



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3140

**SUPERFUND AND EMERGENCY
MANAGEMENT DIVISION**

MEMORANDUM

DATE: September 24, 2019

SUBJECT: ACTION MEMORANDUM - Approval and Funding for a Removal Action at Umpqua Mine AML Site, Douglas County, Oregon.

FROM: Randy Nattis, On-Scene Coordinator
Spill Prevention and Removal Section

TO: David Allnutt, Acting Director
Superfund and Emergency Management Division

THRU: Beth Sheldrake, Acting Manager
Emergency Management Branch

Wally Moon, Manager
Spill Prevention and Removal Section

SITE ID: 10RM

I. PURPOSE

The purpose of this Action Memorandum is to document the decision of the selected time-critical removal action described herein for the Umpqua Mine Site (Site) located in Douglas County, Oregon. On January 8, 2018, President Trump signed the Western Oregon Tribal Fairness Act (WOTFA) into law.¹ Title I of this act, the "Cow Creek Umpqua Tribe Conveyance", mandated that the Secretary of the Interior (Secretary) transfer 17,519 acres of land formerly managed by the Bureau of Land Management (BLM) to be held in trust for the exclusive and beneficial use of the Cow Creek Band of Umpqua Tribe of Indians (Tribe). The lands were subsequently transferred into trust for the Tribe on July 19, 2018. During a May 2018 site visit, BLM indicated to the Bureau of Indian Affairs (BIA) that the Umpqua Mine, an abandoned mercury mine that operated from 1918 to the 1940s, was located within the Tribe's WOTFA boundaries. On August 12, 2018, the Tribe passed a resolution requesting the U.S. government to clean up

¹ H.R. 1306, The Western Oregon Tribal Fairness Act (WOTFA) – Title I – The ‘Cow Creek Umpqua Tribe Conveyance’ - <https://www.congress.gov/115/plaws/publ103/PLAW-115publ103.pdf>

the contamination at the Umpqua Mine Site. EPA offered formal government-to-government consultation with the Tribe, but the Tribe declined. The tribal leadership is satisfied with the level of communication and solution being pursued. The tribal leadership expressed a desire to have the Site cleaned up as soon as possible.

This action meets the criteria for initiating a removal action under the National Contingency Plan (NCP), 40 C.F.R. §300.415. The proposed time-critical removal action will address mine tailings and associated mining structures with elevated concentrations of mercury, arsenic and other heavy metals, which pose a threat to human health and to the environment.

In accordance with the Superfund Removal Guidance for Preparing Action Memoranda ("AM Guidance") (OSWER September 2009), removal actions at non-NPL sites that may affect other sovereign nations, including Indian Tribes, are issues of national significance and require concurrence from the EPA Office of Emergency Management. Region 10 has sought and obtained concurrence from the Office of Emergency Management. See Attachment IV.

II. SITE CONDITIONS AND BACKGROUND

The SEMS ID No. ORN001020093

Mining, milling, and processing of cinnabar ore occurred at the Umpqua Mine to produce mercury. A thermal vaporization/distillation process was used to extract and condense mercury from the ore. Development of the Umpqua Mine began in 1918. Approximately 1,100 feet of underground workings were eventually developed, mostly during the 1920s and 1930s. Cinnabar ore was mined, milled, and processed by distillation to produce flasks of liquid mercury. Reported production of mercury was four flasks in 1929 and five flasks in 1943 (nine total flasks). The general site layout includes a powerhouse area, upper processing area, and main processing plant.

