



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Ref: EPR-ER

**ACTION MEMORANDUM**

**SUBJECT:** Request for Funding and Approval of a Time-Critical Removal Action at the Eight Burnt Buildings Cheyenne River Sioux Site, Eagle Butte, Dewey County, South Dakota

**FROM:** Todd DeGarmo/Craig Gigglesman  
Federal On-Scene Coordinators

*Todd DeGarmo* 10/29/18

**THRU:** Laura Williams, Unit Leader  
Emergency Response

*Laura Williams* 10/29/18

Sandra A. Stavnes, Deputy Assistant Regional Administrator  
Office of Ecosystems Protection and Remediation

*Sandra A. Stavnes* 10/30/18

**TO:** Betsy Smidinger, Assistant Regional Administrator  
Office of Ecosystems Protection and Remediation

Site ID#: A8S1

**I. PURPOSE**

The purpose of this Action Memorandum is to request and document approval of the time-critical removal action (TCRA) described herein for the Eight Burnt Buildings Cheyenne River Sioux Site (Site) located on the Cheyenne River Sioux Indian Reservation in the town of Eagle Butte, Dewey County, South Dakota.

The Removal Action involves the removal, demolition, and proper disposal of six vacant, abandoned structures on tribally owned land known to contain friable asbestos. All six structures are deteriorating and subject to trespassing and vandalism, are structurally unsound, and friable asbestos is readily exposed to the environment and to the surrounding residential population. Conditions at the Site present a threat to public health and the environment and meet the criteria for initiating a removal action under 40 CFR § 300.415(b) of the National Contingency Plan (NCP).

This removal action is considered nationally-significant or precedent-setting because it involves asbestos as the principal contaminant of concern and is occurring on tribally-owned lands. This removal action will not establish any precedent for how future response actions will be taken and will not commit the U.S. Environmental Protection Agency (EPA) to a course of action that could have a significant impact on future responses or resources.

## II. SITE CONDITIONS AND BACKGROUND

Site Name:	Eight Burnt Buildings Cheyenne River Sioux Site
Superfund Site ID (SSID):	A8S1
Operable Unit	N/A
NRC Case Number:	N/A
CERCLIS Number:	SDN000802575
Site Location:	Eagle Butte/Dewey County/South Dakota
Lat/Long:	45.004924/-101.230715
Potentially Responsible Party:	
NPL Status:	N/A
Planned Removal Start Date:	1 <sup>st</sup> Quarter Fiscal Year 2019

### A. Site Description

#### 1. Removal Site Evaluation

In March 2017, the Cheyenne River Sioux Tribe (CRST) contacted the EPA requesting assistance with the removal of burned and abandoned buildings suspected to contain friable asbestos on tribally owned land in Eagle Butte, South Dakota. In September 2017, the EPA deployed the Superfund Technical Assessment and Response Team (START) contractor to conduct a visual inspection of a total of 11 structures. Based on the START contractor's findings, a more in-depth assessment was warranted. In May 2018, the EPA conducted a Targeted Brownfields Assessment (TBA) at the Site. The TBA Phase II environmental site assessment determined that friable asbestos was present in nine of the buildings, six of which were readily exposed to the elements, releasing asbestos to the surrounding environment. The Phase II report is provided in the Administrative Record for this Site. A Site map is presented in Attachment 1 and Site photographs are provided in Attachment 2.

The Site consists of six vacant, abandoned structures on six separate properties all tribally owned:

- Property No. 1 – partially burned, single story building that's missing all outer windows and doors; floor tiles and drywall contain from 2-12% chrysotile asbestos.
- Property No. 2 – partially burned, single story building that's missing all outer windows and doors; a portion of the front outer wall is also missing; linoleum flooring and drywall contain between 5-6% chrysotile asbestos.
- Property No. 3 – partially burned, single story building that contains a basement and is missing windows and doors; flooring and drywall contains from 2-3% chrysotile asbestos; the wrapping around the vibration dampener contains 50% chrysotile asbestos.
- Property No. 4 – mobile home that's missing windows and an entire outer wall; linoleum flooring contains 15% chrysotile asbestos.

- Property No. 5 – partially burned single story building that contains a basement and is missing all outer windows and doors; linoleum flooring and drywall contain from 3-6% chrysotile asbestos; trace amounts of brown vermiculite (tremolite-actinolite asbestos) were also detected throughout the building.
- Property No. 9 – partially burned, single story building that's missing outer windows and doors; floor tiles, drywall, window glazing and transite piping contain from 7-14% chrysotile asbestos.

