassing approximately ___ acres, which is described in Exhibit ___ of this Settlement Agreement.

f. "Site" means the Site encompassing approximately ___ acres, located at [address or description of location] in [name of city, county, and State], and depicted generally on the map attached as Exhibit ___. The Site shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants, have come to be located [provide a more specific definition of the Site where possible].

g. "Work" means all activities Good Samaritan is required to perform under this Settlement Agreement, except those required by Section X (Record Retention, Documentation, And Availability of Information).

IV. FINDINGS OF FACT

9. Good Samaritan is _____ [insert relevant descriptive information – e.g., non-profit, corporation, etc.] in the State of [X] and is voluntarily agreeing, pursuant to this Settlement Agreement, to perform a removal action at an Orphan Mine Site.

10. Pursuant to Section XXVI, Good Samaritan certifies that it is not an owner or operator, generator, or transporter, or otherwise a liable party for this Site pursuant to CERCLA §§ 106 and 107. Good Samaritan also certifies that it is not a past or current owner of the Property, and that it does not intend to acquire ownership of the Property.

11. The [XYZ watershed] has been adversely affected by historic mining activity. Mine tailings from inactive or abandoned milling operations and waste rock from the development of the mines are located along and in close proximity to [XYZ River].

12. [XYZ River] is an [ephemeral or perennial] tributary of [X] located near [describe location]. [Add additional description as appropriate].

13. The Site is located near [X] and is an Orphan Mine Site. Mine waste rock and/or tailings at the Site are being eroded into [X]. These waste rock piles and/or tailings contribute metals such as [identify constituents, e.g. zinc, copper, cadmium, manganese, lead, and arsenic] to the river, especially during storms and periods of melting snow. These metals have a harmful effect on water quality and pose risks to human health or the environment.

[Note: Additional findings related to the property owner, access for EPA, environmental benefits of cleanup and value of the Work may be included].

14. The actual or threatened release of one or more hazardous substances from the facility may present an imminent and substantial endangerment to public health or welfare or the environment.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

- a. The [XYZ Site] is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. [Zinc, copper, cadmium, manganese, lead and arsenic] are "hazardous substances, pollutants or contaminants" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Good Samaritan is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance, pollutant or contaminant from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- e. The Work required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment, and if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.
- f. [If Good Samaritan will itself perform the Work, insert the following: Good Samaritan has submitted information to EPA demonstrating its qualifications to perform the Work.]
- g. [Note: Include the following when supported by the Action Memorandum/Administrative Record for the Site, to support the provisions of Paragraph 31 relating to water quality standards under the Clean Water Act.] As set forth in the Administrative Record, considering the exigencies of the situation and the limited scope of the removal action to be conducted, EPA has determined that attainment of water quality standards under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., as a result of the Work is not practicable as provided in 40 CFR § 300.415(j). Given that attainment of water quality standards as a result of the Work is not practicable, Good Samaritan will comply with [XXX provisions of Work Plan] that address water quality issues in order to ensure environmental improvement at the Property.

VI. AGREEMENT

16. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations [, and the Administrative Record] for this Site, and in consideration and exchange for the United States' covenant not to sue in Section XVII, it is hereby ordered and agreed that Good Samaritan shall comply with the following provisions, including but not limited to, all attachments to this Settlement Agreement, and all documents incorporated by reference into this Settlement Agreement, and perform the actions specified in Section VIII.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

17. EPA has designated [Insert Name] as its On-Scene Coordinator (OSC). Good Samaritan shall direct all submissions required by this Settlement Agreement to [OSC Mailing Address].

18. Good Samaritan shall perform the Work required by this Settlement Agreement or retain contractors and/or subcontractors to perform the Work. Good Samaritan's contractors [and any subcontractors] must be approved by EPA prior to the commencement of any Work under this Settlement Agreement. Good Samaritan shall notify EPA of the names and qualifications of

such contractor(s) [or subcontractor(s)] not more than (X) business days after the Effective Date.

19. Not more than (X) days after the Effective Date, Good Samaritan shall designate a Project Coordinator who shall be responsible for administration of all Good Samaritan's actions required by the Settlement Agreement. Good Samaritan shall submit the designated Project Coordinator's name, address, telephone number, and qualifications to EPA at the time of designation [or] within (X) days of designation. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. Receipt by Good Samaritan's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Good Samaritan.

20. EPA shall have the right to change its designation of OSC. Good Samaritan shall have the right to change its designated Project Coordinator. Good Samaritan's initial notification of its intention to change its Project Coordinator designation may be orally made but it shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

21. Good Samaritan shall, at a minimum, perform the following activities as more fully described in the Work Plan, which has been approved by EPA and is incorporated in this Settlement Agreement by reference:

[Example: Good Samaritan will remove the mine waste pile from the Site and dispose of the material in an environmentally-acceptable location. The removal will include grading and seeding of the hillside removal area and the placement of rock for stream bank protection].