A. Site Description

1. Removal site evaluation

Site visits during the late 1990s and early 2000s identified the presence of relatively intact mine processing equipment in their original position at the Site. The equipment included a rotary furnace, powerhouse area, wooden trestle, ore bins, grizzly bars, condenser, main fuel oil tank and related equipment. BLM also conducted an Engineering Evaluation/Cost Analysis² (EE/CA) investigation in April 2017 which involved a site reconnaissance, field screening with an X-ray fluorescence (XRF), and sampling and laboratory analysis. Visual observations during the 2017 reconnaissance indicated the Site had been heavily disturbed at some point following the site visits during the late 1990s and early 2000s. The reconnaissance focused on visual examination of soil, vegetation, mine waste and mining features. All the mining equipment (except for a fuel oil tank and a portable retort) had been consolidated into non-engineered, partially constructed

² Bureau of Land Management, January 2, 2018, *Umpqua Mine, Engineering Evaluation/Cost Analysis, Douglas County, Oregon*

repositories in the central and southeastern portions of the site. According to BLM, the work had been conducted by an unknown entity sometime during the prior thirteen years.

During the 2017 investigations, BLM took 30 samples, three background samples, two process waste (mine operation debris) samples, five sediment samples from the unnamed drainage and 20 soil samples, two of which were duplicates. Based on those samples, BLM discovered elevated concentrations of mercury and arsenic in samples collected from waste areas related to mine operations and within the soils at Site. No elevated results were found within the unnamed drainage. Mercury was detected in soils at an average concentration of 376 mg/kg with a high of 7,580 mg/kg and arsenic was detected in the soils area at an average concentration of 21 mg/kg with a high of 125 mg/kg. Mercury was detected in the mining operations waste area at an average concentration of 8,415 mg/kg with a high of 10,100 mg/kg and arsenic was detected in the mining operations waste area at an average concentration of 83 mg/kg with a high of 102 mg/kg.

Mercury exceeded the EPA Regional Screening Level (RSL) of 46 mg/kg for industrial soils and 11 mg/kg for residential soils in 13 out of 20 samples. All of the analytical results from the mine waste areas exceed the EPA RSL for arsenic in both residential soils (0.68 mg/kg) and industrial soils (3 mg/kg).

During a site reconnaissance and assessment in August 2019, EPA discovered Site conditions to be the same as depicted in the EE/CA. EPA, using an XRF, verified the findings within the EE/CA. Based on these findings, EPA plans to rely on the sample results from the EE/CA and the XRF field sampling to guide the removal activities (Figures 4, 5, and 6 of the EE/CA). Based on the August 2019 activities and referencing the EE/CA, EPA assumes roughly 500 cubic yards (cy) of mining operations waste (woody, metal) are staged within the repositories and there is an additional 200 cy of contaminated soils throughout the Site.

Toxicity Characteristic Leaching Procedure (TCLP) results for the samples of the mine operations waste residuals are presented in Table 5 of the BLM EE/CA. Results were non-detect for arsenic and ranged from 0.00498 to 0.097 milligrams per liter (mg/l) for mercury, which is well below the Resource Conservation and Recovery Act (RCRA) toxicity characteristic threshold of 0.2 mg/l. TCLP results for a single soil sample (UMM-SS-17) were similar with non-detect for arsenic and 0.00077 mg/l for mercury. It should be noted that sample UMM-SS-17 displayed the highest mercury concentration by XRF at the Site and indicates metals-impacted soils are very unlikely to be classified as a RCRA hazardous waste. Since no contaminated soils or mining operations waste material samples failed TCLP criteria, no material will require removal and disposal at a Subpart C landfill as hazardous waste.

2. Physical Location

The Site is located in Douglas County, Oregon, approximately 30 miles southeast of Roseburg, Oregon. The legal description of the property comprising the Site is Township 29 South, Range 2 West, Section 34, Willamette Meridian. Site coordinates are:

Latitude 43.0179410°

Longitude -122.9336170°

The Site is located at approximately 2,200 feet above mean sea level (amsl) mid-slope on a narrow ridge. The topography of the Site slopes downward to the north and the general area is characterized by rugged forested ridges and valley floors, dominated by the Umpqua River valley. The elevation ranges from approximately 1,000 feet in the valley floor to over 3,000 feet along the ridge tops.