There are over 1,300 people living in the residential area surrounding the Site. There are no fences to prevent community members, including children from accessing the buildings that comprise the Site. All attempts by the Tribe to prevent access to the Site have failed. All six structures are in a state of deterioration. The buildings at Property Nos. 1-5 and No. 9 exhibit signs of trespassing and vandalism and are so degraded that they are structurally unsound and open to the elements. Major damage has been done to sheetrock and flooring within these structures. There are broken or missing windows and doors. Fire, water and other damage to ceilings, floors, and interior and exterior walls is evident. The Tribe has attempted to board up these structures to prevent access, but trespassers continue to remove the boards and the buildings are readily accessible to the local community.

There is a threat of release of friable asbestos to the environment due to the broken and missing doors and windows and damage to interior ceilings, roofs and outer walls of all six structures. Asbestos-containing material (ACM) could be released to the environment from any breach in these structures caused by weather, trespassing, vandalism or fires. The ongoing vandalism and damage to these buildings poses a threat of release of friable asbestos to the environment which would represent an inhalation threat to nearby residents and community members.

## **2. Physical Location**

The Site is located in the town of Eagle Butte within the CRST Reservation in Dewey County, South Dakota (Attachment 1). The CRST Reservation is approximately 4,267 square miles in size.

## **3. Site Characteristics**

As of the 2010 census, approximately 8,090 Tribal members reside at the CRST Reservation. Approximately 1,349 people live in Eagle Butte. In Dewey County the annual average rainfall is 18 inches and the annual average snowfall is 33 inches. The annual average wind speed is 23 miles per hour (mph); however, during the winter months, wind speeds can reach over 60 mph. Wind and precipitation can facilitate the dispersion of friable asbestos into the environment both on and off-site and potentially expose the local community surrounding the Site to asbestos contamination.

The buildings are located in a residential neighborhood providing ready accessibility to community members including children. There are no fences to prevent persons from accessing the Site. All of the structures are abandoned. The structures have already been partially burned and are opened to the elements. Major damage has been done to ceilings, walls, sheetrock and flooring within the structures. There is fire, water and other damage to ceilings, floors, and interior and exterior walls. Outside windows and doors are broken and/or missing. The structures are so degraded and structurally unsound that wind, rain and snow could cause further deterioration of the buildings and allow releases of friable asbestos to the surrounding community. As all six structures continue to deteriorate from ongoing vandalism and weather events, there is a threat of release of asbestos fibers to the environment from damaged building materials.

**4. Release or Threatened Release into the Environment of a Hazardous Substance, Pollutant or Contaminant**

The known contaminant of concern at the Site is asbestos, which is a hazardous substance as defined by Section 101 (14) of CERCLA. Asbestos is a solid material with a variety of forms including tremolite-actinolite and chrysotile which were found at the Site. Asbestos is highly resistant to heat and has exceptional tensile strength, both of which are characteristics that lend themselves to use in ordinary building materials. Asbestos tends to become brittle over time, shattering into fiber bundles due to age and weathering, and is referred to as being friable. Subsequently, the friable fiber bundles can further degrade into microscopic fibers that can be distributed into the air. Human exposure to these airborne asbestos fibers via inhalation has been proven to cause asbestosis, cancer, mesothelioma, and other respiratory diseases. There is potential for human exposure to Site-related asbestos in the surrounding residential area from releases of asbestos into the environment and to anyone who accesses the structures.

**5. NPL Status**

This Site is not on the NPL, nor is it currently proposed for inclusion on the NPL.

**6. Maps, Pictures and Other Graphic Representations**

A Site map and photos are included as attachments.

**B. Other Actions to Date**

**1. Previous Actions**

There have been no previous removal actions at this Site.

**2. Current Actions**

The EPA Brownfields Program provided a Phase II assessment report. The Tribe has provided an access agreement to conduct a removal of ACM and demolition of the properties if warranted.

### **C. State and Local Authorities' Roles**

#### **1. Tribal and Local Actions to Date**

In March 2017, the CRST and, subsequently, the EPA Brownfields Program requested assistance from EPA Region 8's Emergency Response Unit to conduct a removal of potentially ACM contaminated structures from tribally owned land that may be releasing friable asbestos into the environment and exposing local community members.

EPA has contacted the State of South Dakota regarding landfills permitted to accept friable and non-friable asbestos.