[Note: Because the Work Plan is approved by EPA in advance of the Effective Date of the Settlement Agreement, any consideration of applicable or relevant and appropriate requirements (ARARs) will need to take place in connection with drafting and review of the Work Plan.]

22. Work Plan and Implementation. The OSC may make minor modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties. The Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Settlement Agreement. Good Samaritan shall notify EPA at least [48] hours prior to performing any on-Site Work pursuant to the EPA-approved Work Plan.

23. Health and Safety Plan. The Attached Health and Safety Plan, prepared in accordance with EPA's current Standard Operating Safety Guide, has been approved by EPA, is incorporated by reference, and provides for protection of the public health and safety during performance of on-Site Work under this Settlement Agreement.

24. Quality Assurance and Sampling

[Note: Post-project sampling and post removal Site control obligations should be determined on a case by case basis. Good Samaritan will not own the Property and, in most cases, will not have control over the Property. Therefore, in most cases, post-project sampling and post-removal Site controls, if any, should be accomplished through agreements or other means with the party that maintains ownership/control.]

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Good Samaritan shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate provisions of EPA guidance. Good Samaritan 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; and "Environmental Response Team Standard Operating Procedures," " OSWER Directive Numbers 9360.4-02 through 9360.4-08."

b. Upon request by EPA, Good Samaritan shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Good Samaritan while performing the Work. Good Samaritan shall notify EPA not less than [X] days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

25. **Reporting.** Good Samaritan shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every [_____] day after the Effective Date until submission of the Final Report pursuant to Paragraph 26, unless otherwise directed in writing by the OSC. These reports, which may be submitted via email to the designated EPA contact, shall describe all significant developments during the reporting period, including the actions performed and any problems encountered, analytical data received during the reporting period; and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems; and planned resolutions of past or anticipated problems.

26. **Final Report.** Not more than sixty (60) days after completion of all Work required under this Settlement Agreement, Good Samaritan shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, to the requirements set forth in 40 CFR § 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination 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 Work (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.

27. **Off-Site Shipments.** All hazardous substances, pollutants or contaminants removed off-Site pursuant to this Settlement Agreement for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance with, as determined by EPA, 42 U.S.C. Section 9621(d)(3), and the off-site provisions found at 40 CFR § 300.440, and all applicable laws and regulations. Good Samaritan will provide EPA with prior notification of any out-of-state waste shipments.

[**Note:** off-Site disposal approval should be decided on a case by case basis]

IX. SITE ACCESS [**Note:** EPA expects that a Good Samaritan normally will obtain necessary Site access as a condition precedent to a Settlement Agreement.]

28. Good Samaritan shall use its best efforts to obtain and maintain all necessary access agreements for Good Samaritan, as well as for the United States on behalf of EPA and its representatives (including contractors), for the purpose of conducting any activity related to this Settlement Agreement. Good Samaritan shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Good

Samaritan shall describe in writing its efforts to obtain access. EPA may then assist Good Samaritan in gaining access, to the extent necessary to effectuate the Work described herein, using such means as EPA deems appropriate.

X. RECORD RETENTION, DOCUMENTATION, AND AVAILABILITY OF INFORMATION

29. Good Samaritan shall preserve all documents and information relating to the Work, or relating to the hazardous substances, pollutants or contaminants found on or released from the Site, and submit them to EPA upon completion of the Work.

30. Good Samaritan may assert a business confidentiality claim pursuant to 40 CFR § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Settlement Agreement, 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 Good Samaritan. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 CFR 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 Good Samaritan.

XI. COMPLIANCE WITH OTHER LAWS

31. [Except as provided below,] Good Samaritan shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA § 121(e) and 40 CFR §§ 300.400(e) and 300.415(j). In accordance with 40 CFR § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. [Note: Include the following when justified by site-specific factors set forth in the Action Memorandum/Administrative Record: As set forth in Paragraph 15(g) and documented in the Administrative Record, EPA has determined that attainment of water quality standards under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., as a result of the Work is not practicable. 40 CFR § 300.415(j). Good Samaritan will comply with [XXX provisions of Work Plan] that address water quality issues in order to ensure environmental improvement at the Property.]

XII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

32. In the event of any action or occurrence during performance of the Work which causes or threatens a release of a hazardous substance from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Good Samaritan shall immediately take all appropriate action. Good Samaritan shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Good Samaritan shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Emergency Response Branch of the incident or Site conditions.

33. In addition, in the event of any release of a hazardous substance from the Site resulting from the actions conducted pursuant to this Settlement Agreement, Good Samaritan shall immediately notify EPA's OSC at [insert telephone number] and the National Response Center at telephone number (800) 424-8802. Good Samaritan shall submit a written report to EPA within seven (7) days after such 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. EPA reserves the right to

take appropriate measures to mitigate the risk of or potential impact from a threatened or actual release.