The Site is located adjacent to an unnamed drainage that flows through the Site towards the north for approximately 500 feet before discharging into Stanley Creek. Stanley Creek then continues to the northeast for another 500 feet before joining Deadman Creek. Deadman Creek flows towards the east/southeast for approximately 6 miles before joining the South Umpqua River, which is the main drainage in the area.

Average annual precipitation for the area (Roseburg, Oregon) is approximately 34 inches with greater amounts at higher elevations. Average annual maximum temperature is 67 degrees Fahrenheit (F) and average annual minimum of 44 degrees F. The majority of precipitation occurs in the winter and spring months of November through May. Occasional summer thunderstorms cause precipitation during the warmer months (US Climate Data, 2017).

The Site is within the Cow Creek Band of Umpqua Tribe of Indians WOTFA boundaries. EPA is working with BIA, U.S. Fish and Wildlife Service (FWS), and the Tribe for the removal action.

3. Site Characteristics

The land comprising the Site is tribal land held in trust by BIA pursuant to WOFTA. Much of the surrounding area is undeveloped BLM land; although a private patented inholding associated with the Maude S. Mine is located directly to the south of the Site. The nearest town is Tiller (population 235), located approximately 7 air miles southwest of the Site. The City of Medford is located approximately 50 air miles south of the Site and is a major population center in the region. Medford has a population of 77,677 with a greater metro area population of 208,545 based on U.S. census data.

During the August 2019 EPA site reconnaissance and assessment, EPA observed that people had been visiting the Site and recreating at the Site. EPA saw a camp fire ring and other evidence of camping activities within the area. Additionally, an unmaintained Site access road was present in the main area of mine site features. BLM Road 26.0 continues through the Site and appears to be traveled periodically by forest users.

Main Processing Plant

The main processing plant area previously included the main features of the Umpqua Mine. This area is accessed from an unmaintained road that branches off to the northeast from BLM road 26.0. The area is currently dominated by a large repository. The repository measures approximately 90 feet by 25 feet and includes a soil berm with a weathered visqueen liner that is highly degraded and torn. The partially completed feature consisted of two cells. The northern cell included only wood timbers. The southern cell included only metal process equipment. The

repository is open and uncovered with exposed equipment and metal/wood debris. Large metal pieces, including a brick-lined rotary furnace and condenser pipe, are placed in the southern portion of the repository.

A spent ore waste pile is present in the north-central portion of the main processing plant area. The spent ore appears to be a finely-ground (coarse sand and fine gravel size) reddish brown material. The land surface is generally devoid of vegetation. A collapsed adit (no water flow) was observed on the eastern portion of the area. Two large (approximately 4 feet by 5 feet) concrete blocks were visible in the central portion of the area and appear to be remnant portions of the ore processing plant foundation. An unnamed drainage flows through the Site.

Upper Processing Area

Visual observations in the area of the former trestle, main ore bin and fuel oil tank indicate the surficial soils were disturbed during removal of the mining equipment. This area had previously displayed elevated mercury concentrations during previous investigations. No visual evidence of stressed vegetation or soil discoloration was observed except for the original location of the fuel oil tank. A concave depression in the ground surface was visible where the fuel oil tank was previously located. A black, viscous, oily substance was present on the ground surface in this area.

Powerhouse Area

The upper adit was sealed but was discharging groundwater at approximately 10 gallons per minute (visual estimate, piped discharge through an approximately two-foot diameter steel culvert). The adit and fluid discharge is ranked as a Category 1N on the Mine or Mine Activity Fluid Hazard Risk Category Chart.³ The reported Powerhouse structure was no longer present. A small (10 foot by 15 foot) non-engineered repository was present near the closed adit. The repository was constructed with an earthen berm and visqueen liner and contained several pieces of steel pipe and debris. The material was exposed to the elements with no cover and the visqueen was highly weathered and torn. A stockpile of soil and brick debris was located directly south of the BLM access road. The stockpile was covered with torn visqueen and the material was exposed to the elements. An elongated waste rock pile was present directly north and down-slope of the BLM access road. No visual evidence of soil staining or distressed vegetation was observed in the Powerhouse area. The waste rock pile was well vegetated and had several mature trees and small shrubs growing on the surface.