#### **2. Potential for Continued Tribal/Local Response**

Neither the Tribe nor the local authorities have the resources to conduct the proposed removal action at this Site. The Tribe does not have the funds to independently conduct this removal action.

### **III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES**

Conditions at the Site present a threat to public health and the environment, and meet the criteria for initiating a removal action under 40 CFR 300.415(b) of the NCP.

EPA has considered all the factors described in 40 CFR 300.415(b)(2) of the NCP and determined that the following factors apply at the Site:

“(i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, or pollutants or contaminants:”

The ACM from the structures poses a direct threat to public health and welfare because friable asbestos could be released to the environment through broken and missing doors, windows and any breach in the ceilings, inner and outer walls, or roofs due to weather, fires, or vandalism and continued deterioration. The structures are located within a residential neighborhood and there are no access restrictions to prevent community members, including children from readily walking through the properties and being exposed to friable asbestos which may have been released from the structures into the environment, or wandering directly into the buildings and being exposed to friable asbestos contained within the deteriorating structures.

“(v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released:”

The structures are in poor condition with broken doors, windows and other deficiencies. Weather events including wind, rain and snow will cause continued degradation of compromised roofs and water damage to interior ceilings. Any holes in the roofs or underlying ceilings, missing doors, windows and crumbling walls could result in asbestos containing material becoming directly exposed to the elements and becoming friable. In turn, wind and precipitation can cause a release of the friable asbestos from the degraded structures into the environment.

“(vii) The availability of other appropriate federal or state mechanisms to respond to the release:”

No other local, tribal or federal agency is in the position or has the resources to independently implement a timely, effective response action to address the ongoing threat presented by the Site.

#### **IV. PROPOSED ACTIONS AND ESTIMATED COSTS**

##### **A. Proposed Actions**

###### **1. Proposed Action Description**

For each of the six structures, EPA will remove asbestos-containing sheet rock, floor tile and other ACM debris to the extent practicable, demolish the remaining portions of the structures, and properly dispose of the separate waste streams at a permitted landfill. As part of this process, EPA will determine if any of the building components can be segregated from ACM and managed as uncontaminated construction and demolition debris for disposal purposes. Any walls and roofs still standing will be knocked down during the demolition process. All asbestos-contaminated building debris will be managed as ACM for disposal purposes. All ACM will be properly disposed of at a landfill authorized to accept ACM. All non-ACM contaminated debris will be disposed of at a landfill authorized to accept construction and demolition debris. Uncontaminated backfill material will be placed in basement areas of the structures that have basements, and compacted, up to or near the level of the surrounding grade.

EPA will work with the State of South Dakota to identify the closest landfills allowed to accept asbestos which are in compliance with the off-site rule (40 CFR section 300.440).

###### **2. Contribution to Remedial Performance**

This removal action will, to the extent practical, contribute to any future remedial effort at the Site.

###### **3. Engineering Evaluation/Cost Analysis (EE/CA)**

An EE/CA is not required for a time-critical removal action.

###### **4. Applicable or Relevant and Appropriate Requirements (ARARs)**

Removal actions conducted under CERCLA are required to attain ARARs to the extent

practicable considering the exigencies of the situation. In determining whether compliance with ARARs is practicable, EPA may consider appropriate factors including the urgency of the situation and the scope of the removal action to be conducted. EPA contacted the Tribe regarding potential ARARs that EPA should consider. On August 6, 2018, the Tribe was contacted via email by the EPA requesting applicable ARARs that the Tribe may have in place. On the same day, the Tribe responded back via email and identified that they do not have any environmental laws regarding asbestos, so federal requirements shall be followed for this removal action.

A discussion of identified ARARS is included in Attachment 3. The ARARS include the National Emissions Standards for Hazardous Air Pollutants (NESHAPs), for asbestos, including keeping asbestos-contaminated debris adequately wet.

**5. Project Schedule**

The removal action is anticipated to begin in the fall of 2018. All removal activities should be completed within six weeks of the beginning of on-site activities.

**B. Estimated Costs\***

Extramural Costs:

Contractor costs	
ERRS/travel/equipment	\$220,000
START/travel/equipment	\$30,000
Other Extramural	\$0
Subtotal	\$250,000
Contingency Costs (20 % of Subtotal)	\$50,000
<b>Total Removal Project Ceiling</b>	<b>\$300,000</b>

\*EPA direct and indirect costs, although cost recoverable, do not count toward the removal ceiling for this removal action. Liable parties may be held financially responsible for costs incurred by the EPA as set forth in Section 107 of CERCLA.