XIII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

34. The OSC shall be responsible for overseeing Good Samaritan's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct the Work, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of the Work unless specifically directed by the OSC.

XIV. PAYMENT OF OVERSIGHT COSTS

[Note: Where appropriate, EPA may request and negotiate with the Good Samaritan the reasonable reimbursement of all or a portion of the EPA oversight costs, e.g., an upfront not-to-exceed amount that is based on the Good Samaritan's available resources and nature and extent of EPA oversight.]

35. [Note: Regions should include or delete this paragraph on a case-by case basis.] Prior to commencing the Work pursuant to Section VIII, Good Samaritan shall pay EPA costs in connection with EPA's oversight of the removal action outlined herein, not inconsistent with the NCP [, in the amount of \$_____]. Good Samaritan shall not be liable for any oversight costs above \$_____. [Note: See CERCLA Model Agreement and Order on Consent for Removal Action by a Bona Fide Prospective Purchaser," issued November 27, 2006, for payment instructions. Note that, as an alternative to special accounts, oversight costs may be deposited to a Good Samaritan-controlled escrow account, with payments to be made to the Superfund upon certain specified contingencies. Any escrow agreement or provisions must be carefully drafted to avoid direct EPA control over funds in escrow contrary to the Miscellaneous Receipts Act.]

XV. DISPUTE RESOLUTION

36. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally. To the extent needed, Parties will agree on the selection of a neutral to guide discussions and negotiations consistent with generally accepted mediation/dispute resolution practice. If the Parties are unable to reach an agreement regarding the dispute within a reasonable period, an EPA management official at the Associate Regional Administrator level [or equivalent] or higher will review the dispute and will issue a written decision. EPA's decision shall be incorporated into and become an enforceable part of the Settlement Agreement.

XVI. FORCE MAJEURE

37. Good Samaritan agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Good Samaritan, or of any entity controlled by Good Samaritan, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Good Samaritan's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work [,] [or] increased cost of performance [insert, if applicable, ", or a failure to attain [performance standards/action levels] set forth in the Action Memorandum/Enforcement or Administrative Record."].

38. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the

force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Good Samaritan in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Good Samaritan in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVII. UNITED STATES COVENANT NOT TO SUE

39. In consideration of the actions that will be performed [and the payments that will be made] by Good Samaritan under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the United States covenants not to sue or to take administrative action against Good Samaritan pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Good Samaritan of all obligations under this Settlement Agreement [, including, but not limited to, payment of Oversight Costs, pursuant to Section ___]. This covenant not to sue extends only to Good Samaritan and does not extend to any other person.

XVIII. UNITED STATES RESERVATION OF RIGHTS

40. Except as specifically provided in this Settlement Agreement, 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 any legal or equitable relief necessary to enforce the terms of this Settlement Agreement.

41. The covenant not to sue set forth in Section XVII above does not pertain to any matters other than those expressly identified therein. The scope of the reservations in this Section is premised on the voluntary nature and narrow scope of the actions to be undertaken pursuant to this Order, the fact that Good Samaritan does not currently own the Property, and on Good Samaritan's certification that it does not intend to own such Property in the future. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against Good Samaritan with respect to the following:

- a. liability resulting from exacerbation of Existing Contamination due to willful, intentional or grossly negligent conduct by Good Samaritan, its successors, contractors, subcontractors, assignees, lessees or sublessees, except to the extent that the conditions constituting or contributing to the exacerbation were disclosed to EPA, or were readily observable by EPA, prior to issuance of the Notice of Completion;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability for violations of federal law or regulations; and
- e. liability for releases of hazardous substances within or outside the Site caused by Good Samaritan's activities not within the scope of this Settlement Agreement.

42. Work Takeover.

a. In the event EPA determines that Good Samaritan has ceased implementation of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines

necessary. Prior to taking over the Work, EPA will issue a written notice to Good Samaritan specifying the grounds upon which such notice was issued and providing Good Samaritan with [] days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. Good Samaritan may invoke dispute resolution set forth in Section XV to dispute EPA's determination that takeover of the Work is necessary. However, notwithstanding Good Samaritan's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover until the earlier of the date (i) the Parties agree to a resolution of the dispute, or (ii) EPA management renders a written decision.

c. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XXII (Financial Responsibility) of this Settlement Agreement. In the event of such Work Takeover, Good Samaritan's liability for the Work Takeover shall not exceed \$[estimated cost of Work] consistent with Section XXII.

XIX. GOOD SAMARITAN'S COVENANT NOT TO SUE

43. Except as otherwise specifically provided in this Settlement Agreement, Good Samaritan covenants not to sue or assert any claim or cause of action against the United States, or its contractors or employees, with respect to the Work, this Settlement Agreement, or Existing Contamination, including but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law.