Contaminated soils volume estimates - ~ 200 cy (cubic yards)

Wood debris volume estimates - ~200 cy

Metal debris volume estimates - ~300 cy

Total estimated site debris is 700 cy

4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

³ Mine or Mine Activity Fluid Hazard Risk Category Chart developed by the EPA's National Mining Team.

Hazardous substances with elevated concentrations (that are above background concentrations and exceed EPA Regional Screening Levels for Residential and/or Industrial Soils) in one or more samples include the following heavy metals:

- Arsenic
- Mercury

These metals are hazardous substances as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. §9601(14).

The Site is comprised of approximately 200 cy of contaminated soils and 500 cy of mining operations waste that have elevated concentrations of the above listed hazardous substances. Of specific concern are the high concentrations of mercury, which exceed the RSL by several orders of magnitude. The RSL for mercury in industrial soils is 46 mg/kg. The highest mercury concentration sample collected from the mining operations waste was 10,100 mg/kg and the highest mercury concentration sample collected from the contaminated soils was 7,580 mg/kg. These contaminated soils are easily transportable by wind and surface water flow. Additionally, current conditions can threaten campers, loggers or trespassers at the Site.

5. NPL Status

The Site is not listed nor has it been proposed for listing on the National Priorities List (NPL). No remedial activities are in progress or anticipated at this time.

B. Other Actions to Date

1. Previous Actions

- BLM conducted a site assessment in 1999.
- BLM conducted an expanded site assessment 2000.
- BLM conducted a supplemental site assessment to address data gaps because the Site was greatly disturbed since the previous assessments and prepared an engineering evaluation / cost analysis (EE/CA) in 2017 prior to the WOFTA land conveyance.

2. Current Actions

There are no current or planned government or private activities Site.

C. State and Local Authorities' Roles

1. State and local actions to date

None.

2. Potential for continued State/local response

The Site lies solely within the WOTFA boundaries for the Cow Creek Band of Umpqua Tribe of Indians and the recommended action is the removal of all contamination off-site to a disposal facility. It is not anticipated that any potential State/local or tribal response will be necessary. EPA is coordinating with the Tribe to ensure successful implementation of the selected removal activity by maintaining monthly calls and having two site visits with the Tribe, BIA, BLM. The Tribe will support the removal activities by harvesting all timber so that the land is clear to enable EPA to begin removal activities.

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

The current conditions at the Site meet the factors which indicate a threat to the public health or welfare or the environment, and a removal action is appropriate under section 300.415(b)(2) of the NCP:

1. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants (300.415(b)(2)(i)).

Contaminated soil and the mine operations waste contain elevated concentrations of mercury and arsenic. The processing of mined ore and the dumping of the finely milled waste have caused these metals to be easily transported by wind and water erosion, and have increased the capacity for leaching of these metals into adjacent surface water. There is a potential for exposure pathways via inhalation or ingestion. Given the evidence of human activity at the Site, there is a potential for human exposure to the hazardous substances.

BLM has developed screening criteria for metals in soils at mining sites based on various recreational and residential use exposure scenarios.⁴ Arsenic and mercury concentrations of tailings and other wastes at the Site exceed the BLM Risk Management Criteria for campers, workers, surveyors and residents. Arsenic and mercury concentrations in tailings and other wastes at the Site also exceed the EPA Regional Screening Levels for both residential and industrial exposure scenarios.⁵

2. High levels of hazardous substances or pollutants in soils largely at or near the surface that may migrate (300.415(b)(2)(iv)).