**V. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN**

A delay in action or no action at this Site would increase the actual or potential threats to the public health and/or the environment.

**VI. OUTSTANDING POLICY ISSUES**

Removals involving contamination that may affect other sovereign nations, including Indian Tribes, and those involving asbestos as a principal contaminant are two of seven categories designated as nationally significant or precedent-setting (NSPS). Specific procedures are required for requesting Headquarters concurrence on these actions.

According to EPA's Superfund Removal Guidance for Preparing Action Memoranda, September 2009, removals involving asbestos, when it is the principal contaminant of concern, require Headquarters' concurrence because action levels for response have not yet been set and these determinations are being made on a case-by-case basis (OSWER 9345.4-05).

## VII. ENFORCEMENT

A separate Enforcement Addendum has been prepared providing a confidential summary of current and potential future enforcement actions.

## VIII. RECOMMENDATION

This decision document represents the selected removal action for the Eight Burnt Buildings Cheyenne River Sioux Site, in Eagle Butte, Dewey County, South Dakota, developed in accordance with CERCLA, as amended, and is not inconsistent with the NCP. This decision is based on the administrative record for the Site.

Conditions at the Site meet the NCP section 300.415(b) criteria for a removal action and I recommend your approval of the proposed removal action. The total project ceiling, if approved, will be \$300,000 which will be funded from the Regional removal allowance.

Approve: \_\_\_\_\_

  
Betsy Smidinger  
Assistant Regional Administrator  
Office of Ecosystems Protection and Remediation

Date: 10/31/18

Disapprove: \_\_\_\_\_

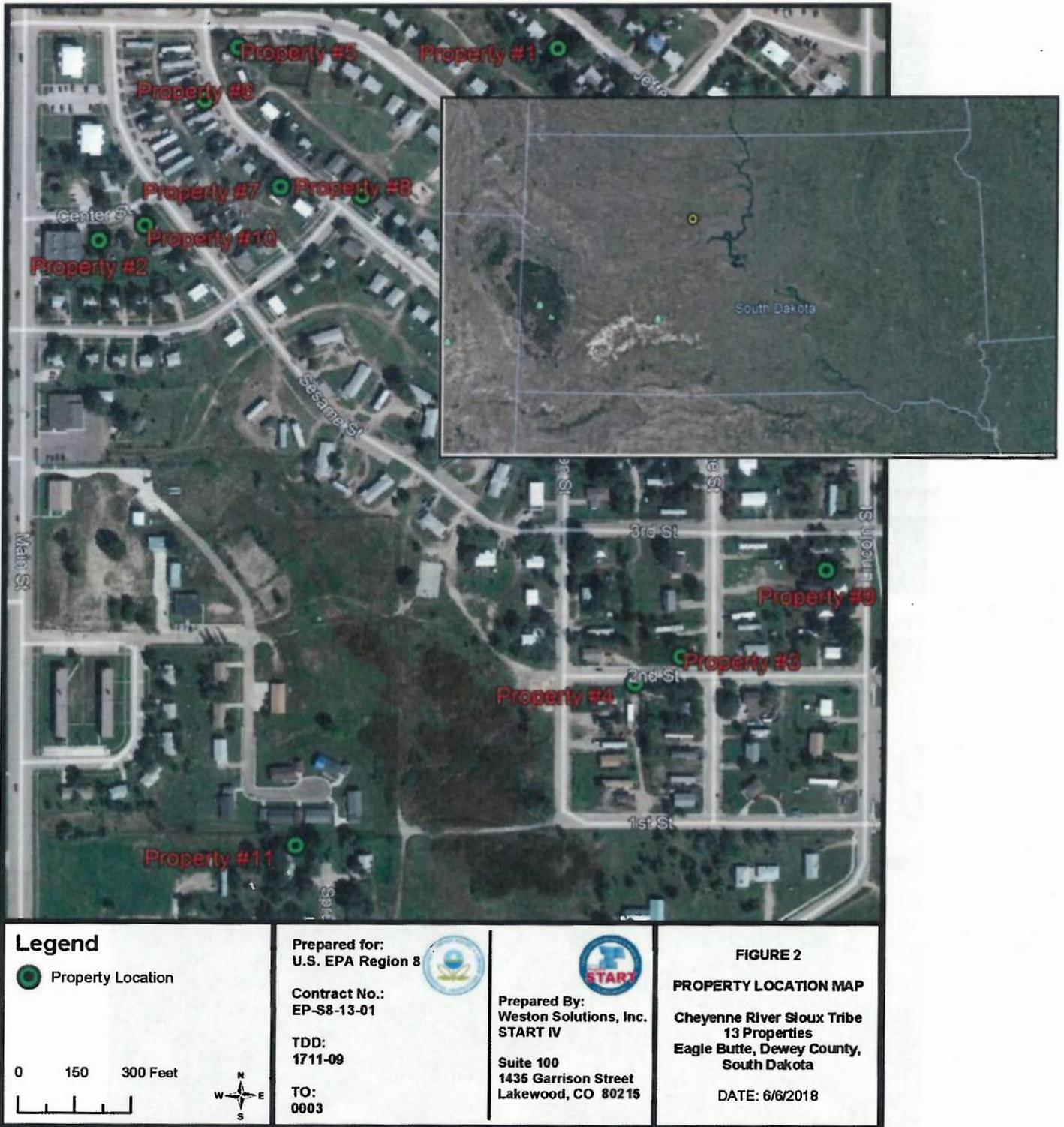
Betsy Smidinger  
Assistant Regional Administrator  
Office of Ecosystems Protection and Remediation