XX. OTHER CLAIMS

44. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Good Samaritan. The United States or EPA shall not be deemed a party to any contract entered into by Good Samaritan or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement. Except as expressly provided in Section XVII (Covenant Not To Sue), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Good Samaritan or any person not a party to this Settlement Agreement, 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 Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

45. This Settlement Agreement does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Good Samaritan waive(s) any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. § 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Settlement Agreement.

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

47. Good Samaritan is carrying out this agreement for its own benefit and waives all claims for compensation for services rendered to EPA for activities it performs in furtherance of this Settlement Agreement.

XXI. CONTRIBUTION

48. In the event of a suit or claim for contribution brought against Good Samaritan notwithstanding the provisions of Section 107(d)(1) of CERCLA, 42 U.S.C. § 9607(d)(1), with

respect to Existing Contamination (including any claim based on the contention that Good Samaritan is not a person rendering care, assistance, or advice pursuant to Section 107(d)(1), or is no longer entitled to protection from liability pursuant to CERCLA Section 107(d)(1)) as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the OSC), the Parties agree that this Settlement Agreement shall then constitute an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Good Samaritan would be entitled, from the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination.

49. In the event Good Samaritan were found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a person rendering care, assistance, or advice or acting at the direction of an OSC pursuant to Section 107(d)(1), or to have lost its status as a person rendering care, assistance or advice or acting at the direction of an OSC pursuant to Section 107(d)(1) as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the OSC, the Parties agree that this Settlement Agreement shall then constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Good Samaritan has resolved its liability for all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination.

50. Good Samaritan agrees that with respect to any suit or claim brought by it for matters related to this Settlement Agreement it will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

51. Good Samaritan also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement it will notify in writing the United States within [insert number] days of service of the complaint on it.

52. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any person not a party to this Settlement Agreement to obtain [additional] response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXII. FINANCIAL RESPONSIBILITY

53. The Parties agree and acknowledge that, in the event Good Samaritan fails to complete the Work in accordance with this Settlement Agreement, Good Samaritan shall ensure that EPA is held harmless from or reimbursed for all costs required for completion of the Work. For these purposes, Good Samaritan shall maintain financial responsibility for the benefit of EPA in the amount of \$[insert estimated cost of Work] (hereinafter [“Estimated Cost of the Work”]), which must be satisfactory in form and substance to EPA before the Good Samaritan begins Work.

54. The commencement of any Work Takeover pursuant to Paragraph 42 shall trigger EPA's right to receive the benefit of financial responsibility mechanism(s) agreed to by the Parties, and at such time EPA shall have immediate access to resources guaranteed under any such financial responsibility mechanism(s), whether in cash or in kind, as needed to complete the Work.

XXIII. NOTICE OF COMPLETION

55. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, EPA will provide notice to Good

Samaritan. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Good Samaritan, provide a list of the deficiencies, and require that Good Samaritan modify the Work Plan if appropriate in order to correct such deficiencies. Good Samaritan shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice.

XXIV. PUBLIC COMMENT

56. This Settlement Agreement shall be subject to a thirty (30)-day public comment period, after which EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

XXV. INTEGRATION/APPENDICES

57. This Settlement Agreement [and its appendices] constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the matters addressed herein. The Parties acknowledge that there are no representations, agreements or understandings relating to the Settlement Agreement other than those expressly contained herein.

58. The following appendices are attached to and incorporated into this Settlement Agreement:

[Appendix 1. shall mean _____, etc.]

XXVI. CERTIFICATIONS

59. By entering into this Settlement Agreement, Good Samaritan hereby certifies that it is rendering care, assistance, or advice in accordance with the National Contingency Plan at the direction of an On-Scene Coordinator, by voluntarily agreeing to clean up Existing Contamination at an Orphan Mine Site, and further that it (a) is not a past owner or current owner of the Property and has no intention of purchasing the Property in the future; (b) is not potentially liable for the remediation of the Existing Contamination pursuant to Sections 106 or 107 of CERCLA; and (c) is not potentially liable under any other Federal, State or local law for the remediation of the Existing Contamination. If the United States determines that any information provided by Good Samaritan in connection with this Settlement Agreement is not materially accurate and complete, or if Good Samaritan becomes a Site owner or operator in the future, the Settlement Agreement, within the sole discretion of EPA, shall be null and void and EPA reserves all rights it may have.

60. The undersigned representative of Good Samaritan certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party it represents to this document.

AGREED this _____ day of _____, _____

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

Regional Administrator Date
Region __

UNITED STATES DEPARTMENT OF JUSTICE

BY:

Assistant Attorney General

Date

Environment and Natural Resources Division

U.S. Department of Justice

BY:

[GOOD SAMARITAN NAME]

[Title]

Date

EFFECTIVE DATE: _____