Arsenic concentrations in the contaminated soils and mining operations waste are as high as 125 mg/kg (BLM Recreational SL for soils is 30.6 mg/kg). Mercury concentrations in the

⁴ U.S. Department of the Interior, Bureau of Land Management (BLM), October 2004, *Risk Management Criteria for Metals at BLM Mining Sites*, obtained on the internet at:

<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1021&context=usblmpub>

⁵ United States Environmental Protection Agency (EPA), May 2019, *Regional Screening Levels for Chemical Contaminants at Superfund Sites*, obtained on the internet at: <https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables>

contaminated soil and mining operations waste are as high as 10,100 mg/kg (RSL for industrial soils is 46 mg/kg). During the winter and spring and high surface water flows, surface waters convey the contaminated soils into the unnamed drainage that flows through the Site. This flow continues to create a risk of undercutting/entraining additional contaminated soil, which could cause a mass loading of contaminated soil with high concentrations of hazardous substances into Stanley Creek and Deadman Creek downstream, ultimately making it into the South Umpqua River.

3. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released (300.415(b)(2)(v)).

During winter and spring, rain and snow, including snow melt with additional rainfall, contribute to the migration of contaminated soil through erosion of the exposed and un-vegetated area. Hot temperatures and dry weather in summer contribute to wind-borne dispersal of tailings.

4. The availability of other appropriate federal or state response mechanisms to respond to the release (300.415(b)(2)(vii)).

The proposed removal action will be performed by EPA. Originally, BLM intended to conduct the removal action, but the conveyance of land under WOFTA shifted jurisdiction away from BLM. EPA and BLM have been working cooperatively to ensure the work is completed despite the land exchange. BLM has provided and will continue to provide technical support for the proposed cleanup activities. Additionally, BLM has conducted an archeological survey of the Site.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from this Site may present an imminent and substantial endangerment to public health, or welfare, or the environment.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Action

1. Proposed Action Description

The primary objectives of the proposed removal action will be to implement alternative 4 of the BLM EE/CA, removal and disposal of all identified mine operation wastes and contaminated soils:

1. Eliminate potential human contact with metals-contaminated soil and the mining operations wastes; and
2. Eliminate potential migration of contaminated soil into Stanley and Deadman Creek.

Complete removal of all contaminated soil and mining operations waste debris will require coordination with BLM and temporary closing or rerouting of nearby roads for Site access and safety during the construction period. The nearby roads are used for logging operations.

To achieve these objectives, the proposed removal action entails excavation of approximately 200 cy of contaminated soil and 500 cy of the mining operations wastes, and woody- and metal debris and disposing them off site to a Subpart D landfill. The contaminated soil and mining operations waste debris will be excavated and backfilled with growth media from nearby borrow sources, regraded and vegetated. In order to accomplish this, the Site will first need to be cleared, grubbed, and prepared to have large equipment on Site. Surface water from the unnamed drainage running through the Site will be temporarily diverted during the removal activities. The surface waters are fed from the adit drainage which has been sealed and piped by BLM. The surface water drainage is classified as an EPA mine activity fluid hazard risk Category 1N. Once the removal of contaminated material is completed, the unnamed drainage will be re-constructed and reinforced. The Site will be revegetated in coordination with Tribal consistent with potential future land uses. Road closures and Site access will be coordinated by BLM. By removing all contaminated soil and mining operations waste debris within the Site, human contact from hazardous soils and potential future ecological impacts will be greatly reduced, achieving the primary removal objectives.

Sediment fences, dust control and other best management practices (BMPs) will be used to ensure that construction activities will not result in increased migration of sediments to Stanley Creek or other off site receptors.

Greener cleanup BMPs will be implemented during cleanup activities, including minimizing energy consumption by using new and well-maintained equipment, minimizing generation and transport of fugitive dust, minimizing impacts to water resources by implementation of construction stormwater and surface water BMPs, minimizing imported materials by using materials for backfilling activities from on-site borrow sources and minimizing unnecessary soil and habitat disturbance. The Tribe has agreed to harvest existing lumber on site prior to mobilization. Any woody material not suitable for harvest will be chipped and used back on site as mulch.