Date: \_\_\_\_\_

### Attachments:

- Attachment 1: Site Map
- Attachment 2: Site Photos
- Attachment 3: ARAR Table

Attachment 1: Site Map



Location of nine properties (Properties #1-#5 and #7-#10) on the Cheyenne River Sioux Tribe Reservation containing asbestos (Note – Properties #6 and # 11 did not contain any detectable asbestos; Properties #7, #8 and #10 are excluded from this removal action).

**Attachment 2: Site Photos**

**Property #1 - Cheyenne River Sioux Tribe, Dewey County, South Dakota.**



**Property #1 (Interior) - Cheyenne River Sioux Tribe, Dewey County, South Dakota.**



**Property #2 - Cheyenne River Sioux Tribe, Dewey County, South Dakota.**



**Property #2 (Interior) - Cheyenne River Sioux Tribe, Dewey County, South Dakota.**



**Property #3 - Cheyenne River Sioux Tribe, Dewey County, South Dakota.**



**Property #3 (Interior) - Cheyenne River Sioux Tribe, Dewey County, South Dakota.**



**Property #4 - Cheyenne River Sioux Tribe, Dewey County, South Dakota.**



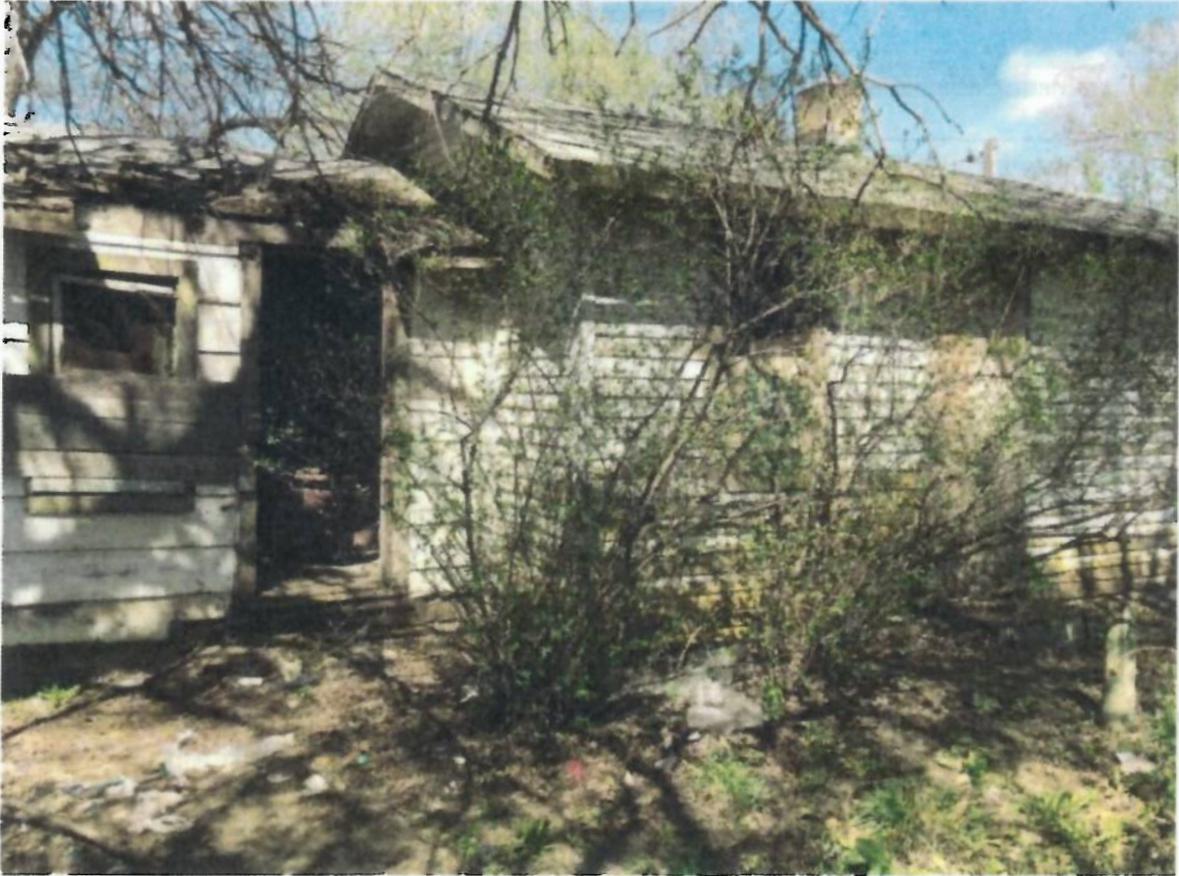
**Property #5 - Cheyenne River Sioux Tribe, Dewey County, South Dakota.**