All contaminated materials will be removed from the Site. No post-removal site controls, institutional controls or maintenance will be required once the removal actions are completed. The Tribe will reuse the land for future harvest of timber or other tribal activities. All activities will comply with the CERCLA Off-Site Rule and the CERCLA action is not anticipated to adversely affect the surrounding area.

2. Contribution to remedial performance

No subsequent remedial action is anticipated. The proposed time-critical removal action is to excavate tailings, contaminated soil and mining debris and dispose of them in a Subpart D landfill. The Site is not expected to require any further EPA action. However, if future actions are required, the proposed removal action should not impede those actions based upon available information.

3. Description of alternative technologies

The use of alternative technologies is not anticipated.

4. Applicable or relevant and appropriate requirements (ARARs)

The NCP requires that removal actions attain ARARs under federal or state environmental or facility siting laws to the extent practicable, considering the exigencies of the situation. This has been interpreted to extend to promulgated tribal laws or regulations as well. The proposed removal action will attain or exceed ARARs, to the extent practicable, including Clean Water Act requirements, National Historic Preservation Act, and Endangered Species Act. Below is a summary of potential Federal and State ARARs that have been identified or otherwise considered for this project. The Tribe has informed EPA that there are no Tribal ARARs.

Federal ARARs:

- a.) Clean Water Act, Section 402(p). Under Section 402(p) of the Clean Water Act, the stormwater discharges associated with metal mining facilities disturbing one acre or more, including mines abandoned on federal lands, must meet the requirements for an NPDES construction general permit for stormwater discharges. The substantive requirements of the permit include design and installation of control measures to mitigate stormwater and non-stormwater pollution. The OSC will coordinate with EPA NPDES compliance personnel to identify the likely substantive requirements for this action.
- b.) Endangered Species Act, Section 7. The Endangered Species Act (ESA) requires that each federal agency ensure, through consultation, that any action authorized, funded, or carried out by that agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat for endangered or threatened species. It is not expected that the proposed removal action will impact Stanley or Deadman Creek; however, the OSC will coordinate with NOAA and USFWS personnel to address ESA at the Site.
- c.) National Historic Preservation Act, Section 106, 16 U.S.C. 470; 36 C.F.R. Part 800. The National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of their undertakings on historic properties. The State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officer (THPO) advise and assist Federal agencies in carrying out their section 106 responsibilities and cooperate with such agencies, to ensure that historic properties are taken into consideration. Both EPA and BLM have worked with the THPO to satisfy this requirement. The THPO has made the determination that since the Site has been heavily disturbed in the early 2000's, the proposed action will not affect any historical properties.
- d.) Archeological and Historic Preservation Act, 16 U.S.C. 469. This statute and implementing regulations establish requirements for the evaluation and preservation of

historical and archaeological data, which may be destroyed through alteration of terrain as a result of a federal construction project or a federally licensed activity or program. The unauthorized removal of archaeological resources from public or Indian lands is prohibited without a permit and any archaeological investigations at a site must be conducted by a professional archaeologist. The unauthorized removal of archaeological resources from public or Indian lands is prohibited without a permit and any archaeological investigations at a site must be conducted by a professional archaeologist. Both EPA and BLM have worked with the THPO to satisfy this requirement. The THPO has made the determination that since the Site has been heavily disturbed in the early 2000's, the proposed action will not affect any archeological or historical properties.

- e.) Archeological Resources Protection Act, 16 U.S.C. 470aa, 43 C.F.R Part 7. This Act and regulations specify the steps that must be taken to protect archeological resources and sites that are on public and Native American lands and to preserve data uncovered. A cultural survey was completed by BLM in 1999, since then, the Site has been completed disturbed in the early 2000's. Both EPA and BLM have worked with the THPO to satisfy this requirement. The THPO has made the determination that since the Site has been heavily disturbed in the early 2000's, the proposed action will not affect any archeological resources.
- f.) Resource Conservation and Recovery Act (RCRA), Subtitle C Hazardous Waste Characteristics, 40 CFR 261.20. Generators of solid waste must determine whether the waste is hazardous. A solid waste is hazardous if it exhibits the toxicity characteristic (based on extraction procedure Method 1311).
 - a. RCRA, Subtitle C Exemption for Extraction, Beneficiation and Processing Mining Waste 40 CFR 261.4(b)(7) - EPA exempts mining wastes from the extraction, beneficiation, and some processing of ores and minerals, in accordance with the Bevill amendment to RCRA. Mercury source material such as tailings and co-mingled contaminated soils/sediment that were not processed through the furnace meet this exemption. Mercury source material identified as exempt would be addressed as nonhazardous solid waste rather than RCRA hazardous waste.
- g.) Migratory Bird Treaty Act, 16 U.S.C. 703 - 712. This Act makes it illegal for anyone to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such a bird except under the terms of a valid Federal Permit. The term "take" is not defined in the MBTA, but the U.S. Fish and Wildlife Service has defined it by regulation to mean to "pursue, hunt, shoot, wound, kill, trap, capture, or collect" or to attempt those activities. Under the provisions of the MBTA, the unauthorized take of migratory birds is a criminal offense. There are no migratory birds expected to be impacted by this action.

Tribal ARARs:

None

5. Project Schedule

All work is expected to be completed within 10 weeks from mobilization date.

B. Estimated Costs

<u>EPA Extramural Costs:</u>	
<u>Regional Removal Allowance Costs:</u>	
Total Cleanup Contractor Costs including subcontractor.	\$428,585
Subtotal Extramural Costs	\$428,585
Extramural Costs Contingency (20% of Subtotal, Extramural Costs)	\$ 85,717
TOTAL EPA REMOVAL ACTION PROJECT CEILING	\$514,302

The total estimated project extramural cost for the proposed removal action is \$514,302.

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

Delayed action will increase public health risks due to the increased exposure to metals. Without the removal action described herein, conditions will remain unaddressed and threats associated with the hazardous substances will persist.

VII. OUTSTANDING POLICY ISSUES

The removal involves nationally significant and precedent-setting issues because it involves the removal of contaminated materials and soils affecting Indian Tribes.

VIII. ENFORCEMENT

See the attached "Confidential Enforcement Addendum" for enforcement details.

IX. APPROVAL / DISAPPROVAL

This decision document represents the selected removal action for the Umpqua Mine Site, Douglas County, Oregon, developed in accordance with CERCLA as amended, and not inconsistent with the NCP. This decision is based on the administrative record for the Site.

Conditions at the Umpqua Mine Site meet the NCP Section 300.415(b)(2) criteria for a removal and I recommend your approval of the proposed removal action. The total EPA removal project ceiling will be \$514,302. Work on the entire Site will be conducted by EPA contractors.

APPROVAL:



David Allnutt, Acting Director
Superfund and Emergency Management Division

9/24/15

Date

DISAPPROVAL:

David Allnutt, Acting Director
Superfund and Emergency Management Division

Date

Attachments:

- I. Bureau of Land Management, January 2, 2018, *Umpqua Mine, Engineering Evaluation/Cost Analysis, Douglas County, Oregon*
- II. H.R. 1306, The Western Oregon Tribal Fairness Act (WOTFA) – Title I – The ‘Cow Creek Umpqua Tribe Conveyance’
- III. Site Restoration Preliminary Design Umpqua Mine Site, Douglas County, Oregon (WORK ASSIGNMENT - SERAS 1-192: TECHNICAL MEMORANDUM) – will be completed prior to mobilization
- IV. OEM Concurrence
- V. Confidential Enforcement Memorandum



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3188

SUPERFUND &
EMERGENCY
MANAGEMENT DIVISION

SEP 13 2019

MEMORANDUM

SUBJECT: Request for concurrence on Nationally Significant or Precedent-setting Removal at the Umpqua Mine Site, Days Creek, Douglas County, Oregon