**Property #5 (Interior) - Cheyenne River Sioux Tribe, Dewey County, South Dakota.**



**Property #9 - Cheyenne River Sioux Tribe, Dewey County, South Dakota.**



**Property #9 (Interior) - Cheyenne River Sioux Tribe, Dewey County, South Dakota.**



**Attachment 3  
ARAR Table**

This table contains a listing of potential Federal ARARs for the CRST Site

Standard, Requirement, Criteria or Limitation	Citation	Description	Applicable or Relevant and Appropriate	Comments
<b>FEDERAL</b>				
National Emissions Standards for Hazardous Air Pollutants (NESHAP), National Emission Standards for Asbestos	40 CFR Part 61 Subpart M, including but not limited to 61.145, 61.150 and 61.154.	Addresses demolition and disposal of asbestos contaminated materials.	Applicable	Best Management Practices will be implemented to comply with the requirements of NESHAP and protect public health, including keeping asbestos-contaminated debris adequately wet until disposed of as ACM. Disposal of ACM will be conducted in accordance with NESHAP regulations.
Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (RCRA Subtitle D)	40 CFR Part 257. Subpart A	Regulates the generation, storage, handling and disposal of solid waste.	Applicable	RCRA Subtitle D specifically regulates non-hazardous solid waste; it may be applicable to any non-asbestos containing debris generated by the CRST Site.



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OCT 01 2018

MEMORANDUM

**SUBJECT:** Region 8 Request for Concurrence on Proposed Nationally Significant or Precedent-Setting Removal at the Eight Burnt Buildings Cheyenne River Sioux Site in Eagle Butte, Dewey County, South Dakota

**FROM:** Sandy A. Stavnes, Deputy Assistant Regional Administrator  
Office of Ecosystems Protection & Remediation *SAS*

**TO:** Reggie Cheatham, Director  
Office of Emergency Management

This memorandum requests your concurrence on the proposed removal action at the Eight Burnt Buildings Cheyenne River Sioux Site on the Cheyenne River Sioux Indian Reservation in South Dakota. Redefinition of Authority R-14-2 gives you the authority to concur on nationally significant or precedent-setting removals.

My staff has discussed this proposed removal with your staff in the Preparedness & Response Operations Division (PROD). PROD has advised the Region that this removal is considered nationally significant or precedent-setting because it involves asbestos as the principal contaminant of concern and is occurring on Tribal Trust Land.

The Action Memorandum is attached for your review. Please indicate your concurrence to proceed with asbestos removal at the Eight Burnt Buildings Cheyenne River Sioux Site below.

Concur:

*Reggie Cheatham*  
\_\_\_\_\_  
Reggie Cheatham, Director  
Office of Emergency Management

Date 10/26/18

According to the redelegation, authority to non-concur remains with the Assistant Administrator. If you choose to not concur on this action, please forward this memorandum to the Assistant Administrator.

Non-Concur:

\_\_\_\_\_  
Barry N. Breen, Acting Assistant Administrator  
Office of Land and Emergency Management

\_\_\_\_\_  
Date

Attachment



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