FROM: David Allnutt, Acting Director
Superfund & Emergency Management Division, Region 10

[Handwritten signature] 9/13/19

TO: Reggie Cheatham, Director
Office of Emergency Management (OEM)

The purpose of this memorandum is to request and document your concurrence on the proposed removal action at the Umpqua Mine Site, Days Creek, Douglas County, Oregon, which is located on the Cow Creek Band of Umpqua Tribe of Indians (Tribe). The primary contaminants of concern at the site, which is an abandoned mercury mine, are mercury and arsenic. The site is not on the National Priorities List (NPL). OLEM re-delegation of Authority R-14-2 gives you the authority to concur on nationally significant or precedent-setting removals at non-NPL sites.

The On-Scene Coordinator (OSC) has discussed this proposed removal with staff of the Office of Emergency Management's Preparedness and Response Operations Division (PROD). PROD has advised the OSC that this removal is considered nationally significant or precedent-setting because the removal action at the Site may affect other sovereign nations, including Indian Tribes (OEM 2009 Action Memo Guidance).

The Action Memorandum is attached for your review. My approval awaits your concurrence.

Concur:

[Handwritten signature]

Reggie Cheatham, Director, Office of Emergency Management

9/24/19
Date

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

Non-Concur:

Peter Wright, Assistant Administrator for Office of Land
and Emergency Management (OLEM)

Date

ENFORCEMENT ADDENDUM

The land on which the removal action is to be taken at the Umpqua Mine Site was previously owned by the Bureau of Land Management (BLM). Recently the land was transferred to the Umpqua Tribe and is held in trust by the Bureau of Indian Affairs (BIA), pursuant to the Western Oregon Tribal Fairness Act (WOFTA). Prior to the land transfer, BLM was responsible for the cleanup of the Site and had begun the CERCLA removal process by completing an Environmental Engineering and Cost Analysis. After the land transfer, BLM requested that EPA become the lead agency for the CERCLA action. BLM evaluated whether there are viable potentially responsible parties at the Site and has determined that there are none. The Site was actively mined between 1918 and 1940s and, according to BLM, any viable owners or operators are no longer in existence.

EPA is initially using EPA appropriated funds to conduct the removal action. To assist EPA in conducting the removal action, BLM transferred funds to EPA that had originally been designated for use by BLM at the Site, when BLM was the owner of the land. Jurisdictional issues were raised by EPA's Office of General Counsel regarding the Interagency Agreement (IA) through which BLM transferred funds to EPA. As a result, EPA is initiating the response action with EPA funds. If the agencies can resolve the legal issues surrounding the transfer of funds from the Department of Interior to EPA, EPA may receive funding from DOI through a new IA. If money is not transferred to EPA through an IA, EPA will request reimbursement from BIA pursuant to Section 9(l) of Executive Order 12580.

Region 10 Routing and Concurrence

	9	9/13/2019
Addressee:	Reggie Cheatham	
Subject:	Umpqua Mine Action Memo	
File Location/Name:		

PROGRAM ADMIN REVIEW:

	Sharon Smith	Casey Myers
Initials/Date:	<i>AS</i>	

PROGRAM OFFICE CONCURRENCE:

	E. McKenna	D. Ingemansen	W. Moon	B. Sheldrake	<i>AS</i>	<i>SEND</i>
	<i>Via email</i>	<i>via email</i>	<i>BS for WM</i>	<i>BS</i>	<i>[Signature]</i>	<i>DA 9/24</i>

cc(s) (include name, title, organization, mailing address, and email if PDF is required—attach a list if necessary)

bcc(s) (include name, title, organization, mailing address, and email if PDF is required—attach a list if necessary)

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Mailing Deadline:		Certified Mail:	
FAX to:		FAX #:	

ADDITIONAL INFO/INSTRUCTIONS: Mail hard copy to addressee and PDF a copy to OSC ! Files, SF Records Center

Program		Chrono.		Other